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Tuesday
May 19, 1987

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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

CHICAGO, IL

WHEN: July 8, at 9 a.m.
WHERE: Room 204A, Everett McKinley Dirksen Federal Building, 219 S. Dearborn Street, Chicago, IL.
RESERVATIONS: Call the Chicago Federal Information Center, 312–353–0339.

BOSTON, MA

WHEN: July 15, at 9 a.m.
WHERE: Main Auditorium, Federal Building, 10 Causeway Street, Boston, MA.
RESERVATIONS: Call the Boston Federal Information Center, 617–565–8129

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DEPARTMENT OF AGRICULTURE

Office of the Secretary

7 CFR Part 2

Revision of Delegations of Authority; Assistant Secretary et al.

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 reflect the transfer of responsibility for physical security functions from the Inspector General to the Assistant Secretary for Administration and the Director, Office of Operations.

EFFECTIVE DATE: May 19, 1987.

FOR FURTHER INFORMATION CONTACT: Charles A. Bucy, Deputy Director, Office of Operations, U.S. Department of Agriculture, Washington, DC (202) 447-2582.

SUPPLEMENTARY INFORMATION: The delegations of authority of the Department of Agriculture are amended to reflect the transfer of responsibility for the physical security functions for the Department of Agriculture from the Inspector General to the Assistant Secretary for Administration and the Director, Office of Operations.

The Assistant Secretary for Administration and the Director, Office of Operations, have responsibility for real property and space management in the Department. This transfer will strengthen the effectiveness and coordination of the physical security functions.

This rule relates to internal agency management. Therefore, pursuant to 5 U.S.C. 553, notice of proposed rulemaking and opportunity for 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, 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, except as 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 2.25 is amended by adding a new paragraph (c)(9) as follows:

§ 2.25 Delegations of authority to the Assistant Secretary for Administration.

* * * * *

(c) * * *

(9) Promulgate Departmental policies, standards, techniques, and procedures and represent the Department in maintaining the security of physical facilities, self-protection, and warden services.

* * * * *

3. Section 2.33 is amended by removing and reserving paragraph (c) as follows:

§ 2.33 Delegations of authority to the Inspector General.

* * * * *

(c) [Reserved]

* * * * *

Subpart J—Delegations of Authority by the Assistant Secretary for Administration

4. Section 2.76 is amended by adding a new paragraph (a)(11) to read as follows:

§ 2.76 Director, Office of Operations.

(a) *Delegations.* * * *

(11) Promulgate Departmental policies, standards, techniques, and procedures and represent the Department in maintaining the security of physical facilities, self-protection, and warden services.

Dated: May 11, 1987.

For Subpart C.

Peter C. Myers,

Acting Secretary of Agriculture.

Dated: May 11, 1987.

For Subpart J.

John J. Franke, Jr.,

Assistant Secretary for Administration.

[FR Doc. 87-11293 Filed 5-18-87; 8:45 am]

BILLING CODE 3410-01-M

Animal and Plant Health Inspection Service

9 CFR Part 78

[Docket No. 86-115]

Validated Brucellosis-Free States

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule.

SUMMARY: We are amending the regulations concerning the interstate movement of swine because of brucellosis by changing the program status of Connecticut, New Jersey, New York, and Ohio to validated brucellosis-free States. This action is necessary because we have determined that Connecticut, New Jersey, New York, and Ohio meet the criteria for validated brucellosis-free States. The effect of this action is to relieve certain restrictions on moving breeding swine from these States.

DATES: Interim rule effective May 19, 1987. All comments must be postmarked on or before July 20, 1987.

ADDRESSES: Send written comments to Steven B. Farbman, Assistant Director, Regulatory Coordination, APHIS, USDA, Room 728, Federal Building, 6505

Belcrest Road, Hyattsville MD 20782. Please state that your comments refer to Docket Number 86–115. Comments received may be inspected at Room 728 of the Federal Building between 8 a.m. and 4:30 p.m. Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT:
Dr. Mitchell A. Essey, Program Planning Staff, VS, APHIS, USDA, Room 844, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301–436–5961.

SUPPLEMENTARY INFORMATION:

Background

Brucellosis is a serious, infectious, and contagious disease which affects animals and man and is caused by bacteria of the genus *Brucella*.

Title 9 of the Code of Federal Regulations Part 78 (referred to below as the regulations), regulates the interstate movement of cattle, bison, and swine with respect to brucellosis. States, areas, herds, and individual animals are classified according to brucellosis status, and interstate movement requirements for animals are based upon the disease status of the herd, area, or State from which the animal originates.

Section 78.43 of the regulations, which lists validated brucellosis-free States, is amended by changing the swine brucellosis program status of Connecticut, New Jersey, New York, and Ohio to validated brucellosis-free States. After reviewing their brucellosis program records, we have concluded that these States meet the criteria for validated brucellosis-free States. Therefore, we are adding Connecticut, New Jersey, New York, and Ohio to the list of States in § 78.43. The effect of this action is to relieve certain restrictions on moving breeding swine from these States.

Emergency Action

Dr. John K. Atwell, Deputy Administrator of the Animal and Plant Health Inspection Service for Veterinary Services, has determined that an emergency situation exists, which warrants publication of this interim rule without prior opportunity for public comment. It is necessary to make this interim rule effective immediately to accurately reflect the current brucellosis status of Connecticut, New Jersey, New York, and Ohio.

For this reason, we find that pursuant to the administrative procedure provisions in 5 U.S.C. 533, prior notice and other public procedures with respect to this interim rule are impracticable and contrary to the public interest; and good cause is found for making this interim rule effective less than 30 days after publication of this document in the **Federal Register.** We are requiring that comments concerning this interim rule be submitted within 60 days of its publication. We will discuss comments received and any amendments required in a final rule that will be published in the **Federal Register.**

Executive Order 12291 and Regulatory Flexibility Act

We are issuing this 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.

For this action, the Office of Management and Budget has waived its review process required by Executive Order 12291.

This action will allow breeding swine to move interstate from these States without testing for brucellosis. The groups affected by this action will be herd owners in Connecticut, New Jersey, New York, and Ohio, and the effect will be beneficial because restrictions are being relieved. This action will have no effect on the market swine identification programs in these States.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant adverse economic impact on a substantial number of small entities.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under 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.)

Paperwork Reduction Act

This rule contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 9 CFR Part 78

Animal diseases, Brucellosis, Cattle, Hogs, Quarantine, Transportation.

PART 78—BRUCELLOSIS

Accordingly, 9 CFR Part 78 is amended as follows:

1. The authority citation for Part 78 continues to read as follows:

Authority: 21 U.S.C. 111–114a–1, 114g, 115, 117, 120, 121, 123–126, 134b, 134f; 7 CFR 2.17, 2.51, and 371.2(d).

2. Section 78.43 is revised as follows:

§ 78.43 Validated brucellosis-free States.

Alaska, Arizona, California, Colorado, Connecticut, Delaware, Idaho, Illinois, Indiana, Iowa, Maine, Maryland, Minnesota, Montana, Nebraska, Nevada, New Jersey, New York, New Hampshire, North Dakota, Ohio, Pennsylvania, Puerto Rico, Rhode Island, South Dakota, Utah, Vermont, Virgin Islands, Virginia, Washington, Wisconsin, Wyoming.

Done in Washington, DC, this 13th day of May, 1987.

J.K. Atwell,

Deputy Administrator, Veterinary Services, Animal and Plant Health Inspection Service.

[FR Doc. 87–11291 Filed 5–18–87; 8:45 am]

BILLING CODE 3410–34–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 91 and 135

[Docket No. 25149; SFAR No. 50]

Special Flight Rules in the Vicinity of Grand Canyon National Park

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; correction.

SUMMARY: The Grand Canyon National Park Special Flight Rules Area was established by a final rule published in the **Federal Register** on March 26, 1987. (52 FR 9768). The rule takes effect on April 27, 1987. This action makes a correction to the description of boundaries which define the Special Flight Rules Area.

EFFECTIVE DATE: 0901 UTC April 27, 1987.

FOR FURTHER INFORMATION CONTACT:
David L. Bennett, Office of the Chief Counsel AGC–230, Federal Aviation Administration, 800 Independence

Avenue SW., Washington, DC, 20591; telephone: (202) 267–3491.

SUPPLEMENTARY INFORMATION:

History

FAA Special Federal Aviation Regulation (SFAR) No. 50, published as **Federal Register** Document No. 87–6647 on March 26, 1987, (52 FR 9768) established rules governing flight within a special flight rules area in the vicinity of the Grand Canyon National Park. The description of the boundaries of the Grand Canyon Special Flight Rules Area contained an error which is corrected by this action.

[Docket No. 25149; SFAR No. 50]

Accordingly, **Federal Register** Document 87–6647, as published in the **Federal Register** on March 26, 1987, (52 FR 9768) is corrected as follows. The last paragraph on column 1 of page 9775, containing the description of the boundaries of the Grand Canyon National Park Special Flight Rules Area, is corrected to read:

That airspace extending upward from the surface to and including 9,000 feet MSL within an area bounded by a line beginning at lat. 36°09'30" N., long. 114°03'00" W.; northeast to lat. 36°14'00" N., long. 113°12'00" W.; to lat. 36°30'00" N., long. 112°36'00" W.; to lat. 36°30'00" N., long. 111°42'00" W.; to lat. 35°59'30" N., long. 111°42'00" W.; to lat. 35°57'30" N., long. 112°03'20" W.; thence counterclockwise via the 5-statute-mile radius of the Grand Canyon Airport reference point (lat. 35°57'09" N., long. 112°08'47" W.); to lat. 35°57'30" N., long. 112°14'00" W.; to lat. 35°58'00" N., long. 113°11'00" W.; to lat. 35°42'30" N., long. 113°11'00" W.; to lat. 35°38'50" N., long. 113°27'00" W.; thence counterclockwise via the 5-statute-mile radius of the Peach Springs VORTAC to lat. 35°41'20" N., long. 113°36'00" W.; thence to the point of beginning.

Issued in Washington, DC, on May 12, 1987.

Donald D. Engen,

Administrator.

[FR Doc. 87–11321 Filed 5–18–87; 8:45 am]

BILLING CODE 4910–13–M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 200

[Release No. IC–15737]

Delegation of Authority to Director of Division of Investment Management

AGENCY: Securities and Exchange Commission.

ACTION: Final rule.

SUMMARY: The Commission is amending its rules relating to general organization and program management. The amendment will give delegated authority to the Director of the Division of Investment Management to issue a notice of the filing of an application for a temporary or permanent exemptive order from the prohibition against serving or acting in specified capacities with respect to registered investment companies where the Director has temporarily granted such an exemption for a period of up to 60 days. This amendment supplements the delegated authority granted to the Director by the Commission on January 15, 1987, and should facilitate prompt and careful review of such applications for exemption.

EFFECTIVE DATE: May 19, 1987.

FOR FURTHER INFORMATION CONTACT: Curtis R. Hilliard, Special Counsel, Office of Investment Company Regulation, Division of Investment Management, Securities and Exchange Commission, Mail Stop 5–2, 450 Fifth Street NW., Washington, DC 20549, (202) 272–3018.

SUPPLEMENTARY INFORMATION: On January 15, 1987, the Commission granted the Director of the Division of Investment Management ("Division Director") delegated authority to exempt temporarily persons from the prohibitions contained in section 9(a) [15 U.S.C. 80a–9(a) (1982)] of the Investment Company Act of 1940 ("Act") [15 U.S.C. 80a–1 *et seq.* (1982)] for up to 60 days.[1] Under that delegated authority the Division Director may grant a 60 day temporary exemption if it appears that: (i)(a) The prohibitions of section 9(a), as applied to the applicant, may be unduly or disproportionately severe, or (b) the applicant's conduct has been such as not to make it against the public interest or the protection of investors to grant the temporary exemption; and (ii) granting the temporary exemption would protect the interests of the investment companies being served by the applicant by allowing time for the orderly consideraton of the application for permanent relief or the orderly transition of the applicant's responsibilities to a successor, or both.[2] The delegated authority will allow the Commission's staff to respond promptly to emergency situations which may result from imposition of the section 9(a) bar.

Historically, where the Commission has granted temporary relief from the section 9(a) bar, it has also given notice of filing of an application for temporary or permanent relief from section 9(a) in the same release granting the temporary relief.[3] In order to continue that procedure, the Commission has determined to give the Division Director additional authority to issue notices of filing of section 9(c) applications where the Director has granted a temporary exemption from the section 9(a) bar for up to 60 days. This will allow publication of the required public notice in the same release that announces the temporary exemption. This revised delegation will *not* permit the staff to extend a temporary exemption beyond 60 days, or to take final action on the application. Any further action on the application must be taken by the Commission.

---

[1] Section 9(a) provides (the italicized language was added by the Government Securities Act of 1986, Pub. L. 99–571, and is effective July 25, 1987):

It shall be unlawful for any of the following persons to serve or act in the capacity of employee, officer, director, member of an advisory board, investment adviser, or depositor of any registered investment company, or principal underwriter for any registered open-end company, registered unit investment trust, or registered face amount certificate company.

(1) Any person who within 10 years has been convicted of any felony or misdemeanor involving the purchase or sale of any security or arising out of such person's conduct as an underwriter, broker, dealer, investment adviser, *municipal securities dealer, government securities broker, government securities dealer, or entity or person required to be registered under the Commodity Exchange Act,* or as an affiliated person, salesman, or employee of any investment company, bank, insurance company, *or entitiy or person required to be registered under the Commodity Exchange Act;*

(2) Any person who, by reason of misconduct, is permanently or temporarily enjoined by order, judgment, or decree of any court of competent jurisdiction from acting as an underwriter, broker, dealer, investment adviser, *municipal securities dealer, government securities broker, government securities dealer, or entity or person required to be registered under the Commodity Exchange Act,* or as an affiliated person, salesman, or employee of any investment company, bank, insurance company, *or entity or person required to be registered under the Commodity Exchange Act,* or from engaging in or continuing any conduct or practice in connection with any such activity or in connection with the purchase or sale of any security; or

(3) A company any affiliated person of which is ineligible, by reason of paragraph (1) or (2), to serve or act in the foregoing capacities.

For the purposes of paragraphs (1), (2), and (3) of the subsection, the term "investment adviser" shall include an investment adviser as defined in [the Investment Advisers Act of 1940].

[2] *See* Investment Company Act Release No. 15539 (January 15, 1987), which summarizes the process by which applications filed under section 9(c) of the Act for exemptions from the prohibitions of section 9(a) are reviewed by the staff and the Commission.

[3] Section 40 of the Act [15 U.S.C. 80a–41 (1982)] requires that the Commission give "appropriate" notice and opportunity to request a hearing before issuing any orders under the Act. The only orders issued under the Act without prior notice and opportunity for hearing being given are emergency temporary orders, when warranted by the circumstances, which must be issued immediately in order to resolve a problem suddenly facing an investment company under one or more of the regulatory provisions of the Act. *See, e.g.*, American Birthright Trust, Investment Company Act Release No. 11644 (February 24, 1981).

The Commission finds, in accordance with section 553(b)(A) of the Administrative Procedure Act [15 U.S.C. 553(b)(A)], that this amendment relates solely to agency organization, procedure, or practice and does not relate to a substantive rule. Accordingly, notice and opportunity for public comment are unnecessary, and publication of the amendment 30 days before its effective date is not needed.

List of Subjects in 17 CFR Part 200

Administrative practice and procedure, Freedom of information, Privacy, Securities.

Text of Amendment

The Commission hereby amends Title 17, Chapter II of Code of Federal Regulations as follows:

PART 200—ORGANIZATION; CONDUCT AND ETHICS; AND INFORMATION AND REQUESTS

1. The authority citation for Part 200 continues to read as follows: (Authority citations before * * * indicate general rulemaking authority).

Authority: Secs. 19, 23, 48, Stat. 85, 901, as amended, sec. 20, 49 Stat. 833, sec. 319, 53 Stat. 1173, sec. 38, 211, 54 Stat. 841, 855; 15 U.S.C. 77s, 78w, 79t, 77sss, 8a–37, 80b–11, unless otherwise noted. * * * § 200.30–5 is also issued under Pub. L. 91–567, 84 Stat. 1497 (15 U.S.C. 77c(a)(2); Pub. L. 87–592, 76 Stat. 394, as amended by Pub. L. 94–29, 89 Stat. 163 (15 U.S.C. 78d–1, 78d–2); 15 U.S.C. 80a–44, 80b–11(a); secs. 6, 7, 8, 10, 19(a), 48 Stat. 78, 79, 81, 85; secs. 205, 209, 48 Stat. 906, 908; sec. 301, 54 Stat. 857; sec. 8, 68 Stat. 685; sec. 308(a)(2), 90 Stat. 57; secs. 3(b), 12, 13, 14, 15(d), 23(a), 48 Stat. 882, 892, 894, 895, 901; secs. 203(a), 1, 3, 8, 49 Stat. 704, 1375, 1377, 1379; sec. 202, 68 Stat. 686; secs. 4, 5, 6(d), 78 Stat. 569, 570–574; secs. 1, 2, 3, 82 Stat. 454, 455; secs. 28(c), 1, 2, 3, 4, 5, 84 Stat. 1435, 1497; sec. 105(b), 88 Stat. 1503; secs. 8, 9, 10, 89 Stat. 117, 118, 119; sec. 308(b), 90 Stat. 57; sec. 18, 89 Stat. 155; secs. 202, 203, 204, 91 Stat. 1494, 1498–1500; sec. 20(a), 49 Stat. 833; sec. 319, 53 Stat. 1173; sec. 38, 54 Stat. 841; 15 U.S.C. 77f, 77g, 77h, 77j, 77s(a), 78c(b), 78l, 78m, 78n, 78o(d), 78w(a), 77sss(a), 80a–37; 15 U.S.C. 78d–1, 78d–2.

2. Section 200.30–5 is amended by revising paragraph (a)(8) as follows:

§ 200.30–5 Delegation of authority to Director of Division of Investment Management.

* * * * *

(a) * * *

(8) To issue notices, pursuant to Rule 0–5(a) (§ 270.0–5(a) of this chapter) with respect to applications for temporary and permanent orders under section 9(c) of the Investment Company Act of 1940 (15 U.S.C. 80a–9(c)), and to conditionally or unconditionally exempt persons, for a temporary period not exceeding 60 days, from section 9(a) of the Investment Company Act of 1940 (15 U.S.C. 80a–9(a)), if, on the basis of the facts then set forth in the application, it appears that:

(i)(A) The prohibitions of section 9(a), as applied to the applicant, may be unduly or disproportionately severe, or (B) the applicant's conduct has been such as not to make it against the public interest or the protection of investors to grant the temporary exemption; and

(ii) Granting the temporary exemption would protect the interests of the investment companies being served by the applicant by allowing time for the orderly consideration of the application for permanent relief or the orderly transition of the applicant's responsibilities to a successor, or both.

* * * * *

By the Commission.

Jonathan G. Katz,

Secretary.

May 13, 1987.

[FR Doc. 87–11398 Filed 5–18–87; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 510, 522, and 524

Animal Drugs, Feeds, and Related Products, Nitrofurazone Ointment

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a new animal drug application (NADA) filed by Vet Labs Limited, Inc., providing for use of a nitrofurazone ointment (water soluble dressing) for the prevention or treatment of surface bacterial infections on dogs, cats, and horses. The regulations are also amended to reflect Veterinary Laboratories' purchase of Wittney & Co. and its change of sponsor name to Vet Labs Limited, Inc.

EFFECTIVE DATE: May 19, 1987.

FOR FURTHER INFORMATION CONTACT: Sandra K. Woods, Center for Veterinary Medicine (HFV–114), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–3420.

SUPPLEMENTARY INFORMATION: Vet Labs Limited, Inc., 12340 Santa Fe Dr., Lenexa, KS 66215, is sponsor of NADA 138–657 which provides for use of a 0.2-percent nitrofurazone ointment (water soluble dressing) for the prevention or treatment of surface bacterial infections of wounds, burns, and cutaneous ulcers of dogs, cats, and horses. The NADA is approved and 21 CFR 510.600(c) is amended to reflect this approval. The basis of this approval is discussed in the freedom of information summary.

Veterinary Laboratories, Inc., informed the agency that it purchased Wittney & Co. of Denver, CO, and changed its name to Vet Labs Limited, Inc. Accordingly, the lists of sponsors of approved NADA's in § 510.600(c) are amended to remove Veterinary Laboratories, Inc., and Wittney & Co. and to add Vet Labs Limited, Inc. Additionally, this final rule removes and adds drug labeler codes in §§ 522.1183(e)(1), 522.1680(b), 524.1580b(b), and 524.1580d(b) to reflect the purchase of Wittney & Co. and the sponsor name change. The NADA's affected are:

NADA	Product	Ingredient
8–142	Enteritis Formula (swine)	Nitrofurazone.
8–354	Sodium Arsanilate Tablets (swine).	Sodium arsanilate.
42–889	Oxytocin Injection (cats, dogs, ewes, sows, cows, horses).	Oxytocin.
121–559	Nitrofurazone Solution 0.2 percent (dogs, cats, horses).	Nitrofurazone.
138–255	Iron Hydrogenated Dextran Injection (baby pigs).	Iron dextran.
138–657	Nitrofurazone Ointment (dogs, cats, horses).	Nitrofurazone.

This change of sponsor does not involve any changes in current manufacturing facilities, equipment, procedures, or production personnel.

In accordance with the freedom of information provisions of Part 20 (21 CFR Part 20) and § 514.11(e)(2)(ii) (21 CFR 514.11(e)(2)(ii)), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA–305), Food and Drug Administration, Room 4–62, 5600 Fishers Lane, Rockville, MD 20857, from 9 a.m. to 4 p.m., Monday through Friday.

The agency has determined under 21 CFR 25.24(d)(1)(i) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

List of Subjects

21 CFR Part 510

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

21 CFR Part 522

Animal drugs.

21 CFR Part 524

Animal drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, Parts 510, 522, and 524 are amended as follows:

PART 510—NEW ANIMAL DRUGS

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

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

2. Section 510.600 is amended in paragraph (c)(1) by removing the entries for "Veterinary Laboratories, Inc." and "Wittney & Co." and alphabetically adding an entry for "Vet Labs Limited, Inc.," and in paragraph (c)(2) by removing the entries for "000857" and "012481" and numerically adding an entry for "054016" to read as follows:

§ 510.600 Names, addresses, and drug labeler codes of sponsors of approved applications.

* * * * *

(c) * * *

(1) * * *

Firm name and address	Drug labeler code
* * * * *	
Vet Labs Limited, Inc., 12340 Santa Fe Dr., Lenexa, KS 66215	054016
* * * * *	

(2) * * *

Drug labeler code	Firm name and address
* * * * *	
054016	Vet Labs Limited, Inc., 12340 Santa Fe Dr., Lenexa, KS 66215.
* * * * *	

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

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

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

4. Section 522.1183 is amended by revising paragraph (e)(1) to read as follows:

§ 522.1183 Iron hydrogenated dextran injection.

* * * * *

(e)(1) *Sponsors.* See Nos. 015562, 015579, and 054016 in § 510.600(c) of this chapter.

* * * * *

5. Section 522.1680 is amended by revising paragraph (b) to read as follows:

§ 522.1680 Oxytocin injection.

* * * * *

(b) *Sponsors.* See Nos. 00010, 000381, 000693, 000856, 000864, 010271, 015562, 015579, 032420, and 054016 in § 510.600(c) of this chapter.

* * * * *

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

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

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

§ 524.1580b [Amended]

7. Section 524.1580b *Nitrofurazone ointment* is amended in paragraph (b) by removing the "and" before "015579" and adding after the same number", and 054016".

8. Section 524.1580d is amended by revising paragraph (b) to read as follows:

§ 524.1580d Nitrofurazone solution.

* * * * *

(b) *Sponsors.* See 015562, 015579, 051259, and 054016 in § 510.600(c) of this chaper for use as in paragraphs (d) (1) and (2) of this section. See 017153 and 053617 in § 510.600(c) of this chapter for use in paragraph (d)(1) of this section.

Dated: April 30, 1987.

Gerald B. Guest,

Director, Center for Veterinary Medicine.

[FR Doc. 87–11327 Filed 5–18–87; 8:45 am]

BILLING CODE 4160–01–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 81

[Region II Docket No. 69; FRL 3203–2]

Designation of Areas for Air Quality Planning Purposes; Revisions to Section 107 Attainment Status Designations for the State of New Jersey

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: This notice announces the Environmental Protection Agency's approval of a request from New Jersey to revise the air quality designation of the City of Bridgeton from "does not meet secondary standards" to "better than national standards" for the particulate matter secondary standard. Such designations are required by section 107(d) of the Clean Air Act. This action means that the air quality of Bridgeton will be designated as better than the particulate matter secondary standard.

EFFECTIVE DATE: This action is effective June 18, 1987.

ADDRESSES: Copies of the proposals submitted by the State of New Jersey are available for public inspection during normal business hours at the following addresses:

U.S. Environmental Protection Agency, Air Programs Branch, Room 1005, Region II Office, Jacob K. Javits Federal Building, 26 Federal Plaza, New York, New York 10278.

State of New Jersey, Department of Environmental Protection, Division of Environmental Quality, 401 East State Street, CN 027, Trenton, New Jersey 08625.

FOR FURTHER INFORMATION CONTACT: Raymond Werner, Acting Chief, Air Programs Branch, U.S. Environmental Protection Agency, Region II Office, Jacob K. Javits Federal Building, 26 Federal Plaza, New York, New York 10278 (212) 264–2517.

SUPPLEMENTARY INFORMATION: Section 107(d) of the Clean Air Act directed each State to submit to the Administrator of the Environmental Protection Agency (EPA) a list of national ambient air quality standard attainment status designations for all areas within the State. EPA received such designations from the States and promulgated them on March 3, 1978 (43 FR 8962). As authorized by the Clean Air Act, after EPA review and approval, these designations have been revised from time to time at a State's request.

On October 25, 1985 the New Jersey Department of Environmental Protection (NJDEP) submitted a request to revise the air quality designation for the City of Bridgeton from "does not meet secondary standards" to "better than national standards" for attainment of the particulate matter secondary standards. Additional information clarifying its original request was submitted by NJDEP on February 13, 1986.

In the September 22, 1986 issue of the **Federal Register** (51 FR 33626) EPA advised the public that, based on its review of the technical material submitted by the State, it was proposing to approve the requested redesignation. The reader is referred to the September 22, 1986 notice for a detailed description of the State's submittal and for a description of EPA's review criteria and findings. No comments were received by EPA during the comment period, which ended on October 22, 1986.

EPA is today approving the redesignation request submitted by the State of New Jersey. The request has been found to meet the requirements of sections 107 and 301 of the Clean Air Act and applicable EPA guidelines.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by July 20, 1987. This action may not be challenged later in proceedings to enforce its requirements (See section 307(b)(2)).

List of Subjects in 40 CFR Part 81

Air pollution control, National Parks, Wilderness areas.

Dated: May 13, 1987.

Lee M. Thomas,

Administrator, Environmental Protection Agency.

PART 81—DESIGNATION OF AREAS FOR AIR QUALITY PLANNING PURPOSES

Title 40 Chapter I, Subchapter C; Part 81, Code of Federal Regulations is amended as follows:

PART 81—[AMENDED]

Subpart C—Section 107 Attainment Status Designations

1. The authority citation for Part 81 continues to read as follows:

Authority: 42 U.S.C. 7401–7642.

§ 81.331 [Amended]

2. Section 81.331 is amended by revising the entry for the New Jersey Intrastate AQCR in the particulate matter attainment status designation table "New Jersey—TSP" as below:

3. In the § 81.331 "New Jersey—TSP" designation table, the entry for the Northeast Pennsylvania-Upper Delaware Valley Interstate AQCR is reprinted for format purposes only.

NEW JERSEY—TSP

Designated area	Does not meet primary standards	Does not meet secondary standards	Cannot be classified	Better than national standards
• • • • • • •				
New Jersey Intrastate AQCR				X
Northeast Pennsylvania-Upper Delaware Valley Interstate AQCR				X

[FR Doc. 87-11407 Filed 5-18-87; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL MARITIME COMMISSION

46 CFR Parts 516, 559, and 572

[Docket No. 85-10]

Marine Terminal Agreements

AGENCY: Federal Maritime Commission.

ACTION: Final rule.

SUMMARY: This exempts marine terminal agreements (other than marine terminal conference, interconference, joint venture and discussion agreements) from the waiting period requirement of the Shipping Act of 1984 and from the approval requirement of the Shipping Act, 1916. The Final Rule establishes a uniform exemption procedure conditioned upon the filing of the agreement and **Federal Register** publication. The exemptions become effective upon the filing of the agreement with the Federal Maritime Commission.

EFFECTIVE DATE: The amendments to Part 559 shall become effective July 20, 1987, or upon the receipt of OMB clearance for the collection of information requirements, whichever is later. OMB approval will be published when received. The amendments to Part 572 shall become effective July 20, 1987.

FOR FURTHER INFORMATION CONTACT:

Robert G. Drew, Director, Bureau of Domestic Regulation, Federal Maritime Commission, Washington, DC 20573, (202) 523–5796.

Robert D. Bourgoin, General Counsel, Federal Maritime Commission, Washington, DC 20573, (202) 523–5740.

SUPPLEMENTARY INFORMATION: By Notice of Proposed Rulemaking published in the **Federal Register** on April 5, 1985 (50 FR 13617) pursuant to sections 16 and 17 of the Shipping Act of 1984 (1984 Act), 46 U.S.C. app. 1715 and 1716, and sections 35 and 43 of the Shipping Act, 1916 (1916 Act), 46 U.S.C. app. 833a and 841a, the Commission invited comments on the exemption of certain classes of marine terminal agreements from the filing and/or waiting period requirements of section 5 of the 1984 Act, 46 U.S.C. app. 1705, and from the filing and/or approval requirements of section 15 of the 1916 Act, 46 U.S.C. app. 814.[1] The Proposed Rule implemented then Commissioner Robert Setrakian's recommendations in *Report of Inquiry Officer—Part I* (served September 26, 1984 (49 FR 38987)) in Federal Maritime Commission Docket No. 83–38, *Notice of Inquiry and Intent to Review Regulation of Ports and Marine Terminal Operators.*

The Proposed Rule would have incorporated the exemptions for marine terminal agreements in a new Part 516 of Title 46 of the Code of Federal Regulations. In the interest of maintaining the integrity of the current organizational scheme, the exemptions will now be included in existing Parts 559 and 572 of the Code of Federal Regulations, which currently set forth agreements that are exempt from requirements of the 1916 Act and the 1984 Act, respectively.

Fifteen port, marine terminal operator, trade association and ocean common carrier interests filed comments in response to the Commission's Notice. These are: (1) The Maryland Port Administration (MPA); (2) the Port of Sacramento (Sacramento); (3) the Terminal Operators Conference of Hampton Roads (TOCHR); (4) the Virginia Port Authority and Virginia International Terminals (collectively, VPA); (5) the Port of Houston Authority of Harris County, Texas (Port of Houston); (6) American President Lines, Ltd. (APL); (7) the Port of Oakland (Oakland); (8) Matson Terminals, Inc. (Matson) (9) the Houston Port Bureau, Inc. (Houston Port Bureau); (10) the Tampa Port Authority (Tampa); (11) the American Association of Port Authorities (AAPA); (12) the Port of Seattle (Seattle); (13) Sea-Land Service, Inc. (Sea-Land); (14) the United States Atlantic & Gulf Ports/Italy France & Spain Freight Conference (Conference); and (15) the Jacksonville Port Authority (Jacksonville).

[1] A correction to the Supplementary Information of the Proposed Rule was published in the **Federal Register** on May 10, 1985 (50 FR 19727).

All of the commenters support at least a partial exemption for marine terminal agreements, other than marine terminal conference and interconference agreements, from the waiting period/approval requirements of the 1984 and 1916 Acts. A majority recommend that all exempt agreements be filed with the Commission for **Federal Register** publication. Some of the commenters favor a pre-effectiveness review procedure while others support the proposal that the exemption become effective immediately upon an agreement's filing. A number of commenters also addressed the Commission's policy concerning agreements that relate back to events or activities that occurred before the agreement became effective or was approved pursuant to the appropriate Shipping Act.[2]

Discussions.[3]

After careful consideration of the comments, we are establishing a uniform waiting period/approval exemption procedure for all classes of marine terminal agreements, other than marine terminal conference, interconference, joint venture, and discussion agreements. This procedure requires agreements to be filed and published in the **Federal Register**, with the exemption becoming effective upon the agreement's filing. The Final Rule should serve to reduce regulatory delays to a minimum while preserving the benefits derived from prompt public notice of the existence and content of marine terminal agreements. For the reasons more fully explained below, we have determined that the Final Rule will not substantially impair effective regulation by the Commission, be unjustly discriminatory or detrimental to commerce within the meaning of section 16 of the 1984 Act and section 35 of the 1916 Act; nor result in a substantial reduction in competition within the meaning of section 16 of the 1984 Act.

[2] On December 17, 1985, the Commission published a Notice of Proposed Rulemaking in the **Federal Register** (50 FR 51418) in Docket No. 85–22, *Agreements by Ocean Common Carriers and Other Persons Subject to the Shipping Act of 1984*. Docket No. 85–22 proposed to add a new paragraph (h) to Part 572 setting forth the Commission's policy with regard to agreement provisions that relate back to events that occurred before the agreement's effectiveness or approval. By separate Notice served this date, the Commission has determined to withdraw the proposed rule and to continue to address retroactive agreement provisions on an *ad hoc* basis.

[3] This discussion addresses those sections of proposed Part 516 that are being retained in the Final Rule. Certain sections, such as proposed § 516.3 "Policy and Scope," are not being retained and will not be addressed herein. It indicates, however, where the retained provisions of Part 516 will appear in Parts 559 and/or 572.

We have considered all of the comments received in this proceeding and the Supplementary Information discusses some of the more significant issues raised by the comments. Any comments not expressly discussed have either been incorporated as a technical change without discussion, have been found to be mooted by the changes incorporated in the Final Rule, or have been found to be irrelevant or without merit.

A. Proposed § 516.4 (a) and (e)—"Agreement" and "Marine Terminal Agreement" (now §§ 559.7(a) and 572.307(a))

Proposed § 516.5(a) defined the term "agreement" for the purposes of the rule. This definition was narrowly drawn to exclude agreement provisions relating back to activity or events that occurred prior to an agreement's execution. Proposed § 516.4(d) defined the term "marine terminal agreement." The Final Rule combines these definitions under the term "marine terminal agreement."

However, because the Final Rule exempts the agreement only upon filing, the term "marine terminal agreement" is defined to only include agreements that apply to "future, prospective activities" that occur after filing. In response to comments filed in this proceeding and consistent with the Commission's action taken this date in Docket No. 85–22, *supra*, the Final Rule deletes specific references to unacceptable types of agreement provisions. It is extremely difficult, if not impossible, to prescribe a rule which addresses the legitimate concerns of the commenters while at the same time providing clear, definitive guidelines covering all potential variant situations. Accordingly, determinations as to retroactivity will continue to be made on an *ad hoc* basis.

Four commenters urge clarification as to the manner in which the exemption should apply to agreement provisions relating to activity or events occurring prior to an agreement's execution. VPA notes that neither the 1916 and 1984 Acts nor the cases interpreting them provide adequate guidance in this area, and states that a number of valid factors in the business environment could result in entirely reasonable circumstances where parties to marine terminal agreements—wholly lacking unlawful intent—might lock in triggering events or dates ultimately predating the agreement's actual effectiveness. APL believes that the Proposed Rule may blur the distinction between agreement provisions which are, on the one hand, prospective in effect, but which quite properly relate back in terms of an accounting or an adjustment period or some other measure of future performance, and, on the other hand, provisions which on their face provide for performance which predates the filing of an agreement. Accordingly, APL recommends revising the proposed definition to exclude agreement provisions that on their face become effective as of a date, or as of an event, or as of any activity, occurring prior to the agreement's execution, rather than categorically excluding all agreement provisions relating back to pre-execution activity or events.

Oakland is encouraged to see a clear statement on the retroactivity issue in the Proposed Rule, stating that it has found some uncertainty concerning the acceptability of pre-execution provisions under the Commission's precedents. AAPA urges the Commission to advise whether preapproval events may properly be included in marine terminal agreements.

The complexity of the retroactivity issue is amply attested to by the comments which have been received in this proceeding and in Docket No. 85–22, *supra*. The Commission limited the exemption provided by the rule proposed in this proceeding to those agreements which relate to prospective events or activities on the grounds that is unlawful to implement an agreement that has not been approved, become effective or exempted from applicable 1916 or 1984 Act requirements. *See* 46 U.S.C. app. 816, 833a, 1704, 1706(a), 1709(a) and 1715. The Commission may not therefore exempt, or otherwise act to grant antitrust immunity to an agreement or the activity that occurred thereunder prior to the agreement being made lawful under the applicable Shipping Act. *Mediterranean Pools Investigation*, 9 F.M.C. 264 (1966). *See also, Carnation v. Pacific Westbound Conference*, 383 U.S. 213 (1966); *Pacific Coast European Conference v. FMC*, 439 F.2d 514 (D.C. Cir. 1970); *River Plate and Brazil Conference v. Pressed Steel Car Co.*, 327 F.2d 60 (2d Cir. 1955). The Final Rule continues the limitation to the exemption conferred and defines the term "marine terminal agreement" in §§ 559.7(a) and 572.307(a) to limit the exemption provided to those arrangements which apply soley to prospective activities or events.

Finally, the Final Rule also clarifies that the definition of "marine terminal agreement" (and therefore any exemption accorded herein to that class of agreement) does not apply to joint venture arrangements among marine terminal operations. Given their significant and possible competitive

impact, these arrangements will continue to be subject to the filing and approval/waiting period requirements of the 1916 and 1984 Acts.

B. Proposed § 516.5 (a) and (b)—Marine Terminal Agreements—Exemptions (now §§ 559.7(f) and 572.307(e))

Proposed § 516.5 (a) and (b) contained the operative provisions exempting certain classes of marine terminal agreements from the filing and/or waiting period requirements of the 1984 Act, or from the filing and/or approval requirements of the 1916 Act, depending on which Act applies to the agreement in question. Two types of exemptions were proposed, which were differentiated on the basis of the likely anticompetitive impacts of the classes of agreement involved. The Supplementary Information to the Proposed Rule also invited comment on an alternative to each type of exemption.

The first alternative was set forth in § 516.5(a) and proposed an exemption from both Acts' filing requirements (hereinafter referred to as the "Paragraph (a) Exemption") for four classes of agreements: (1) Landlord-tenant marine terminal facility leases; (2) agreements relating to marine terminal facilities or services used in connection with the handling of proprietary cargo; (3) agreements relating to the financing or construction of marine terminal facilities; and (4) agreements relating to off-dock container freight station facilities or services (the four classes hereinafter referred to as "Paragraph (a) Agreements").

We also invited comments on a procedure that would exempt Paragraph (a) Agreements from only the waiting period/approval requirements, on condition that they be filed for informational purposes and **Federal Register** publication (hereinafter referred to as the "Paragraph (a) Exemption Alternative"). The exemption provided by the Paragraph (a) Exemption Alternative would become effective upon filing as the Commission did not intend to substantially review these agreements before they were implemented. The Commission proposed this Alternative because of its concern that agreements should generally be made available to the maritime community as a matter of public information.

The second type of exemption, as proposed in § 516.5(b), provided an exemption from the 1984/1916 Acts' waiting period/approval requirements (hereinafter referred to as the "Paragraph (b) Exemption") for classes of marine terminal agreements other than Paragraph (a) Agreements, with the exception of marine terminal conference, marine terminal interconference and marine terminal discussion agreements, on condition that they be filed for **Federal Register** publication. (These "other" marine terminal agreements are hereinafter referred to as "Paragraph (b) Agreements").[4] Again, no substantive pre-implementation review of these agreements would be undertaken.

We also invited comments on an alternative exemption for Paragraph (b) Agreements which would provide a substantive pre-effectiveness review procedure to ensure overall conformity with the exemption's standards and the Commission's rules (hereinafter referred to as the "Paragraph (b) Exemption Alternative"). Under this Alternative, the exemption would take effect on the earlier of: (1) Twenty-one days after the filing of the agreement; and (2) the date of the letter from the Commission advising that the agreement has been accepted for exemption. An agreement not accepted for exemption under the Paragraph (b) Exemption Alternative would instead be processed for effectiveness or approval under the normal procedures prescribed in 46 CFR Part 572 or 560, as appropriate for the category of agreement involved.

Fourteen commenters specifically addressed proposed § 516.5(a): One favors the Paragraph (a) Exemption in its proposed form; four recommend that certain other agreements be designated Paragraph (a) Agreements; and nine urge adoption of the Paragraph (a) Exemption Alternative. TOCHR favors adoption of the Paragraph (a) Exemption in its proposed form.

Of the four commenters recommending that other types of agreements be designated Paragraph (a) Agreements, MPA and APL suggest inclusion of marine terminal leases where the lessor retains some control over the facility through its public tariff. Matson urges the Commission to classify marine terminal services agreements between marine terminal operators and their common carrier customers as Paragraph (a) Agreements. Matson argues that there is competition among terminal operators performing terminal services and there is therefore no regulatory need to file such agreements. However, if this suggestion is not adopted, Matson urges enforcement of the requirement that complete marine terminal services agreements be filed, including the rates and charges agreed to by the parties involved.

The Conference recommends that all marine terminal agreements, except marine terminal conference agreements, be classified as Paragraph (a) Agreements. The Conference argues that the majority of such agreements have no anticompetitive effects, due to the availability of such facilities and services, as well as the innocuous, purely operational nature of the arrangements involved. The Conference also urges elimination of § 516.5(a)(3), which requires furnishing exempted agreements to any interested party, stating that this procedure is without precedent in Commission practice and is susceptible to abuse through "fishing expeditions" by carriers and terminals solely interested in keeping abreast of competitors' terminal rates and conditions.

Whatever the merits of the various recommendations to expand the types of agreements classified as Paragraph (a) Agreements, they are beyond the scope of this rulemaking and will not be addressed further. With regard to Matson's comments concerning the need for file complete marine terminal agreements, we believe that the Final Rule makes clear that agreements are not entitled to the exemption if they do not completely set forth the rates and charges agreed to by the parties.[5]

A majority of commenters support the Paragraph (a) Exemption Alternative in one form or another, on the grounds that it would allow all interested parties timely and accurate notice of the existence and content of agreements that may affect them, protect the Commission and other interested parties from the loss of relevant information that would otherwise be in the agreement parties' private files,[6] and

[4] Terminal services arrangements, berthing agreements and other such arrangements are examples of Paragraph (b) Agreements.

[5] The Commission has recently received numerous inquiries and requests concerning its requirement that marine terminal operators' charges for terminal services be set forth in an agreement on file with the Commission or separately reflected in a filed tariff. As a result of these inquiries, and the apparent confusion regarding the Commission's requirements, the Commission gave notice that it would waive assessing penalties for the pre-filing implementation of such terminal services agreements until a formal study of the issue had been completed. *Notice of Waiver of Penalties*, 51 FR 23145 (June 25, 1986). Because there still appeared to be some continuing confusion regarding its requirement, the Commission on October 15, 1986 extended indefinitely the waiver of penalties provided by the June Notice. The Commission, by separate Order served this date is instituting Fact Finding Investigation No. 17 to study this matter. The Commission is also issuing this date a Second Supplemental Notice of Waiver of Penalties to extend the June Notice.

[6] Sea-Land argues that the Paragraph (a) Exemption would be counterproductive to the

Continued

enable negotiations and decisions in the industry to be based on actual knowledge of the relevant facts.

Many commenters urge the Commission to avoid artificial distinctions between classes of agreements and to treat all classes the same. The division of marine terminal agreements into different categories for exemption purposes, some of which would no longer be filed and others continuing to be filed but exempt from subsequent waiting period/approval requirements, allegedly would create uncertainty concerning which agreements should be filed; may be discriminatory as between the types of agreements and carriers involved, particularly as to off-dock CFS agreements; and would render effective regulation of agreements entitled to the Paragraph (a) Exemption impossible, since there would be no effective, uniform and timely procedure to ascertain the nature of an agreement to ensure that it properly falls within the exemption. Several of these commenters note that the Paragraph (a) Exemption Alternative would create no additional burden for marine terminal operators in comparison to the system currently in place, and is similar to current procedures, while affording a significant savings in time.

The reasons advanced in support of the Paragraph (a) Exemption Alternative are meritorious and this Alternative, modified as discussed below, is adopted in the Final Rule. The common tread running through virtually all of the comments supporting this Alternative is that marine terminal agreements falling within the scope of the 1984 or 1916 Acts should generally be made available to the maritime community as a matter of public information.The concern here is that all interests that are not parties to an agreement—but nonetheless may be affected by the agreement—have timely and accurate knowledge of the agreement's existence and content.

The objections to dividing marine terminal facility and services agreements into classes for exemption purposes are also well supported. Marine terminal faciltiy and services agreements are often "mixed" in their characteristics. As a result, the proposed Paragraph (a) Exemption would not apply to agreements which, while primarily landlord-tenant leases or other arrangements described in § 516.5(a) of the Proposed Rule, also include other activities which would not fit within the Paragraph (a) Agreement category. Moreover, the several recommendations for aggregating all marine terminal facility and services agreements into a single class for uniform treatment for exemption purposes are well supported in logic. The adoption of this approach should result in a significantly clarified and more easily administered Final Rule.

Eleven commenters specifically address proposed § 516.5(b): Four support the Paragraph (b) Exemption as proposed; another would classify intra-port discussion agreements as Paragraph (a) Agreements; two suggest that some or all of the agreements included as Paragraph (b) Agreements be instead classified as Paragraph (a) Agreements; and four support the Paragraph (b) Exemption Alternative.

Sacramento, Tampa, Seattle and Sea-Land favor the Paragraph (b) Exemption without substantive change. They state that this procedure would allow all interested parties sufficient and timely notice of agreements that may affect them, provide adequate safeguards to make the Paragraph (b) Exemption Alternative unnecessary and avoid significant and unnecessary delay to the parties. Tampa believes that this exemption would provide a basis for ensuring that Congress continues the antitrust exemption presently afforded marine terminal agreements by the 1916 and 1984 Shipping Acts. Seattle suggests clarifying the effective date of the Paragraph (b) Exemption to deem an agreement to be "filed" when deposited in the United States mail or delivered to a courier for delivery. Seattle also urges the Commission to reduce the number of copies required to be filed to the absolute minimum necessary—perhaps a true original and two copies—in view of the cost and time consumed in providing the oversized exhibits often included in a terminal lease.

The Final Rule does not adopt Seattle's suggested technical modifications. The filing "date" for exemption purposes is consistent with our procedures for agreements in general, and the requirement that an original and fifteen copies be filed is based on our need to have sufficient number of copies available to facilitate agency processing, the **Federal Register** notice and assure prompt public access to copies of filed agreements. We will, however, continue the current practice of accepting agreement copies that have had oversized exhibits reduced to standard paper size, provided that they are complete, legible and reproducible.

MPA suggests that intra-port discussion agreements be classified as Paragraph (b) Agreements, stating that such agreements warrant special treatment. A discussion agreement involving local port interests is said to present a much different set of regulatory options than do two-port or range-wide discussion agreements.

Two other commenters recommend that certain or all of the Paragraph (b) Agreements be instead classified as Paragraph (a) Agreements and therefore entitled to the less stringent Paragraph (a) Exemption. Matson believes that marine terminal services agreements should be classified as Paragraph (a) Agreements for the reasons summarized in the discussion of § 516.5(a); and the Conference urges that all agreements proposed as Paragraph (b) Agreements be instead afforded the Paragraph (a) Exemption, for the reasons summarized in the discussion of § 516.5(a). As noted earlier, we cannot consider the merits of recommendations to expand the scope of this proceeding beyond that originally set forth in the Proposed Rule.

TOCHR, VPA, Oakland and Houston Port Bureau favor adoption of the Paragraph (b) Exemption Alternative in one form or another. They note that it is consistent with the shortened review procedure now requested by many parties under the 1984 Act, and argue that it is preferable to the Paragraph (b) Exemption since the latter exemption may permit agreements that do not conform to the Commission's requirements to become effective without even a cursory review. These commenters argue that Paragraph (b) Exemption is inconsistent with the Commission's obligations, and would be inequitable to other parties who might well be damaged if they did not have the opportunity to review and challenge an agreement before it became effective.

The Final Rule adopts the Paragraph (b) Exemption for all classes of marine terminal agreements, other than marine terminal conference, interconference, joint venture and discussion agreements, with the exemption becoming effective upon the filing of an agreement with the Commission. Thus, the Final Rule implements a uniform procedure consisting of the Paragraph (a) Exemption Alternative and the Paragraph (b) Exemption for all classes of marine terminal agreements, excepting marine terminal conference, interconference, joint venture and discussion agreements.

On balance, we agree with the many views favoring a uniform exemption

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Commission's obligations under section 18 of the 1984 Act, 46 U.S.C. app. 1717, which requires the Commission to collect and analyze information concerning the Act's impact on the international ocean shipping industry, and to submit a report thereon specifically addressing, among other things, the need for antitrust immunity for ports and marine terminals.

procedure. There is merit to the objections to the classfication system upon which the Proposed Rule was predicated. Another factor we considered in adopting this Final Rule is the disproportionate amount of the Commission's own resources that would have been required to administer an exemption alternative that would subject all agreements filed thereunder to a substantive pre-effectiveness review procedure within twenty-one days following filing (as suggested under proposed § 516.5(b) (the Paragraph (b) Exemption Alternative)) or within fourteen days following **Federal Register** publication (as suggested by some of the commenters favoring this alternative). The Commission will, however, monitor those agreements that are filed for exemption pursuant to the Final Rule to ensure that the agreements otherwise conform to the Commission's statutory and regulatory requirements. In this connection it should be noted that the Final Rule makes it clear that only agreements that apply to prospective activities, *i.e.*, events or payments that occur after filing are entitled to the exemption. The exemption also does not apply to agreements which fail to completely set forth the rates and charges agreed to by the parties. Parties who implement agreements that do not qualify for the exemption or which otherwise are in violation of the Commission's requirements will be subject to substantial penalties of the applicable statute.

The Federal Maritime Commission has determined that this Final Rule is not a "major rule" as defined in Executive Order 12291 dated February 17, 1981, because it will not result in:

(1) An annual effect on the economy of $100 million or more;

(2) A major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or

(3) Significant adverse effect on competition, employment, investment, productivity, innovations, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Chairman of the Federal Maritime Commission certifies pursuant to section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, that this rule will not have a significant economic impact on a substantial number of small entities, including small businesses, small organizational units or small governmental jurisdictions. The primary economic impact of this rule would be on marine terminal operators and common carriers which generally are not small entities. A secondary impact may fall on shippers, some of whom may be small entities but that impact is not considered to be significant.

The Federal Maritime Commission has determined that this action does not constitute a major Federal action significantly affecting the quality of the human environment. Therefore, no environmental assessment or environmental impact statement was prepared.

The collection of information requirements contained in this regulation have been previously approved under 46 CFR Part 516, OMB Control Number 3072–0049. Since that Part is being discontinued, the requirements that are being codified in Part 559 are being resubmitted to OMB for review under section 3504(h) of the Paperwork Reduction Act of 1980 (44 U.S.C. 3504). No clearance is necessary for the requirements being codified in Part 572 as these requirements do not add to the burden already present therein. A copy of the request for OMB review and supporting documentation may be obtained from John Robert Ewers, Director, Bureau of Administration, Federal Maritime Commission, 1100 L Street NW., Room 12211, Washington, DC 20573, telephone number (202) 523–5866. Comments may be submitted to the Agency and the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, Attention: Desk Officer for the Federal Maritime Commission.

List of Subjects in 46 CFR Parts 559 and 572

Antitrust, Contracts, Maritime carriers, Administrative practice and procedure, Rates and fares, Reporting and record-keeping requirements.

Therefore, pursuant to 5 U.S.C. 553, and sections 5, 16 and 17 of the Shipping Act of 1984, 46 U.S.C. 1704, 1715, 1716 and sections 15, 35 and 43 of the Shipping Act, 1916, in order to exempt certain marine terminal agreements from the waiting period requirements of the 1984 Act, and from the approval requirement of the 1916 Act, Title 46 of the Code of Federal Regulations is amended as follows:

PART 559—[AMENDED]

1. The authority citation to Part 559 continues to read:

Authority: 5 U.S.C. 553; secs. 15, 35 and 43 of the Shipping Act, 1916, 46 U.S.C. app. 814, 833a and 841a.

§ 559.8 [Redesignated from § 559.7]

2. Section 559.7 to Part 559 in Subchapter C in Title 46 of the Code of Federal Regulations is redesignated § 559.8.

3. A new § 559.7 to Part 559 in Subpart C in Title 46 of the Code of Federal Regulations is added to read as follows:

§ 559.7 Marine terminal agreements—exemption.

(a) *Marine terminal agreement* means an agreement, understanding, arrangement or association, written or oral (including any modification, cancellation or appendix) that applies to future, prospective activities between or among the parties and which relates solely to marine terminal facilities and/or services among marine terminal operators and among one or more marine terminal operators and one or more common carriers in interstate commerce that completely sets forth the applicable rates, charges, terms and conditions agreed to by the parties for the facilities and/or services provided for under the agreement. The term does not include a joint venture arrangement among marine terminal operators to establish a separate, distinct entity that fixes its own rates and publishes its own tariff.

(b) *Marine terminal conference agreement* means an agreement between or among two or more marine terminal operators and/or common carriers in interstate commerce for the conduct or facilitation of marine terminal operations in connection with waterborne common carriage in the domestic commerce of the United States and which:

(1)(i) Provides for the fixing of and adherence to uniform marine terminal rates, charges, practices and conditions of service relating to the receipt, handling and/or delivery of passengers or cargo for all members; and/or

(ii) Provides for the conduct of the collective administrative affairs of the group; and

(2) May include the filing of a common marine terminal tariff in the name of the group and in which all the members participate, or, in the event of multiple tariffs, each member participates in at least one such tariff.

(c) *Marine terminal discussion agreement* means an agreement between or among two or more marine terminal operators and/or marine terminal conferences and/or common carriers in interstate commerce solely for the discussion of subjects including marine terminal rates, charges, practices and conditions of service relating to the

receipt, handling and/or delivery of passengers or cargo.

(d) *Marine terminal interconference agreement* means an agreement between or among two or more marine terminal conference and/or marine terminal discussion agreements.

(e) *Marine terminal facilities* means one or more structures (and services connected therewith) comprising a terminal unit, including, but not limited to, docks, berths, piers, aprons, wharves, warehouses, covered and/or open storage spaces, cold storage plants, grain elevators and/or bulk cargo loading and/or unloading structures, landing and receiving stations, which are used for the transmission, care and convenience of cargo and/or passengers or the interchange of some between land and common carriers by water in interstate commerce, or between two common carriers by water in interstate commerce. This term is not limited to waterfront port facilities and includes so-called off-dock container freight stations at inland locations and any other facility from which inbound waterborne cargo may be tendered to consignees or at which outbound cargo may be received from shippers for vessel or container loading.

(f) All marine terminal agreements as defined in § 559.7(a), with the exception of marine terminal conference, marine terminal interconference and marine terminal discussion agreements, as defined in § 559.7 (b), (c) and (d) are exempt from the approval requirements of section 15 of the Shipping Act, 1916 on the condition that they be filed with the Commission. Such filing shall consist of:

(1) A true copy and 15 additional copies of the filed agreement;

(2) A letter of transmittal, which shall:

(i) Clearly state that the agreement is being filed for exemption pursuant to this paragraph;

(ii) Identify all of the documents being transmitted including, in the instance of a modification to an approved or exempted agreement, the full name of the approved or exempted agreement, the Commission-assigned agreement number of the approved or exempted agreement and the revision, page and/or appendix number of the modification being filed;

(iii) Provide a concise summary of the filed agreement or modification separate and apart from any narrative intended to provide support for the acceptability of the agreement or modification;

(iv) Clearly provide the typewritten or otherwise imprinted name, position, business address and telephone number of the filing party; and

(v) Be signed in the original by the filing party or on the filing party's behalf by an authorized employee or agent of the filing party.

(3) To facilitate the timely and accurate publication of the **Federal Register** Notice, the letter of transmittal shall also provide a current list of the agreement's participants where such information is not provided elsewhere in the transmitted documents.

(f) Agreements filed for and entitled to exemption under this paragraph will be exempted from the approval requirements of the Shipping Act, 1916 effective on the date they are filed with the Commission.

PART 572—[AMENDED]

4. The authority citation to Part 572 continues to read:

Authority: 5 U.S.C. 553; 46 U.S.C. app. 1701–1707, 1709–1710, 1712 and 1714–1717.

§ 572.308 [Redesignated from § 572.307]

5. Section 572.307 to Part 572 in Subpart C of Subchapter D of Title 46 of the Code of Federal Regulations is redesignated § 572.308.

6. A new § 572.307 to Part 572 in Subpart C of Subchapter D, Marine Terminal Agreements-Exemption is added to read as follows:

§ 572.307 Marine terminal agreements-exemption.

(a) *Marine terminal agreement* means an agreement, understanding, or association written or oral (including any modification, cancellation or appendix) that applies to future, prospective activities between or among the parties and which relates solely to marine terminal facilities and/or services among marine terminal operators and among one or more marine terminal operators and one or more ocean common carriers that completely sets forth the applicable rates, charges, terms and conditions agreed to by the parties for the facilities and/or services provided for under the agreement. The term does not include a joint venture arrangement among marine terminal operators to establish a separate, distinct entity that fixes its own rates and publishes its own tariff.

(b) *Marine terminal conference agreement* means an agreement between or among two or more marine terminal operators and/or ocean common carriers for the conduct or facilitation of marine terminal operations in connection with waterborne common carriage in the foreign commerce of the United States and which:

(1)(i) Provides for the fixing of and adherence to uniform marine terminal rates, charges, practices and conditions of service relating to the receipt, handling and/or delivery of passengers or cargo for all members; and/or

(ii) Provides for the conduct of the collective administrative affairs of the group; and

(2) May include the filing of a common marine terminal tariff in the name of the group and in which all the members participate, or, in the event of multiple tariffs, each member participates in at least one such tariff.

(c) *Marine terminal discussion agreement* means an agreement between or among two or more marine terminal operators and/or marine terminal conferences and/or ocean common carriers solely for the discussion of subjects including marine terminal rates, charges, practices and conditions of service relating to the receipt, handling and/or delivery of passengers or cargo.

(d) *Marine terminal interconference agreement* means an agreement between or among two or more marine terminal conference and/or marine terminal discussion agreements.

(e) All marine terminal agreements, as defined in § 572.307(a), with the exception of marine terminal conference, marine terminal interconference and marine terminal discussion agreements as defined in § 572.307 (b), (c) and (d) are exempt from the waiting period requirements of section 6 of the Shipping Act of 1984 and Part 572 of this chapter on the condition that they be filed in the form and manner presently required by Part 572 of this chapter.

(f) Agreements filed for and entitled to exemption under this paragraph will be exempted from the waiting period requirements effective on the date of their filing with the Commission.

By the Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 87-11359 Filed 5-18-87; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 85-380; RM-4963, 5052, 5084, 5092, 5261]

Radio Broadcasting Services; Roswell, GA

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channel 298A to Roswell, Georgia, at the request of Willian E. Mallon, as a first FM service. The requests for Channel 298A at Elizabeth, Georgia (Elizabeth Community Broadcasters), Acworth, Georgia (C. Phillip Robuck), Carterville, Georgia (Julia N. Frew) and the counterproposal for Channel 298A at Duluth, Georgia (Duluth Broadcasting Company) have been denied. Each of the above petitioners have presented arguments which indicate that their respective community deserves a first local FM service. However, Channel 298A is the only available channel. We have allotted Channel 298A to Roswell since it is the community with the largest population.

With this action, this proceeding is terminated.

DATES: Effective date: June 26, 1987. The window period for filing applications will open on June 29, 1987, and close on July 27, 1987.

FOR FURTHER INFORMATION CONTACT: Montrose H. Tyree, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 85–380, adopted April 17, 1987, and released May 13, 1987. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

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

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

§ 73.202 [Amended]

2. § 73.202(b), the Table of Allotments, in the entry for Roswell, Georgia, Channel 298A is added.

Federal Communications Commission.

Bradley P. Holmes,

Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 87–11369 Filed 5–18–87; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Part 73

[MM Docket No. 85–381; RM–5120; RM–5302]

Radio Broadcasting Services; Lake View and Cheraw, SC

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document, at the request of Cheraw Broadcasting Company, Inc., substitutes Channel 277C2 for Channel 276A at Cheraw, SC, and modifies the license of Station WPDZ–FM to specify the higher powered channel. The substitution of channels could provide expanded radio service to Cheraw and its environs. Channel 277C2 can be allocated to Cheraw in compliance with the Commission's minimum distance separation requirements with a site restriction of 23.8 kilometers (13.8 miles) southwest. The request of Willard Payne to allocate Channel 277A to Lake View, SC, is dismissed due to a lack of continuing interest. With this action, this proceeding is terminated.

EFFECTIVE DATE: June 26, 1987.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 85–381, adopted April 17, 1987, and released May 13, 1987. The full text of this Commission decision is available for inspection and copying during noral business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service. (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

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

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

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments for Cheraw, South Carolina, is amended by removing Channel 276A and adding Channel 277C2.

Mark N. Lipp,

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

[FR Doc. 87–11371 Filed 5–18–87; 8:45 am]

BILLING CODE 67121–01–M

47 CFR Part 73

[MM Docket No. 86–305; RM–5248]

Radio Broadcasting Services; Aberdeen, SD

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Alrox, Inc., allocates Channel 294C1 to Aberdeen, South Dakota, as the community's third local FM service. The channel can be allocated in compliance with the Commission's minimum distance separation requirements without the imposition of a site restriction. With this action, this proceeding is terminated.

EFFECTIVE DATE: June 26, 1987. The window period for filing applications will open on June 29, 1987, and close on July 27, 1987.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order MM Docket No. 86–305, adopted April 17, 1987, and released May 13, 1987. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

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

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

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments for Aberdeen, South Dakota, is amended by adding Channel 294C1.

Mark N. Lipp,

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

[FR Doc. 87–11372 Filed 5–18–87; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Part 73

[MM Docket No. 86-238; RM-5136]

Radio Broadcasting Services; Brenham, TX

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots channel 231A to Brenham, Texas, as that community's second FM channel, at the request of Brenham Bluebonnet Communications. A site restriction of 7.7 kilometers (4.8 miles) west of the city is required. With this action, this proceeding is terminated.

DATES: *Effective date:* June 26, 1987. The window period for filing applications will open on June 27, 1987, and close on July 27, 1987.

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

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order MM Docket No. 86-238, adopted April 17, 1987, and released May 13, 1987. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

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

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

§ 73.202 [Amended]

2. § 73.202(b), the FM Table of Allotments, in the entry for Brenham, Texas, Channel 231A is added.

Mark N. Lipp,

Chief, Allocations Branch, Mass Media Bureau.

[FR Doc. 87-11368 Filed 5-18-87; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 86-220, RM-5243]

Radio Broadcasting Services; Whitehouse, TX

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document substitutes Channel 297C2 for channel 257A at Whitehouse, Texas, and modifies the license of Station KEYP-FM, to specify operation on the new frequency, at the request of Broadco of Texas, Inc. With this action, this proceeding is terminated.

EFFECTIVE DATE: June 26, 1987.

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

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 86-220, adopted April 17, 1987, and released May 13, 1987. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

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

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

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments is amended, under Texas, by revising Channel 257A to 297C2 for Whitehouse.

Mark N. Lipp,

Chief, Allocations Branch, Mass Media Bureau.

[FR Doc. 87-11373 Filed 5-18-87; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 86-352; RM-5285]

Radio Broadcasting Services; Derby Center, VT

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channel 221A to Derby Center, Vermont, as that community's first FM service, as requested by Steele Communications, Co. A site restriction of 5.4 kilometers (3.4 miles) northeast of the community if required. With this action, this proceeding is terminated.

DATES: June 26, 1987. The window period for filing applications will open on June 29, 1987, and close of July 27, 1987.

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

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 86-352, adopted April 17, 1987, and released May 13, 1987. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

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

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

§ 73.202 [Amended]

2. § 73.202(b), the Table of FM Allotments, in amended by adding Channel 221A to Derby Center, Vermont.

Mark N. Lipp,

Chief, Allocations Branch, Mass Media Bureau.

[FR Doc. 87-11370 Filed 5-18-87; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 91

Migratory Bird Hunting and Conservation Stamp (Duck Stamp) Contest

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule; administrative changes.

SUMMARY: The Service is revising the regulations governing the conduct of the annual Migratory Bird Hunting and Conservation Stamp (Duck Stamp) Contest. Among other minor changes, the amendments provide for a commendation to be given to the artists placing first, second, and third; require artists to sign both the reproduction agreement and the display agreement in order for their entries to be eligible. The

dates and location of this year's contest are also announced, and the public is invited to attend.

DATES:

1. This rule is effective July 1, 1987, the beginning of the 1987–1988 contest.

2. This year's contest will be held on November 9 and 10, 1987, beginning at 11 a.m. on Monday and 9 a.m. on Tuesday.

3. Persons wishing to enter this year's contest may submit entries any time after July 1, but all must be postmarked no later than midnight October 1.

ADDRESSES: Requests for complete copies of the regulations, reproduction rights and display agreements should be addressed to: Migratory Bird Hunting and Conservation Stamp Contest, Department of the Interior, U.S. Fish and Wildlife Service, 18th & C Streets NW., Room 2643, Washington, DC 20240.

Location of Contest

Department of the Interior Building Auditorium (C Street Entrance), 18th & C Streets NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Ms. Norma Opgrand, Coordinator, U.S. Fish and Wildlife Service, Washington, DC 20240, Telephone: (202) 343–5508.

SUPPLEMENTARY INFORMATION: Analysis of these amendments to 50 CFR Part 91 has resulted in the Department's determining that they are not major actions under the provisions of Executive Order 12291. The amendments also will not significantly affect a substantial number of small entities under the provisions of the Regulatory Flexibility Act, since entrants are individuals and not small entities as defined in 5 U.S.C. 601, *et seq.* The amendments do not contain information collection requirements that require approval by the Office of Management and Budget under 44 U.S.C. 3501, *et. seq.* Because this rule constitutes only minor technical revisions to the duck stamp contest procedures, notice and public comment are determined to be unnecessary in accordance with the Administrative Procedure Act, 5 U.S.C. 553(b)(3). No compliance with the National Environmental Policy Act is required because this rule constitutes minor changes or amendments to an approved action (the Duck Stamp Contest), which changes have no potential for causing substantial environmental impact.

Therefore, the rulemaking is categorically excluded from NEPA compliance under departmental guidelines. 516 DM 6, App. 1. The primary authors of this document are David Fisher, James E. Pinkerton, and Norma E. Opgrand, U.S. Fish and Wildlife Service.

List of Subjects in 50 CFR Part 91

Hunting, Wildlife.

Accordingly, 50 CFR Part 91 is amended to read as follows:

1. Part 91 is revised to read as follows:

PART 91—MIGRATORY BIRD HUNTING AND CONSERVATION STAMP CONTEST

Subpart A—Introduction

Sec.

Subpart B—Procedures for Entering the Contest

Subpart C—Procedures for Administering the Contest

Subpart D—Post-Contest Procedures

Authority: 5 U.S.C. 301, 31 U.S.C. 9701.

Subpart A—Introduction

§ 91.1 Purpose of regulations.

The purpose of the regulations is to establish procedures for selecting a design that will be used for the annual Migratory Bird Hunting and Conservation Stamp.

§ 91.2 Definitions.

"Contest coordinator:" The contest official responsible for overseeing the judges' scores for each entry. The contest coordinator will be named by the Secretary of the Interior and will not be a past or present employee of the Fish and Wildlife Service.

"Display agreement:" A document that each contestant must complete, sign and submit with the entry. The signed agreement permits the Service to display the entry for Migratory Bird Hunting and Conservation Stamp for promotional purposes.

"Qualifying entry:" Each original work of art submitted to the contest that satisfies the requirements outlined in Subpart B of this part.

"Reproduction rights agreement:" A document that each contestant must sign and submit with the entry. The signed agreement certifies that the entry is an original work of art and stipulates how the Fish and Wildlife Service may use the winning entry.

§ 91.3 Public attendance at contest.

All phases of the nomination and voting process will be open for viewing by the general public.

Subpart B—Procedures for Entering the Contest

§ 91.11 Contest deadlines.

(a) The contest will officially open on July 1 of each year.

(b) All individuals entering the contest must comply with the regulations. A copy of those regulations may be requested from the Migratory Bird Hunting and Conservation Stamp Office (Duck Stamp Office), U.S. Fish and Wildlife Service, Department of the Interior, Washington, DC 20240. Entries must be postmarked no later than midnight of October 1.

§ 91.12 Contest eligibility.

United States citizens, nationals, or resident aliens are eligible to participate in the contest. Any person who has won the contest during the preceding three years shall be ineligible to submit an entry in the current year's contest. Contest judges and their relatives are ineligible to submit an entry. All entrants must submit a non-refundable fee of $50.00. The fee must be a cashier's check, a certified check or a money order made payable to: Fish and Wildlife Service. (Personal checks will not be accepted). All entrants must submit signed reproduction rights and display agreements.

§ 91.13 Technical requirements for design and submission of entry.

The design must be a horizontal drawing or painting seven (7) inches high and ten (10) inches wide. The entry may be drawn in any medium desired by the contestant and may be in either multicolor or black and white. No scrollwork, lettering, bird band numbers, signatures or initials may appear on the design. Each entry must be matted (over or under) with a nine (9) inch by twelve (12) inch white mat, one (1) inch wide, and cannot exceed one quarter (¼) inch in total thickness. Entries must not be framed, under glass or have a protective covering that is attached to the entry.

§ 91.14 Restrictions on subject matter of entry.

A portrayal of live, non-extinct, North American migratory ducks, geese, or swans (Family Anatidae) must be the dominant feature of the design. No species that has been selected for the Migratory Bird Hunting and Conservation Stamp during the preceding five years will be eligible. The design must be the contestant's original creation and may not be copied or duplicated in whole or in part from previously published art, including photographs. An entry submitted in a prior contest that was not selected for the Federal or a State stamp design may be submitted in the current contest.

§ 91.15 Suitability of entry for engraving.

All entries should be drawn with fullest attention to clarity of detail and the relationship of total values. These prerequisites are important to interpret pictorial elements to hand engraving for printing, as they determine the engraved line techniques and direction. The engraver relies on the accuracy of the artist's work for successful interpretation. Detailed art can be drawn as transparent or opaque watercolor, oil painting, or pencil drawings. An entry that is a line pencil drawing, scratchboard or an etching should effectively interpret the full range of tone, rather than duplicate line engraving techniques of past Migratory Bird Hunting and Conservation Stamps. The engraver is primarily responsible for line interpretation and discipline, creating the miniature image of the stamp.

§ 91.16 Submission procedures for entry.

(a) Each contestant may submit only one entry. Each entry must be accompanied by a non-refundable entrance fee and a completed and signed Reproduction Rights Agreement and a completed and signed Display Agreement. The bottom portion of the Reproduction Rights Agreement must be attached to the back of the entry.

(b) Each entry should be appropriately wrapped to protect the art work and sent by registered mail or hand delivered to: Migratory Bird Hunting and Conservation Stamp Contest, Room 2643, U.S. Fish and Wildlife Service, Department of the Interior, Washington, DC 20240.

§ 91.17 Property insurance for entries.

Each contestant is responsible for obtaining adequate insurance coverage for his/her entry. The Department of the Interior will not insure the entries it receives. The Department of the Interior is not responsible for loss or damage unless it is caused by its negligence or willful misconduct; in any event, the liability of the Department of the Interior will not exceed the amount of the fifty dollar ($50.00) entry fee.

§ 91.18 Failure to comply with contest regulations.

Any entry that does not comply with the requirements of Subpart B will be disqualified from the contest.

Subpart C—Procedures for Administering the Contest

§ 91.21 Selection and qualification of contest judges.

Five judges will be selected annually by the Secretary of the Interior. Current employees of the Fish and Wildlife Service and their relatives are ineligible to serve as judges for the contest. The judges will be reimbursed for reasonable travel expenses. The judges will be announced on the first day of the contest.

§ 91.22 Display of entries for contest.

Entries selected by the judges under the procedures described in Subpart C, § 91.24 will be displayed in numerical order. The only visible identification on each entry will be the number assigned to it in chronological order when it is received and processed by the Service.

§ 91.23 Scoring criteria for contest.

Entries will be judged on the basis of anatomical accuracy, artistic composition and suitability for engraving the production of a stamp.

§ 91.24 Contest procedures.

(a) Prior to the judging of entries, the judges will be briefed by a printing and engraving expert on the characteristics that make a design suitable for engraving.

(b) All eligible entries will be displayed in the Department of the Interior auditorium. Prior to the first round of judging, the judges will spend two hours in the auditorium reviewing the entries the first day before the official contest begins. Public viewing will begin at 11 a.m.

(c) All qualified entries will be shown one at a time to the judges by the Contest Coordinator or a contest staff member. The judges will vote "in" or "out" on each entry; those entries receiving a majority of votes "in" will receive further consideration. The remaining eligible entries will be placed on display as a group for public viewing and further judging.

(d) In the second round of judging each entry selected in the first round will be shown one at a time to the judges by the Contest Coordinator or a contest staff member. The judges will vote by indicating a numerical score from zero to nine for each entry. One highest and one lowest score for each entry will be eliminated and the remaining scores will be totaled to provide the entry score. The entries receiving the five highest scores will be advanced to the third and final round.

(e) In the third round of judging, the judges will vote on the remaining entries using the same method as in round two. The Contest Coordinator will tabulate the final votes and present them to the Director, U.S. Fish and Wildlife Service, who will announce the winning entry as well as the entries that placed second and third.

(f) In case of a tie vote for first place in the final round, the judges will vote again on the entries that are tied. Each judge will vote by raising his or her hand for the one entry believed to be the most qualified. The entry receiving the most votes will be declared the winner.

(g) The selection of the winning entry by the judges will be final. Each contestant will be notified of the winning artist and the design. The winning artist will receive a pane of stamps signed by the Secretary of the Interior at the Duck Stamp Contest the following year. The artists placing first, second and third will receive a framed commendation from the Director of the U.S. Fish and Wildlife Service.

Subpart D—Post-Contest Procedures

§ 91.31 Return of entries after contest.

All entries will be returned by certified mail to the participating artists within 120 days after the contest. If artwork is returned to the Service because it is undelivered or unclaimed (this may happen if an artist changes address), the Service will not be obligated to trace the location of the artist to return the artwork. Any artist who changes his or her address is responsible for notifying the Service of the change. All unclaimed entries will be destroyed one year from the date of the contest.

Dated: May 5, 1987.

Susan Recce,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 87-11363 Filed 5-18-87; 8:45 am]

BILLING CODE 4310-55-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 661

[Docket No. 70845-7085]

Ocean Salmon Fisheries Off the Coasts of Washington, Oregon, and California

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

ACTION: Notice of closure and request for comments.

SUMMARY: NOAA announces the closure of the commercial salmon fishery in the exclusive economic zone (EEZ) from Sisters Rocks to Chetco Point, Oregon, at midnight, May 14, 1987, to ensure that the chinook salmon quota is not exceeded. The Director, Northwest Region, NMFS (Regional Director), has determined in consultation with the Pacific Fishery Management Council, and the Oregon Department of Fish and Wildlife, that the commerical fishery quota of 7,500 chinook salmon for the subarea will be reached by that time. The closure is necessary to conform to the preseason announcement of 1987 management measures. This action is intended to ensure conservation of chinook salmon.

EFFECTIVE DATES: Closure of the EEZ from Sisters Rocks to Chetco Point, Oregon, to commerical salmon fishing is effective at 2400 hours local time, May 14, 1987. Comments on this closure will be received until May 29, 1987.

ADDRESSES: Comments may be mailed to Rolland A. Schmitten, Director, Northwest Region, NMFS, BIN C15700, 7600 Sand Point Way N.E., Seattle, WA 98115-0070. Information relevant to this notice has been compiled in aggregate form and is available for public review during business hours at the same address.

FOR FURTHER INFORMATION CONTACT: Rolland A. Schmitten at 206-526-6150.

SUPPLEMENTARY INFORMATION: Regulations governing the ocean salmon fisheries at 50 CFR Part 661 specify at § 661.21(a)(1) that "When a quota for the commercial or the recreational fishery, or both, for any salmon species in any portion of the fishery management area is projected by the Regional Director to be reached on or by a certain date, the Secretary will, by publishing a notice in the **Federal Register** under § 661.23, close the commercial or recreational fishery, or both, for all salmon species in the portion of the fishery management area to which the quota applies as of the date the quota is projected to be reached."

Management measures for 1987 were effective on May 1, 1987 (52 FR 17264, May 6, 1987). The 1987 commercial fishery for all salmon except coho from Sisters Rocks to Chetco Point, Oregon, was established as May 1, 1987, through the earlier of May 31, 1987, or the attainment of a quota of 7,500 chinook salmon.

Based on the best available information, the commercial fishery catch in the subarea is projected to reach the 7,500 chinook quota by midnight, May 14, 1987.

Therefore, NOAA issues this notice to close the commercial fishery in the EEZ from Sisters Rocks to Chetco Point, Oregon, effective midnight, May 14, 1987. This notice does not apply to treaty Indian fisheries or to other fisheries which may be operating in other areas.

The Regional Director consulted with representatives of the Pacific Fishery Management Council and the Oregon Department of Fish and Wildlife (ODFW) regarding a closure of the commercial fishery between Sisters Rocks and Chetco Point, Oregon. ODFW repesentatives confirmed that Oregon will close the commercial fishery in State waters adjacent to this subarea of the EEZ effective noon, May 14, 1987. Oregon will allow a period of 24 hours for landings.

Other Matters

This action is authorized by 50 CFR 661.23 and is in compliance with Executive Order 12291.

List of Subjects in 50 CFR Part 661

Fisheries, Fishing, Indians.

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

Dated: May 14, 1987.

Joseph W. Angelovic,

Deputy Assistant Administrator for Science and Technology, National Marine Fisheries Service.

[FR Doc. 87-11427 Filed 5-14-87; 5:12 pm]

BILLING CODE 3510-22-M

Proposed Rules

Federal Register
Vol. 52, No. 96
Tuesday, May 19, 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.

FEDERAL RESERVE SYSTEM

12 CFR Part 225

[Regulation Y; Docket No. R-0567]

Capital Maintenance; Revision to Capital Adequacy Guidelines

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Extension of Time to Comment on Proposed Rulemaking.

SUMMARY: On February 12, 1987, the Board announced a proposed modification of its Guidelines for minimum and appropriate levels of capital for bank holding companies and state chartered banks that are members of the Federal Reserve System. [52 FR 5119 (February 19, 1987)] This proposed amendment to the Board's Guidelines, contained in Appendix A to the Board's Regulation Y, 12 CFR Part 225, was designed to make the Board's capital policies more systematically and explicitly sensitive to the risk exposure of individual banking organizations by providing for a risk-based capital measure to be used in tandem with existing capital ratios and to amend the definition of primary capital for purposes of computing existing capital-to-total assets ratios. The Board indicated that it would consider comments on this proposal received by May 13, 1987.

Subsequently, on March 18, 1987, the Board announced a proposal to incorporate credit risks on off-balance sheet interest rate and exchange rate contracts (including interest rate swaps) into the proposed risk-based capital measure. [52 FR 9304 (March 24, 1987)].

Since publication of these proposals the Board has received several requests for additional time to comment on these proposals, requests which cite the nature of the proposals and the importance of the issues they raise. While the Board has provided for a substantial comment period and while there is a need to proceed expeditiously to consider the proposals and the comments received, the Board is extending the comment period for both of its risk-based capital proposals (Docket R-0567) until June 1, 1987. The Board believes such an extension of the comment period will allow it to receive additional and more complete responses to its proposal.

DATE: All comments should be received by June 1, 1987.

ADDRESS: All comments, which should refer to Docket No. R-0567, should be mailed to William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, 20th and Constitution Avenue, NW., Washington, DC 20551, or should be delivered to the courtyard entrance, Eccles Building, 20th Street, NW., between "C" Street and Constitution Avenue, NW., between the hours of 8:45 a.m. and 5:15 p.m. weekdays. Comments may be inspected in Room 1122, Eccles Building between 9:00 a.m. and 5:00 p.m. weekdays.

FOR FURTHER INFORMATION CONTACT: Richard Spillenkothen, Deputy Associate Director (202/452-2594), Anthony G. Cornyn, Assistant Director (202/452-3354), or James E. Scott, Senior Counsel, Legal Division (202/452-3513) of the Board's staff; or Andrew Spindler, Vice President, Federal Reserve Bank of New York (212/791-5846). For the hearing impaired *only*, Telecommunication Device for the Deaf (TDD), Earnestine Hill or Dorothea Thompson (202) 452-3544.

By order of the Board of Governors of the Federal Reserve System, May 13, 1987.
William W. Wiles,
Secretary of the Board.

[FR Doc. 87-11335 Filed 5-18-87; 8:45 am]
BILLING CODE 6210-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Parts 157 and 284

[Docket No. RM87-16-000]

Abandonment of Sales and Purchases of Natural Gas Under Expired, Terminated, or Modified Contracts

May 7, 1987.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Federal Energy Regulatory Commission (Commission) proposes to amend its regulations to provide for abandonment of certain sales and purchases under the Natural Gas Act by both sellers and purchasers where the underlying contract term has expired, the contract has been terminated under a provision of the contract, or the contract has been terminated or modified by mutual agreement of the parties. Under the proposal, when a contract has expired or been terminated, either party to the contract may, upon thirty (30) days written notice, abandon its service obligation to purchase or sell the gas. However, if an interstate pipeline purchaser is seeking to abandon purchases from a producer, it must continue the transportation of the "abandoned" gas if the producer so elects. The abandonment is automatically effective in accordance with the notice given. The abandoning party must notify the Commission of the abandonment within thirty (30) days of the effective date of abandonment. If the parties agree to terminate the contract or to modify their sales and purchase obligations under the contract, the abandonment is effective in accordance with the parties' agreement, but one of the parties must notify the Commission within thirty (30) days of the effective date of abandonment.

DATE: An original and 14 copies of the written comments on this proposed rule must be filed with the Commission by June 18, 1987.

ADDRESS: All filings should refer to Docket No. RM87-16-000 and should be addressed to: Office of the Secretary, Federal Energy Regulatory Commission, 825 N. Capital Street, NE., Washington, DC 20426.

FOR FURTHER INFORMATION CONTACT: Jacob Silverman, Federal Energy Regulatory Commission, 825 N. Capital Street, NE., Washington, DC 20426, (202) 357-9119.

SUPPLEMENTARY INFORMATION:

I. Introduction

The Federal Energy Regulatory Commission (Commission) is proposing to amend its regulations to permit abandonment under section 7(b) of the

Natural Gas Act (NGA) [1] of certain sales and purchases of natural gas under an expired or terminated contract upon 30-days written notice, or where the parties to the contract have mutually agreed upon termination or modification of the contract.

II. Background

A. History

The NGA declares that the business of transporting and selling natural gas for ultimate distribution to the public is affected with a public interest. The NGA was adopted "so as to afford consumers a complete, permanent and effective bond of protection from excessive rates and charges." [2] Critical to the achievement of those objectives is the assurance of an adequate and reliable supply of natural gas.[3] To achieve that assurance of supply, gas companies that seek to sell or transport natural gas for resale in interstate commerce are required, under section 7(c) of the NGA,[4] to obtain a certificate of public convenience and necessity from the Commission.

The Federal Power Commission (predecessor to the Commission) took the position, which the Supreme Court affirmed, that there was "a continuing obligation to perform 'service' imposed by the [NGA] which outlasts the term of a seller's original contract of sale." [5] Thus, once gas service in interstate commerce has commenced, natural gas companies are precluded—under section 7(b) of the NGA—from abandoning all or part of this service without Commission approval. Abandonment within the meaning of section 7(b) "occurs whenever a natural gas company abandons facilities or permanently reduces a significant portion of a particular service." [6] Similarly, although a pipeline does not need a certificate to purchase gas, the pipeline's purchase and transportation of the gas constitute "services" under the NGA, and accordingly, a pipeline requires abandonment authorization to cease purchases, even if no facilities are abandoned.[7]

Under section 7(b), an applicant has the burden of demonstrating that abandonment is permitted due to the depletion of reserves or is otherwise permitted by the present or future public convenience or necessity.[8] Most producer abandonment applications are based on depletion of reserves. They are generally not opposed and the Commission routinely grants them.[9] Where the gas supply is not depleted, and abandonment has been contested, the courts have said that, in determining whether the public convenience or necessity permits such abandonment, (1) a pipeline with a certificate of public convenience and necessity to serve a particular market has a "deep legal obligation" to continue service; (2) the burden of proof is on the proponent of the abandonment to demonstrate that the public interest "will in no way be disserved" by the abandonment; and (3) the principal index of the public interest is a comparative needs test which balances the relative needs of the competing pipelines and their ultimate consumers.[10]

These standards for abandonment were developed during a period marked at its close in the 1970's by gas shortages in the interstate market. By enacting the Natural Gas Policy Act of 1978 (NGPA) [11] to meet this shortage and other problems, Congress transformed federal regulation of the gas industry from an all-encompassing regulatory approach to one which "move[s] toward a less-regulated national natural gas market," and "leave[s] determination of supply and first-sale price to the market." [12]

In the Commission's April 10, 1985 Policy Statement,[13] the Commission expressed an intent to allow parties to change their service obligations to accommodate take-or-pay buy-out agreements. The Commission stated that it would expeditiously grant abandonment authorization necessary to implement any such agreement reached by the parties, and that where a producer files for abandonment based on payments made pursuant to the policy statement, the pipeline purchaser will be deemed to have waived its right to oppose the abandonment. Subsequently, in Order No. 436, the Commission developed a regulatory approach to "allow competitive forces to operate in those areas where Congress has determined they will better protect the public interest than traditional utility-type regulation, while retaining traditional-type regulation in those areas where competitive forces have been found inadequate by the Congress."[14]

In Order No. 436, the Commission reaffirmed its April 1985 Policy Statement, and expanded the categories of gas that could be the subject of expedited abandonment, stating:

> In the Commission's judgment, new § 2.77 is consistent with the policies reflected in this rule, in that producers should be able to sell shut-in gas and purchasers, to the extent possible, should be able to renegotiate or buy-out higher priced contracts so that gas under those contracts can be sold at market-clearing prices. To this end, the Commission will consider requests for permanent, limited-term, or partial abandonment of sales subject to reduced takes irrespective of the NGPA price category of such gas.[15]

The Commission further noted its concern "about the need for abandonment in cases where the underlying contract has expired" because of "the market disordering effects of reduced sales of lower-priced gas as well as the economic effect on sellers."[16] The Commission declined to issue any criteria for allowing abandonment under expired contracts at that time but added that it would:

> Review the matter based on experience gained in individual proceedings and will, if it appears reasonable and desirable to do so,

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[1] Section 7(b), 15 U.S.C. 717f(b) (1982), provides: No natural gas company shall abandon all or any portion of its facilities subject to the jurisdiction of the Commission, or any service rendered by means of such facilities, without permission and approval of the Commission first had and obtained, after due hearing, and a finding by the Commission that the available supply of natural gas is depleted to the extent that the continuance of service is unwarranted, or that the present or future public convenience or necessity permit such abandonment.

[2] *Atlantic Refining Co.* v. *Public Service Commission*, 360 U.S. 378, 388 (1959).

[3] *California et al.* v. *Southland Royalty Co. et al.*, 436 U.S. 519, 523 (1978).

[4] 15 U.S.C. 717f(c) (1982).

[5] *Sunray Mid-Continent Oil Co.* v. *FPC*, 364 U.S. 137, 153-55 (1960) (Sunray).

[6] *Reynolds Metals Co.* v. *FPC*, 534 F.2d 379, 384 (D.C. Cir. 1976).

[7] *United Gas Pipeline Co.* v. *FPC*, 385 U.S. 83 (1966) (*United*). In *Panhandle Pipe Line Co.* v. *FERC*, 803 F.2d 726 (D.C. Cir. 1986) (*Panhandle*), the court held, on the basis of *United*, that the Commission must entertain abandonment applications filed by purchasers seeking to cease purchases of gas if the gas is transported through a certificated facility. *Accord: Valero Interstate Transmission Company* v. *FERC*, 804 F.2d 1406 (5th Cir. 1986).

[8] *Michigan Consolidated Gas Co.*, v. *FPC*, 283 F.2d 204 (D.C. Cir.), *cert. denied*, 364 U.S. 913 (1960).

[9] The Commission has delegated the authority to grant specified unopposed applications for abandonment to the Director of the Office of Pipeline and Producer Regulation. 18 CFR 375.307 (1986).

[10] *Transcontinental Gas Pipeline Corp.* v. *FPC*, 488 F.2d 1325, 1328 (D.C. Cir. 1973), *cert denied*, 417 U.S. 921 (1974) *(Transco); Michigan Consolidated Gas Co.* v. *FPC*, *supra*.

[11] 15 U.S.C. 3301 through 3432 (1982).

[12] *Transcontinental Gas Pipeline Corp.* v. *State Oil and Gas Board of Mississippi*, 106 S. Ct. 709, 717 (1986).

[13] Regulatory Treatment of Payments Made in Lieu of Take-or-Pay Obligations, 50 FR 16076 (April 24, 1985); FERC Statutes and Regulations [Regulations Preambles 1982-1985] ¶ 30,637. The policy statement is embodied in 18 CFR 2.76 (1986).

[14] Regulation of Natural Gas Pipelines After Partial Wellhead Decontrol, 50 FR 42408 (October 18, 1985); FERC Statutes and Regulations [Regulations Preambles 1982-1985] ¶ 30,665 (1985).

[15] *Id.* at 31,568.

[16] *Id.*

establish guidelines to be applied in ruling on future contested abandonments as a means of further expediting the determination of such abandonments.[17]

In 1985, the Commission reconsidered its abandonment policy under section 7(b) in *Felmont Oil Corp. et al.* (*Felmont* and Opinion No. 245).[18] The applicant therein was a producer seeking abandonment (which the pipeline's customers opposed) because of the expiration of the underlying contract and the reduced takes by the purchaser, which had led to the shutting-in of the gas.[19] The Commission held that in light of substantially changed conditions in the natural gas market following enactment of the NGPA, the "comparative needs" test articulated in the *Transcontinental* case, *supra* n. 10, which was developed in quite different conditions, had to be reexamined.

The Commission adopted an abandonment policy that would allow shut-in, low-priced gas to enter the marketplace in order to allow purchasers to displace higher cost gas. The Commission reasoned that if lower-priced gas begins to displace some high-cost gas, pipelines and gas producers will have the incentive to renegotiate their contracts both to reduce prices and lower take-or-pay requirements. The Commission, therefore, held that:

Where a party can demonstrate that abandonment in a particular instance would have beneficial effects on the market overall, such as increasing competition and causing gas prices to respond to that competition, and the benefits of the abandonment outweigh any adverse effect to the purchaser to whom the gas is presently dedicated, or that purchaser's customers, the Commission will grant abandonment.[20]

Applying that standard to the case before it, the Commission held that the record supported the grant of a limited term three-year abandonment, suggested by the producer in a settlement offer.[21] On rehearing, the Commission, in rejecting the specific arguments made by the petitioners,[22] stressed inter alia, that "[t]he abandonment policy expressed in Opinion No. 245 is designed to facilitate competition in the natural gas markets resulting in significant benefits to the overall public interest." The Commission concluded that, "[g]iven the limited nature of the abandonment approved, Opinion No. 245 represents a careful and modest application of the Commission's revised approach to abandonment."[23]

The Commission, in revising its abandonment policy, essentially changed the focus of its analysis in light of the current situation in the gas industry. Rather than limiting its analysis to the needs of a current purchaser and a prospective new purchaser, the Commission sought to balance the benefits to natural gas customers as a whole from a release of gas against any detriments to the current purchaser and its customers. In *Felmont*, the Commission recognized that it was changing prior policy, and set forth a reasoned explanation for its action. Specifically, the Commission recognized that other fuels have become more competitive with gas, that demand for gas has accordingly declined, and that a significant surplus has developed. In such circumstances, the Commission concluded that, where the abandonment request is predicated upon a current purchaser's failure to buy substantial amounts of available gas due to a sharp decline in the market, the traditional comparative needs test was inappropriate and the Commission "must look at a wider range of factors than it has previously considered".[24] Thus:

The real change from the past will be a shift in the identification of the public interest, from the interest of only specific customers to the interest of the market as a whole and in the determination of how the public's needs are best served.[25]

After passage of the NGPA and the onset of an over-supply condition, diminution of demand, and the incurring of take-or-pay obligations by pipelines, the Commission recognized the need to change existing regulations governing the release of gas. Thus the Commission permitted special marketing programs (SMPs). These authorized the release by pipelines, temporary abandonment, and sale of certain categories of gas under certain conditions to other (generally industrial, fuel switching) customers, in order to allow pipelines to obtain take-or-pay relief.

The U.S. Court of Appeals for D. C. Circuit struck down the SMP's in *Maryland People's Counsel* v. *FERC*, (*MPC I*)[26] because of the exclusion of "captive customers" from the class of customers eligible to participate in the programs. The SMP's in *MPC I* had already expired when the court rendered its decision on May 10, 1985. Since successor SMP orders with later expiration dates had been issued by the Commission, the Court directed the Commission to show cause why the successor orders should not also be vacated. In *MPC II*,[27] the court held that the new orders were similarly infected with unlawful discrimination. However, since the new orders were scheduled to expire on October 31, 1985, the court stated that it would "allow the current SMP orders to die a natural death" by which time the Commission was expected "to promulgate new rules that may effect fundamental changes in the marketing of natural gas." The court was referring to the Notice of Proposed Rulemaking that ultimately resulted in Order No. 436.

In a series of orders subsequent to *MPC II*, the Commission approved limited-term abandonments (LTA's) and granted sales certificates to permit continuation of the sale of the gas that had been sold under various SMP's that expired on October 31, 1985.[28] These orders were originally intended to be a temporary bridge between the defunct SMP arrangements and arrangements under Order No. 436, and thus the Commission limited the duration of

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[17] *Id.* at 31,567. The Commission referred to its policy at that time that a seller was obligated to continue providing service under an expired contract, if requested to do so, even though the purchaser had no obligation to continue purchasing, and required no Commission authorization to cease its purchases, citing Mississippi River Transmission Corporation (MRT), 30 FERC ¶ 61,185 (1985). In *Panhandle*, *supra* n.7, the United States Court of Appeals for the District of Columbia reversed the Commission's decision to dismiss MRT's application to abandon purchases, and remanded the case for further Commission consideration.

[18] 33 FERC ¶ 61,333 (1983), *reh'g denied*, 34 FERC ¶ 61,296 (1986). The orders in *Felmont*, and the subsequent certificate orders involving the released gas, are on appeal. Oral argument was heard by the court on February 18, 1987. *Consolidated Edison* v. *FERC*, Docket Nos. 86-1168 *et al.* (D.C. Cir.).

[19] The gas involved was priced under NGPA sections 104 and 106.

[20] 33 FERC at 61,657.

[21] The order also included a provision granting the purchaser's customers a call upon the gas, as requested by the parties. The Commission has not imposed that condition in subsequent abandonment orders.

[22] Petitioners argued that the Commission could not change the "comparative needs" test and that, in any event, there was no substantial evidence to support the application of the new policy in the case before it.

[23] 34 FERC at 61,533.

[24] 33 FERC at 61,656.

[25] *Id.* at 61,657.

[26] 761 F.2d 768 (D.C. Cir. 1985) (MPC I).

[27] 765 F. 2d 450 (D.C. Cir. 1985).

[28] The LTA's were issued in basket orders covering numerous applications. The leading case is Tenneco Oil Co., 33 FERC § 61,134 (1985), *reh'g denied and clarification granted*, 34 FERC ¶ 61,145 (1986). The Commission has also issued other LTA orders approving many applications. 33 FERC ¶ 61,233 (1985), 33 FERC ¶ 61,173 (1985), and 33 FERC ¶ 61,326 (1985).

authorizations until March 31, 1986.[29] However, the Commission later determined that these orders would provide important benefits to the public interest, even after Order No. 436 programs were implemented, and extended the authorizations because they allowed for the release by pipelines of shut-in, above-market-priced gas which could be sold by producers at market clearing prices. The public interest was served by the releases because pipelines could by this means obtain take-or-pay relief, producers were able to sell gas and generate cash flow, and increased gas sales made the natural gas market more price sensitive.[30]

The Commission has granted LTA authorizations not only for individual producers but also for applications filed by pipelines on behalf of their producer-suppliers.[31] The Commission recognized that this was an extension of *Felmont supra*, and granted such pipeline applications because:

> Based upon [the pipeline's] assertions that it has substantially reduced takes from all of its producer-suppliers and that it may be unable to take even minimum volumes of gas to protect against drainage and well or reservoir damage, and upon our own review of [the pipeline's] demand and supply projections for 1986 and 1987, we have determined that the requested abandonment is permitted by the public convenience [or] necessity.[32]

The LTA orders have stated that any release is a matter of mutual agreement between the pipeline and its producers. The authorizations merely allow the release, but do not mandate it. Each producer is free to determine whether it wishes to enter into the release arrangement. Second, administration of the program by the pipelines must be on a non-discriminatory basis. Furthermore, the authorizations do not alter the pipelines' responsibilities to meet service obligations under their certificates. The pipelines' decisions to release gas constitute purchasing practices subject to review in rate proceedings. Third, the authorizations granted do not provide for blanket transportation, and transportation authorization must be obtained through other proceedinqs.

[29] Tenneco Oil Co., *supra*, 34 FERC at 61,250.

[30] Columbia Gas Transmission Corp., 34 FERC ¶ 61,407 (1986); Marathon Oil Co., 34 FERC ¶ 61,417 (1986); and Odeco Oil and Gas Co., 38 FERC ¶ 61,343 (1987).

[31] *E.g.*, ANR Pipeline Company *et al.*, 38 FERC ¶ 61,046 (1987); Southern Natural Gas Co., 36 FERC 61,401 (1986) (Southern); and Transcontinental Gas Pipe Line Corp., 36 FERC ¶ 61,403 (1986).

[32] *Southern supra*, 36 FERC at 62,013.

The changed gas marketing environment after the NGPA also prompted the Commission to authorize abandonment on a generic basis under Order No. 451.[33] This new rule provides an alternative maximum lawful price (MLP) for older vintages of gas under NGPA sections 104 and 106 (old gas). It also establishes a good faith negotiation procedure. The negotiation procedure is available to a producer who sells old gas under an interstate contract or the service obligation of a certificate in effect on July 18, 1986, that provides for escalation of the contract price to a higher MLP. This negotiation rule grants such producers abandonment if the producer seeks a higher price for its old gas, is unable to reach agreement with the purchaser on a suitable price, finds another purchaser, and gives 30-days written notice to the existing purchaser. The rule further grants the seller, with respect to the abandoned gas, a blanket certificate authorizing sales for resale in interstate commerce, with pre-granted abandonment upon termination of any contract. In addition, the rule grants abandonment for the benefit of purchasers in certain circumstances. In response to a producer's request for a higher price for old gas, the purchaser may seek a lower price for any gas in any contract with the producer which includes old gas. The purchaser may terminate purchases of any such gas on which no agreement as to price is reached, and abandonment authority is granted for any such gas that is subject to the Commission's NGA jurisdiction.

The abandonment provisions under Order No. 451 are not available for gas sold under interstate contracts that do not provide for escalation of the contract price to a higher MLP, or for gas sold under intrastate rollover contracts. However, the price of gas sold under such contracts may be increased up to the new higher MLP if the producer can nevertheless secure the purchaser's agreement to a higher price.

In support of the rule the Commission stated:

> Abandonment under the good faith negotiation rule is in the public interest, since it is necessary to ensure that the goals of Order No. 451 of increased production of old gas and overall lower prices * * * are achieved. Those goals cannot be achieved unless producers can obtain the market-responsive prices permitted by the rule. Without the possibility of abandonment, purchasers under existing contracts could prevent producers from obtaining those prices by insisting on continuation of the present price. In addition, requiring individual producers to file abandonment applications and considering those applications on a case-by-case basis is an inadequate solution. That would cause lengthy delays before abandonments could be granted, given the vast number of producers in the nation and the Commission's limited resources. Achievement of the goals of increased production and lower overall prices would thereby be substantially delayed. Thus, granting abandonment in the present proceeding, if the conditions set forth in the good faith negotiation rule are met, is in the interest of the natural gas market as a whole and is necessary to bring about market-responsive prices for old gas and overall lower prices.[34]

[33] Ceiling Prices; Old Gas Pricing Structure, 50 FR 22168 (June 18, 1986); III FERC Statutes & Regulations ¶ 30,701 (1986).

B. The Need for the Rule

Under the NGA the Commission had concluded that service obligations should not be limited to the contractual term between the parties.[35] To permit the contract term to govern the service obligation would allow the parties to avoid the Commission's authority over abandonment. Thus, the Commission's prior policy attempted to ensure that the interstate market would not be subject to limitations of supplies because of competition from the unregulated markets.

Furthermore, the prior policy on abandonment protected pipelines, which had substantial capital investment in the facilities to deliver the gas, from being cut-off from their supplies. The crux of that policy was that under the NGA, it was "Congress' purpose to regulate the supply and price of natural gas." [36] However, Congress significantly changed the method of achieving this desired objective in enacting the NGPA by permitting market forces, to a very large extent, to regulate price and

[34] Order No. 451-A, 51 FR 46762 (December 24, 1986); III FERC Statutes & Regulations ¶ 30,720 at 30,405 (1986).

[35] *Sunray*, *supra*, text at n.5.

[36] United Gas Pipe Line Co. v. McCombs, 442 U.S. 529, 539 (1979). The Commission notes that in *Sunray*, the court held that another reason for permitting the Commission to issue certificates of indefinite duration was to prevent producers from obtaining, at the contract expiration date, a higher price as an initial rate under a new certificate. The Court reasoned that to consider sales after the contract expiration as new service under a new certificate would force the Commission to test the reasonableness of the rate under NGA section 5(a), where the Commission has the burden of proof and where experience had shown the procedure to be subject to great delays, and would avoid the rate-change procedures of NGA section 4(e), where the producer has the burden of proof and rates can be temporarily suspended, and implemented subject to refund, pending issuance of a final rate order. This distinction between the effective date and burden of proof concerning producers' rate increases under new service and a continuation of existing service is no longer relevant because Congress has provided in NGPA section 601(b) that for purposes of NGA sections 4 and 5, ceiling prices under the NGPA are deemed to be "just and reasonable."

supply. The conversion of the natural gas market to a nationwide market has virtually eliminated the need for the Commission's prior abandonment policy, because the NGPA has eliminated the dual (inter and intrastate) markets altogether by establishing a single national market where both interstate and intrastate gas purchasers have equal access to new gas production without substantial price disparity, "to assure adequate supplies of natural gas at fair prices." [37]

The Commission believes that the continuation of service obligations after the contract has expired prevents market forces from operating to the extent envisaged under the NGPA, and frustrates the parties' agreements. To the extent that either a producer or a purchaser concludes that it no longer wishes to continue its contractual arrangement after the contract has expired, Congress' NGPA policies are thwarted by policies that interfere with parties' bargained-for arrangement. Thus producers with contracts for the sale of gas at prices that may be less than the replacement cost of gas reserves should be permitted to seek the market price up to the maximum lawful price for that gas once the contract terminates. Similarly, purchasers should not be required to continue purchasing relatively high-priced gas when the contract term expires, unless it is in their interest to do so. In that situation, the purchaser, and not the Commission, should determine whether it wishes to continue purchasing under the contract. Expedited abandonment procedures, such as those in this proposed rule, are necessary to ensure that the parties are not required to continue selling or purchasing gas where the marketplace provides a better alternative than their expired or terminated contractual arrangement. Requiring sellers to continue selling gas at a lower price than the gas commands in the market, or requiring the purchaser to continue purchasing the gas where it could satisfy its requirements with lower-priced gas, may prevent the gas being priced at its real value to the economy. Accordingly, the proposed rule would treat both producers and purchasers evenhandedly and allow either party to terminate its purchase or sale obligation when the contract term expires without the need to obtain Commission approval on a care-by-case basis.[38]

Dedication and abandonment do not, at a particular moment in time, impact the total gas supply available to the market as a whole. Continuation of the dedication after expiration or termination of a contact merely places restraints on the movement of the gas, preventing it from going from one group of customers to other customers who may have a greater need for it. When there were distinct markets prior to the NGPA, dedication and abandonment arguably helped achieve the goals of the NGA. However, even under the NGA, natural gas shortages were a recurring phenomena, and to some extent abandonment policies exacerbated the shortages because where gas surpluses existed on certain pipeline systems, the surplus gas could not readily be utilized to alleviate gas shortages existing on other pipeline systems. If supplies were free to move quickly, as contemplated under this rule, the nation's entire gas supply could be more efficiently utilized to satisfy consumer needs, thereby allocating the gas supply as the economy dictated rather than in accordance with "dedicated reserves," as under the current policy.

The Commission notes that a study prepared by the Commission's Office of Pipeline and Producer Regulation (OPPR), entitled "Dedicated Interstate Gas Supply, Potential Supplemental Sources and Their Effects on Meeting Potential Demand" (April 1987), provides information relevant to the evaluation of the need for the rule, and is attached as Appendix A. The study indicates that at the present time the reserves of dedicated gas subject to the Commission's certificate and abandonment authority are serving a diminishing role in satisfying total nationwide natural gas requirements of residential and commercial customers. Dedicated production is estimated to have been between 5.1 and 5.2 Tcf in 1985 while total U.S. residential and commercial consumption in 1985 in interstate and intrastate markets amounted to 6.8 Tcf. Accordingly, assurance of supply to these customers cannot come solely from dedicated reserves.

The OPPR study also indicates that future supply for these customers must increasingly come from sources other than dedicated gas. New reserves that are dedicated account for a decreasing percentage of total new reserve additions and will continue to decrease in the future because the NGPA "prevents the universe of gas subject to the NGA from expanding." [39] Yet, dedicated reserves provide a disproportionate amount of production. In 1985, for example, dedicated reserves provided an average of 58% of dedicated and/or contractually committed production [40] while comprising only 45% of reserves dedicated and/or contractually committed to interstate pipelines in 1985. This disparity between the addition of reserves and production has caused dedicated reserves to decline approximately 10% per year since 1976.

Finally, the OPPR study estimates the potential for supplemental sources to meet gas requirements. The 1987 U.S. surplus deliverability is estimated at 3.6 Tcf but, since this surplus may be exhausted in the near future, other supplemental sources were evaluated. Fuel switching by dual fuel industrials and electric utilities, infill drilling, and imports could potentially make available a range of 3.92 to 7.69 Tcf in one year and up to 10.44 Tcf in two or more years. The potential of this range of supplemental sources is dependent upon alternative fuel availability, market price signals that encourage production of the supplemental supplies, and the absence of bottlenecks that prevent access to the available gas. However, one important fact noted by the study is that an oil supply disruption would increase demand for gas and possibly eliminate the estimated supplemental gas potential of 5.64 Tcf from fuel switching.

As the OPPR study indicates, dedicated reserves have diminished to the point that they already appear questionable in meeting the demands of total U.S. high-priority customers,[41] and are estimated to continue dwindling. Therefore, it is obvious that the purpose of the Commission's certificate and abandonment policy during the 1970's of maintaining enough dedicated reserves to protect high-priority customers in the interstate market against possible shortages cannot possibly be realized in the future by denying applications for abandonment.

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[37] See Transcontinental Gas Pipe Line Corp. v. State Oil and Gas Board of Mississippi, 106 S. Ct. 709, 716 (1986).

[38] Termination of the sale or purchase obligation will not, of course, affect the parties' contractual rights and obligations arising prior to the termination.

[39] *Pennzoil Co.* v. *FERC*, 645 F.2d 360, 380 (5th Cir. 1981).

[40] In this context, contractually committed production means production that is committed to an interstate pipeline under a contract, but is not subject to the Commission's NGA jurisdiction as are "dedicated reserves."

[41] The OPPR estimate for residential and commercial use does not exactly correspond to the definition of "high priority users" under section 401(f)(2) of the NGPA. The estimate includes commercial establishments consuming more than 50 Mcf on a peak day that would not be "high priority" and excludes "high priority use" for life, health, and maintenance of physical property.

Interstate pipelines and local distribution companies cannot rely on the authority of the Commission under section 7(b) of the NGA to deny contested applications for abandonment to meet their duty of assuring an adequate supply of reasonably priced natural gas to their high-priority customers. As a matter of hindsight, it is apparent that the Commission's ability to deny abandonment was never an effective means of securing gas supplies for the interstate market. The effort to secure supplies for the interstate market by attempting to force producers to sell gas beyond the terms of their contractual commitments at prices that were less than they could receive from other potential purchasers was ultimately a failure, as the recurring shortages in the interstate market during the 1970's made abundantly clear.[42]

While the proposed rule will not detrimentally affect high priority customers' assurance of supply, the rule will provide three related economic benefits. First, the rule would increase competition by allowing more gas to enter the market. Purchasers may have an opportunity to lower their gas costs which in turn, would exert pressure on other sellers of gas to reduce prices. Further, in contrast to limited term abandonments, dedicated gas abandoned under the rule would be available for purchase under either short- or long-term contracts. This maximizes the competitive effect by allowing the gas to be purchased in the most highly valued manner: As a spot purchase, a long-term contract to ensure supply reliability, or something between.

The second economic benefit of the rule is that it increases high-priority user's access to gas. If expired contracts are not abandoned, high priority customers are not expected to have access to all of the existing dedicated production. Some pipelines are likely to have dedicated production in excess of their customers' high priority usage. But that excess dedicated production would not be available to other high priority users. However, under the rule, the free market's ability to move reserves among different systems and regions in response to consumers' demands would be enhanced.[43]

Closely related to the other two economic benefits is the improved allocation of society's resources. The OPPR study indicates that additional supplies of gas from various sources will quickly become available under adequate price incentives. However, if underpriced dedicated gas continues to be sold under expired contracts, unregulated market prices will be distorted upward. The distorted price response to any future gas shortage will then induce more supply from supplemental sources than is socially optimal. The rule will remove this distortion, allowing the market to allocate more optimally the use of gas, alternative fuels, and other resources associated with the "potential supplemental sources of gas supply."

The new rule will provide economic benefits to the market as a whole. The standard used in *Felmont* and in Order No. 451, of balancing the particular purchaser's needs and the needs of the market as a whole, provides support for the proposed rule.

The Commission believes that security of supply can best be achieved under the NGPA's schedule of decontrol by permitting producers and purchasers of natural gas to buy and sell gas in accordance with their contractual commitments, free of the constraints of any requirement to seek Commission approval on a case-by-case basis. The mechanism of a free market will provide adequate gas supplies to pipelines to meet their customer's demands, and in the event of a shortfall of supply, gas will be allocated on individual pipelines in accordance with Commission approved curtailment plans. It is possible that a disruption could be so severe that market forces would not satisfy the supply needs of high priority users. Under this emergency condition, Title III [44] of the NGPA provides authority to the President to allocate natural gas supplies to meet those needs from any available source of gas, without regard to whether such gas is subject to the Commission's NGA jurisdiction. This authority under Title III provides a more effective way to deal with any emergency shortage of natural gas supply than the Commission trying to anticipate such an event by refusing to permit abandonments. In addition, in both times of surplus and shortage, nothing in the proposed rule will alter the continued sales service obligations of pipelines to their customers, unless revised by the Commission after case specific review under the NGA.

For all the reasons stated above, the Commission also believes that parties to gas purchase contracts should be free to terminate their contractual arrangements either permanently or for a limited period without Commission approval on a case-by-case basis. Given the limitations on Commission resources, requiring such individual approval serves no useful purpose and merely imposes an unnecessary step that injects uncertainty, and delays the parties from consumating sales which would benefit the public interest in general. It should be noted, however, because a pipeline's decision to release gas constitutes a purchasing practice, a pipeline's agreement to modify contracts will be subject to scrutiny in rate proceedings. This rule does not preclude parties from challenging any release of gas by a pipeline in future rate cases, where the pipeline has voluntarily agreed to enter into such arrangement.

The goal of assuring high-priority users an adequate supply of gas can thus be furthered by removing regulatory impediments to the efficient operation of the forces of supply and demand in a competitive natural gas market.

III. Discussion

A. The Proposed Rule

The proposed rule will be applicable to "first sales" of gas as defined in the NGPA and to purchases by a pipeline from producers or another pipeline. The rule permits any party to a contract for such a sale, once the contract term has expired or has been terminated by exercise of an option contained therein, to notify the other party that it will cease sales or purchases under the contract at the expiration of thirty days from the date of notification or the notification period in the contract, whichever period is longer. The rule also applies where the parties to the contract have mutually agreed to terminate, or modify the contract. Termination or modification of the parties' certificate obligations becomes effective in accordance with the parties' agreement.

Where a pipeline is abandoning purchases of gas from a producer, abandonment under the proposed rule will be conditioned upon providing for the transportation of the abandoned gas. If the abandoning pipeline is not an open-access transporter subject to the non-discrimination provisions of § 284.8(b) or § 284.9(b) of the

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[42] The bizarre situation of natural gas shortages in the interstate market concurrent with a glut of natural gas in certain intrastate markets, was a compelling factor leading to enactment of the NGPA.

[43] Moreover, the nation's broader energy security interests will be served by the removal of regulatory impediments to the marketing of natural gas by reducing the vulnerability of the economy to oil supply disruptions. Oil shortages can be ameliorated by the ability of many boiler fuel users to switch to gas, if gas reserves can be quickly brought to market without the delay of abandonment proceedings before the Commission. (U.S. Department of Energy, *Energy Security: A Report to the President of the United States* at p. 40 (March 1987)).

[44] 15 U.S.C. 3361 *et. seq.* (1982).

Commission's regulations, transportation will be available under § 284.227, a blanket transportation provision similar to that promulgated in Order No. 451.

Authority to abandon the purchase or sale of gas is granted automatically upon compliance with the above conditions. The rule further provides for the grant of a blanket certificate to the producer or other first seller under § 157.301 of the Commission's regulations to sell the abandoned gas for resale in interstate commerce, with pregranted abandonment of any sale of the gas under the blanket certificate upon termination of the contract.

The abandoning party, or the purchaser if the abandonment is mutually agreed to, must notify the Commission of the abandonment within thirty days after the effective date of the abandonment, and shall provide the Commission with certain information concerning the abandoned transaction.

The rule will apply to all contracts between producers and pipelines, and will not be limited to contracts containing an indefinite price escalation clause, as under the good faith negotiation procedures of Order No. 451. Thus all gas sold under any expired contract will be eligible for price renegotiation or abandonment.[45] In addition, purchases under expired contracts between pipelines would be covered by this proposed rule, although beyond the scope of Order No. 451.

B. Hearing Requirement and the Legal Basis for the Commission's Action

Once gas reserves have been committed to an interstate pipeline, any sales from these reserves cannot be made to another purchaser without Commission approval under section 7(b). In other words, a producer cannot cease service to an interstate pipeline without a Commission grant of abandonment authority. Abandonment, while typically considered on a case-specific basis, has been generically authorized.[46] The ultimate criterion in determining whether abandonment should be granted under section 7(b) is the public interest.[47] As stated above, the Commission believes that the Congressional policy of achieving market-responsive pricing of gas that is embodied in the NGPA would be furthered by permitting generic abandonment as provided herein. Permitting both producers and purchasers to terminate obligations which they consider disadvantageous in the present market would help further the objective of achieving an equilibrium between supply and demand because gas would move more readily to the market that needs it and at the same time diminishing surplus deliverability in markets where it is not needed. Therefore, the Commission believes that, where contracts have expired and other conditions set forth in the rule are met, abandonment is in the interest of the natural gas market as a whole and is necessary to bring about a closer equilibrium between supply and demand.

In this proceeding, the Commission will consider all relevant factors involved in determining the overall public interest. The Commission believes that generally a purchaser's loss of gas under abandonment provisions where contracts have expired should not cause it, or the market it serves, to experience a shortage of supply. The move to market-responsive prices for new gas over the last eight years under the NGPA has already eliminated shortages of gas. Permitting old gas covered by expired or terminated contracts to enter the gas market will ensure that present adequate supplies of gas continue into the foreseeable future. Therefore, there is no reason to believe that purchasers losing supplies under this rule should have difficulty replacing those supplies. In addition, the increased flexibility of supply brought about by this rule should allow purchasers to replace lost supplies at reasonable prices.[48] Of course initially at least, some persons, particularly those who benefitted from the distortions inherent in the continuation of expired contracts with low fixed prices, may experience price increases. However, such isolated instances are outweighed by the benefits to the market as a whole described above.

The present rule is consistent with section 7(b). Abandonment authorization is, and will continue to be required, for gas still subject to the NGA. Where the conditions described in this rule are met, the Commission grants abandonment authorization by the rule. Where the conditions are not met, a party must seek abandonment authorization by a specific filing. In enacting the NGPA Congress limited the role of dedication under the NGA in regulating the nation's gas supply by legislating a continued diminution of dedicated reserves with the passage of time. Security of supply at reasonable prices was to be achieved by the working of the incentive price provisions and free market forces. This rule merely accelerates that process in light of the success of the NGPA along with other economic factors in creating a competitive wellhead market.

For the reasons stated, the Commission believes that the present and future public convenience or necessity would permit abandonment when the parties' contract has expired or the parties have agreed to such abandonment, because the abandonment will serve the overall interest of all participants in the natural gas market. The proposed rule permitting abandonment on a generic basis is limited to expired contracts, contracts terminated in accordance with a provision of the contract, or terminated or modified by mutual agreement of the contracting parties. Accordingly, there can be no conflict with the *Sierra-Mobile* doctrine [49]

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[45] Where the contract has not expired and the parties cannot mutually agree upon termination or a modification, a party may seek abandonment under other Commission procedures, including, 18 CFR 2.77 (1986), *supra* pp. 4–5, which provides expedited procedures where the producer is subject to substantially reduced takes, or abandonment is sought in connection with take-or-pay buy-out arrangements.

[46] FPC v. Moss, 424 U.S. 494 U.S. 494, 501 (1975); Order No. 436, *supra*.

[47] *Transco, supra.*, n. 10.

[48] In short, the Commission relies on market forces to assure that purchasers have adequate supplies at reasonable cost. Such reliance on market forces in the context of NGA section 7(b) is supported by the Supreme Court's decision in FCC v. WNCN Listeners Guild, 450 U.S. 482 (1981). That case involved a similar requirement that the Federal Communications Commission (FCC) determine whether the "public interest, convenience, and necessity" permit radio station license renewals or transfers. Among the factors to be considered in making the necessary determination is whether granting the renewal or transfer will promote diversity in entertainment programming. The FCC issued a policy statement that it would not consider this in individual cases since it would rely on market forces to promote diversity. The Supreme Court upheld the policy statement, finding that the FCC had provided a rational explanation of its reliance on the market. The Court noted that an agency's decision "must sometimes rest on judgment and predictions rather than pure factual determination", 450 U.S. 581. The Commission here has provided a detailed explanation why under this rule market forces should assure adequate supplies at reasonable costs, and would provide for a more efficient utilization of the nation's natural gas supply.

[49] Federal Power Commission v. Sierra Pacific Power Co., 350 U.S. 348 (1956); United Gas Pipe Line Co. v. Mobile Gas Service Corp., 350 U.S. 332 (1956); United Gas Pipe Line Co. v. Memphis Light, Gas & Water Division, 358 U.S. 103 (1958). The doctrine established in these cases recognizes that the NGA preserved the integrity of private contracts, and that the scheme of the NGA was one applying the regulatory system on the foundation of private contracts. The NGA did not abrogate private contracts, but simply provided protection to the public interest through the statutory filing procedures and notice requirements.

because the Commission action is in conformity with the parties' contractual agreement.

To the extent that the Commission adopts the proposed rule, the present rulemaking proceeding would satisfy the hearing requirement under NGA section 7(b). That hearing requirement will be satisfied by the opportunities to file comments in this proceeding. Section 7(b) does not require that the Commission hold individual case-by-case hearings.[50] The Commission may determine in this proceeding that the public interest permits abandonment where the underlying contract has expired or has been terminated or modified by agreement. If so, it would make no sense for the Commission to require individual producers to file abandonment applications and to hold a hearing on each application for abandonment under such a contract. Given the large number of certificates where the underlying contract has expired or may be terminated or temporarily modified bv mutual agreement, that procedure could result in a very large number of hearings.[51] The inevitable result would be lengthy delays before individual abandonments could be granted because of the Commission's limited resources, which would seriously impede the achievement of this rule's goals of permitting the market allocation of gas that Congress intended in enacting the NGPA. As the Supreme Court stated in *Texaco* v. *FPC*, "We see no reason why under this statutory scheme the processes of regulation need be so prolonged and crippled." [52]

[50] *See Phillips Petroleum Co.* v. *FPC*, 475 F.2d 842, 848–852 (10th Cir. 1973), and *American Public Gas Ass'n.* v. *FPC*, 567 F.2d 1016, 1064–1067 (D.C. Cir. 1977), holding that the Commission may establish area and national rates in rulemaking proceedings as opposed to case-by-case adjudications without violating the similar hearing requirements of NGA sections 4 and 5. *See also FPC* v. *Moss*, 424 U.S. 494, 500–501 (1976), stating that the Commission has discretion to determine the timing of its finding that the public convenience or necessity permits abandonment, including the discretion to pre-grant abandonment on a generic basis, even though years may elapse before the abandonment actually occurs.

[51] The Commission notes that in the short time that LTA programs have been in effect, almost half of the major interstate pipelines have filed for LTA's on behalf of their producer-suppliers. Furthermore, the number of abandonment applications filed with the Commission has increased from 455 in 1985 to 792 in 1986, and the number of abandonments granted by the Commission has increased from 569 in 1985 to 763 in 1986.

[52] 377 U.S. at 33, 44 (1964). *See also Phillips Petroleum Co.* v. *FPC*, 475 F.2d at 849, 851, citing *Permian*, 390 U.S. at 777, holding the Commission has broad discretion to contrive expeditious administrative methods in order to achieve its regulatory purposes.

V. Request for Comments

At the request of Commissioner Charles G. Stalon, the Commission seeks comments on the following questions:

1. The Commission is concerned that the benefits meant to accrue from the adoption of this Notice of Proposed Rulemaking may not be fully realized by captive residential customers of local distribution companies because of the unavailability of Order No. 436 transportation. Under Order No. 436, firm customers have the ability to reduce firm sales entitlements or convert firm sales entitlements to firm transportation. Without the right to sign long-term contracts with producers that include assured transportation, captive customers may not be able to realize the benefits of competitive wellhead markets. The Commission, therefore, seeks comments on modifying the proposed rule to condition the blanket abandonment authorized under the rule on the pipeline purchaser providing Order No. 436 transportation.

2. The Commission also seeks comments on modifying its proposal to require pipeline purchasers to transport from producer sellers in cases where the producer initiates the abandonment.

At the request of Commissioner Charles A. Trabandt, the Commission seeks comments on the following questions:

1. The Commission is interested in receiving comments with regard to the extent to which the Commission, pursuant to section 7(b) of the Natural Gas Act, may grant its permission and approval of this generic abandonment rule, after due hearing, and a finding that the present or future public convenience or necessity permit such abandonment. The Commission is particularly interested in the extent to which such a finding may be based upon (1) a general public interest test placing primary emphasis on beneficial effects of the abandonment on the overall natural gas market rather than an individual producer-pipeline specific standard; (2) an analysis placing primary reliance on national market forces as a substitute for the traditional concept of dedication and abandonment in achieving the statutory objective of section 7(b); (3) an interpretation of law placing primary emphasis on general Congressional intent embodied in the Natural Gas Policy Act of 1978, as interpreted by the Courts, and the application of recent Commission precedent under section 7(b) particularly *Felmont* and the LTA cases and; (4) an approach incorporated in the proposed rule providing prior generic approvals of qualified abandonments conditioned on filing of a report and, in certain situations, a transportation service requirement, rather than a case-by-case determination after prior notice and comment. The Commission also is particularly interested in the extent to which "the present or future public convenience or necessity" shou1d be deemed as a matter of law or as a matter of policy to require the Commission to consider whether and how natural gas consumers are provided with an assured and reliable supply of natural gas under applicable judicial precedent.

2. The Commission seeks comments on modifying its proposal to provide for a one-year Limited-Term Abandonment using the same generic approach and procedures, rather than the permanent abandonment included in the proposed rule.

VI. Initial Regulatory Flexibility Analysis

Whenever the Commission is required by section 553 of the Administrative Procedure Act (APA) [53] to publish a general notice of proposed rulemaking, it is also recuired by section 603 of the Regulatory Flexibility Act (RFA) [54] to prepare and make available for public comment an initial regulatory flexibility analysis. The analysis must describe the impact the proposed rule will have on small entities. The broad purpose of the RFA is to ensure more careful and informed agency consideration of rules that may significantly affect small business and small government entities, and to encourage cost-benefit analyses of these rules, as well as the agency's consideration of alternative approaches that may better resolve any unnecessarily costly or adverse effects on these small entities. The Commission is not required to make an RFA analysis, however, if it certifies that a rule "will not, if promulgated, have a significant economic impact on a substantial number of small entities." [55]

In this notice of proposed rulemaking, the Commission presents its reasons for this agency action, its objectives, and the legal basis for this rulemaking. As discussed above, the proposed rule would allow all producers and purchasers, many of which would probably be classified as small businesses,[56] to abandon a certificated

[53] 5 U.S.C. 553 (1982).

[54] 5 U.S.C. 601 through 612 (1982).

[55] 5 U.S.C. 605(b) (1982).

[56] 5 U.S.C. 601(c), citing to section 3 of the Small Business Act, 15 U.S.C. 632 (1982). Section 3 of the Small Business Act defines small business concern

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obligation upon the underlying contract's expiration, termination in accordance with a provision of the contract, or the parties' mutual agreement to terminate or temporarily suspend the contract, by notification to the other party of its intention to do so at the expiration of the notice period. Abandonment would be granted automatically, and the need for filing an application for abandonment with the Commission would be eliminated. The only requirement imposed on the abandoning party is notifying the Commission of the action taken. The rule will thus benefit small producers by permitting them to abandon sales in a simple and expeditious manner at minimal cost.

Since the impact of the proposed rule on small producers is expected to be beneficial, the Commission does not believe that the economic impact will be "significant" within the meaning of the RFA. Pursuant to section 605(b), the Commission certifies that the rule, if promulgated, will not have a "significant economic impact on a substantial number of small entities".

VII. Paperwork Reduction Act Statement

The information collection provisions in this proposed rule are being submitted to the Office of Management and Budget (OMB) for its approval under the Paperwork Reduction Act [57] and OMB's regulations.[58] Interested persons can obtain information on the proposed information collection provisions by contacting the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. (Attention: Peg Covello, Energy Validation Data Branch, (202) 357–5402). Comments on the information collection provisions can be sent to the Office of Information and Regulatory Affairs of OMB, New Executive Office Building, Washington DC 20503 (Attention: Desk Officer for Federal Energy Regulatory Commission).

VIII. Comment Procedures

The Commission invites interested persons to submit written comments, data, views, and other information concerning the matters set out in this notice including the questions in Part V, *supra*. An original and 14 copies of comments should be filed with the Commission by June 18, 1987. Comments should be submitted to the Office of the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, and should refer to Docket No. RM87–16–000. All written submissions will be placed in the Commission's public files and will be available for public inspection through the Commission's Division of Public Information, Room 1000, 825 North Capitol Street, NE., Washington, DC 20426, during regular business hours.

List of Subjects

18 CFR Part 157

Administrative practice and procedure, Natural gas, Reporting and recordkeeping requirements.

18 CFR Part 284

Continental Shelf, Natural gas, Reporting and recordkeeping requirements.

In consideration of the foregoing, the Commission is proposing to amend Parts 157 and 284, Title 18, Code of Federal Regulations, as set forth below.

By direction of the Commission. Commissioner Trabandt concurred in part and dissented in part with a separate statement attached.

Kenneth F. Plumb,

Secretary.

PART 157—[AMENDED]

1. The authority citation for Part 157 continues to read as follows:

Authority: Natural Gas Act, 15 U.S.C. 717–717w (1982); Department of Energy Organization Act, 42 U.S.C. 7101–7352 (1982); E.O. 12009, 3 CFR 142 (1978); Natural Gas Policy Act of 1978, 15 U.S.C. 3301–3432 (1982).

2. The table of contents for Part 157 is amended by adding a new section to Subpart A to read as follows:

Sec.

* * * * *

157.21 Abandonment of purchases.

3. Part 157 is amended by adding a new § 157.21 to Subpart A to read as follows:

§ 157.21 Abandonment of purchases.

(a) A purchaser subject to the Commission's jurisdiction under the Natural Gas Act is authorized, upon 30-days written notice to the seller, or any longer notice period required by contract, to abandon purchases of natural gas from any first seller or pipeline, subject to the provisions of paragraph (c) of this section, under a contract that has expired or has been terminated by the purchaser under any provision of the contract.

(b) A purchaser subject to the Commission's jurisdiction under the Natural Gas Act is authorized to abandon purchases of gas from any first seller or pipeline in accordance with the terms of any contract under which the purchase obligations have been modified or terminated by agreement of the parties to the contract.

(c) A purchaser that is an interstate pipeline not subject to the non-discriminatory access provisions of § 284.8(b) or § 284.9(b) of this chapter that abandons purchases of gas under paragraph (a) of this section from any seller that is not a pipeline must transport the gas in accordance with § 284.227 of this chapter. The notice required under paragraph (a) of this section must indicate the conditions under which such gas will be transported.

(d) A purchaser that abandons purchases of gas under this section must file a report with the Commission within 30 days of the date that purchases are terminated providing the following information:

(1) The name of the former seller;

(2) A description of the certificate authority under which the former seller sold the abandoned gas;

(3) A description of the contractual authority under which the purchases were terminated; and

(4) If the abandonment is partial, a description of the acreage from which purchases were terminated and acreage from which purchases continue.

(e) For purposes of this section, the term "first seller" means any seller that engages in a sale of natural gas that is a "first sale" under section 2(21) of the Natural Gas Policy Act of 1978.

4. In § 157.30, paragraph (a) is amended by adding the phrase, "Except as provided in paragraph (c) of this section," to the beginning of the paragraph, and paragraphs (c) through (f) are added to read as follows:

§ 157.30 Abandonment of service.

* * * * *

(c) A first seller is authorized, upon 30-days written notice to the purchaser, or any longer notice period required by contract, to abandon sales of gas to any purchaser except a local distribution company under a contract that has expired or has been terminated by the seller under any provision of the contract.

(d) A first seller is authorized to abandon sales of gas to any purchaser, except a local distribution company, in accordance with the terms of any contract under which the sales obligations have been modified or terminated by agreement of the parties to the contract.

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as a business which is independently owned and operated and which is not dominant in its field of operation.

[57] 44 U.S.C. 3501 through 3520 (1982).

[58] 5 CFR 1320.12 (1986).

(e) Unless the former purchaser agrees to file a report of the abandonment under § 157.21(d), a seller that abandons sales of gas under paragraph (c) of this section must file a report with the Commission within 30 days of the date that sales are terminated providing the following information:

(1) A description of the certificate authority under which the abandoned sales were made;

(2) The name of the former purchaser;

(3) A description of the contractual authority under which the sales were terminated; and

(4) If the abandonment is partial, a description of the acreage from which sales were terminated and acreage from which sales continue.

(f) For purposes of this section, the term "first seller" means any seller that engages in a sale of natural gas that is a "first sale" under section 2(21) of the Natural Gas Policy Act of 1978.

5. Amend § 157.301 by revising paragraph (a) to read as follows:

Subpart G—Natural Gas Producer Blanket Authorization for Sales and Abandonment

§ 157.301 Blanket certificate authority, pregranted abandonment, and reporting requirements.

(a) *Blanket certificate authority.* Any first seller of natural gas that is authorized to abandon the sale of gas under § 157.30(c) or the good faith negotiation procedures set forth in § 270.201 of this chapter is granted a certificate of public convenience and necessity to sell such gas for resale in interstate commerce, subject to the reporting requirements of paragraph (c) of this section.

* * * * *

PART 284—[AMENDED]

6. The authority for Part 284 continues to read as follows:

Authority: Natural Gas Act, 15 U.S.C. 717–717w (1982); Natural Gas Policy Act of 1978, 15 U.S.C. 3301–3432 (1982); Department of Energy Organization Act, 42 U.S.C. 7107–7352 (1982); E.O. 12,009, 3 CFR 142 (1978).

7. The table of contents for Part 284 is revised by adding a new section to subpart G to read as follows:

Sec.

* * * * *

284.227 Transportation by interstate pipelines of gas released under generic abandonment procedures.

8. Part 284 is amended by adding a new § 284.227 to read as follows:

§ 284.227 Transportation by interstate pipelines of gas released under generic abandonment procedures.

(a) *Applicability.* This section applies to any interstate pipeline that must transport natural gas under the abandonment provisions of § 157.21 of this chapter.

(b) *Blanket certificate.* An interstate pipeline is granted a blanket certificate of public convenience and necessity that authorizes firm and interruptible transportation of natural gas to any existing customer of the interstate pipeline or to any pipeline to which the interstate pipeline is interconnected, if the sale of the gas is abandoned under § 157.21 of this chapter.

(c) *Terms and conditions of service.* (1) An interstate pipeline that transports gas under a certificate granted by this section is subject to the provisions of paragraphs (c), (d), (e),(f)(1), and (f)(3) of § 284.225.

(2) An interstate pipeline that transports gas under a certificate granted by this section and is not otherwise subject to the non-discriminatory access provisions of § 284.8(b) or § 284.9(b) is not required to transport on behalf of others any gas the sale of which is not abandoned under § 157.21 of this chapter.

Note.—This appendix is not being codified in the Code of Federal Regulations.

Appendix A—Dedicated Interstate Gas Supply, Potential Supplemental Supply Sources and Their Effects on Meeting Potential Demand—April 1987—Office of Pipeline and Producer Regulation

Index

I. Introduction

The purpose of this study is to identify the amount of dedicated interstate reserves (those which require Natural Gas Act (NGA) section 7(b) abandonment to be sold to a new customer) and the ability of these reserves and other supplemental sources to meet gas supply requirements of all gas customers and particularly high priority users in the next several years. The availability of short term supplemental supplies would be instrumental in allowing adequate time for market forces to stimulate drilling and bring on longer term supply.

With the diminution of supplies dedicated to interstate commerce, depressed oil and gas prices, and the significant plunge in gas exploration there is growing pessimism in some quarters about future gas supply.

Currently dedicated reserves are preserved for the interstate market even after the contract to purchase these volumes has expired unless the seller receives abandonment authority. The concern of this study is to investigate the supply and market consequences of a generic policy that facilitates the abandonment of dedicated reserves not currently needed. To analyze the possibilities this study will examine the volume of dedicated reserves, the deliverability of these reserves, and the potential for other supplemental sources to meet high priority gas requirements and other requirements in the near future and in the longer term.

The potential supplemental sources that will be analyzed are: (a) Alternate fuel switching capability, (b) infill drilling, (c) imports, and (d) current surplus deliverability. The potential of these supplemental supplies is aggregated to examine their effectiveness. The oil/gas price relationship is incorporated to investigate the impact of market forces on the effectiveness of these supplemental sources. The study also reviews the ability to respond to a gas or oil shortage with the assistance of these sources under market conditions. The possible use of mandatory allocation mechanisms provided by the Natural Gas Policy Act of 1978 (NGPA) is also considered. Other factors that may inhibit the mobility of the interstate pipeline system to respond are discussed. Finally a brief review of three studies considers the long term supply/demand outlook to the year 2000 and beyond.

II. Executive Summary

Dedicated Supplies

Gas reserves dedicated to interstate commerce as of January 1, 1986 are calculated to be approximately 38 Tcf. This accounts for 45% of U.S. reserves dedicated under the NGA or legally committed by contract only to interstate pipelines of 85.1 Tcf, and 20% of total U.S. reserves of 193.4 Tcf. Dedicated production for 1985 was approximately 5.2 Tcf. This accounted for approximately 58% of dedicated and/or committed production and 31% of total U.S. production.

A comparison of the reserve and production percentages indicates that dedicated gas reserves are progressively decreasing. Since 1976, dedicated reserves have declined approximately 10% each year. The picture for dedicated and/or committed reserves is brighter. Until the recent gas glut, committed reserves were increasing rapidly enough

to counterbalance the decrease in dedicated reserves.

Current Surplus Deliverability

The Office of Pipeline and Producer Regulation (OPPR) estimates 1986 excess deliverability was 4.7 Tcf. The Energy Information Administration (EIA) estimates that the 1987 surplus will be 3.6 Tcf. Uncertainty has arisen over the length of the current surplus.

Even with this current surplus some energy analysts predict peak day shortages in the winter of 1987–88. With the low gas and oil prices, the U.S. drilling rig count in June of 1986 fell to 686 compared to 4,530 at yearend 1981. Gas well completions are projected to drop to 6,800 in 1986, and 6,300 in 1987 from 13,600 in 1985. Several studies predict the gas bubble will be exhausted between 1988 and 1990.

Potential Supplemental Sources

Potential supplemental sources of gas supply that might be exploited to meet future demand or deliverability shortages include: (1) Industrial and electric generation fuel switching capability, (2) infill drilling, and (3) imports.

The following chart demonstrates the potential supplemental supplies that may be available on a short term basis to meet any potential shortages.

POTENTIAL SUPPLEMENTAL SOURCES PER YEAR (TCF)

	Minimum	Maximum
Fuel Switching of Dual Fuel Industrials	1.31	3.07
Fuel Switching of Electric Utilities	1.71	2.57
Infill Drilling	.10	.75
Imports:		
Mexico	0	.20
LNG	0	.10
Canada	.80	1.00
Total	3.92	7.69
Two or more years		2.75
		10.44

Shortages

The estimated volumes of potential supplies could probably meet shortages of reasonable duration (not a long term oil embargo). This would allow time for expected market-induced price rises to stimulate additional exploration and production of longer term gas supplies. Furthermore, a significant contribution toward a safety margin for residential and commercial consumption (6.8 Tcf in 1985) could be made by these supplemental sources. Pipeline capacity to move the supplemental supplies to the affected markets should generally be available but some capacity bottlenecks could occur.

Mandatory allocation under Title III of the NGPA could be used to move the supplemental supplies to high priority markets if price stimulus does not elicit the supply. While dedicated supplies could help an individual pipeline in a time of shortage, mandatory allocation applies to all supplies moving through interstate pipelines and all boiler fuel gas including intrastate users. Therefore the distinction between dedicated and non-dedicated supply is not necessarily important during a shortage. Dedicated production still plays a significant role as part of total interstate production but with dedicated reserves continuously being depleted, the role of dedicated production is diminishing. Dedicated production has been decreasing almost continuously reaching a low of 4.3 Tcf in 1986 as estimated by OPPR.

III. Analysis

U.S. Gas Supplies Dedicated to Interstate Commerce

Supplies of natural gas dedicated to interstate commerce peaked at 198.1 Tcf in 1968 but have declined steadily ever since. Prior to the Natural Gas Policy. Act of 1978 (NGPA), dedicated reserves experienced a steady decline from 198.1 Tcf in 1968 to 98.3 Tcf in 1977. With the enactment of the NGPA and associated price deregulation total interstate (dedicated & committed) reserves began to increase beginning in 1979. However as a result of the NGPA, many reserves added after February 19, 1977 were no longer legally dedicated to interstate commerce, just committed under a contract.

The following chart describes the NGPA categories that are still dedicated under section 7(b) of the Natural Gas Act (NGA) and those that are just committed:

STATUS UNDER NGPA [1]

Section	Subject to price ceiling	Dedicated Under section 7 of NGA
102(c)	No	No.
102(d)	Yes	Yes.
103 Committed or dedicated on 4/20/77.	Yes	No.
103 Not Committed or dedicated on 4/20/77.	No	No.
104	Yes	Yes.
106(a)	Yes	Yes.
105 and 106(b) price greater than $1.00 on 12/31/84.	No.[2]	No.
105 and 106(b) price less than $1.00 on 12/31/84.	Yes	No.
107(c)(1)–(c)(4)	No	No.
107(c)(5) Post 2/19/77 wells.	Yes	No.[3]
107(c)(5) Pre 2/19/77 wells.	Yes	Yes.[4]
108	Yes	No.[5]
109	Yes	No.[5]

[1] As of July 1, 1987.
[2] Unless sold under indefinite price escalator clause.
[3] Per Commission Order No. 406 (NOTE.—Court reversed Commission—on appeal).
[4] If committed or dedicated prior to 11-9-78.
[5] Unless committed or dedicated prior to 11-9-78.

The NGPA catecories that are not dedicated under section 7 of the NGA no longer require abandonment to be sold to other parties. These reserves are committed to interstate commerce in the sense that these volumes are committed by contract to the interstate market but are bound only by the terms of the contract. All dedicated volumes reouire Commission authorized abandonment to terminate sales even if the contract has expired.

OPPR and EIA performed studies attempting to estimate the dedicated reserves remaining. Using different methodologies, the OPPR and EIA estimates were 37.5 Tcf (45%) and 38.5 Tcf (48%), respectively for the 1986, beginning of the year, dedicated reserves. The percentages represent the share of the estimated 1986 total interstate reserves.

OPPR develooed its estimate by using available reserve and production data [1] beginning with 1976 and with the use of extrapolations and regression analysis derived final 1986 and 1987 figures. The year 1976 was chosen as the initial year because it was the last year that all U.S. reserves and production were dedicated. Althouqh the NGPA was enacted in November 1978, certain reserves could qualify as not dedicated (committed) if the production well had a spud date of February 19, 1977 or later.[2] To derive an

[1] The two major sources of data used in the OPPR analysis consisted of: (1) Gas Supplies of Interstate Natural Gas Pipeline Companies 1985 annual report, and
(2) Natural Gas Monthly November 1986, both of these reports are published by EIA.
[2] The spud date is the day drilling of the well begins.

estimate of the 1977 reserve composition, it was assumed that 50% of the net reserve additions were designated as new gas. But to account for new added reserves subject to NGPA section 102(d) (new gas which is discovered on old OCS leases),[3] it was assumed that 13% [4] of the 50% was dedicated. As a result 1977 dedicated reserves added were 57% of the new reserve additions. This 13% figure for section 102(d) gas was subsequently assumed for the years 1978 through 1986, in deriving the net reserve addition composition.

The data points of 1973–76 were used to extrapolate 1977–80 dedicated production. The new production for 1977–80, was obtained by subtracting dedicated from total production. To derive the production composition for the years 1981 through 1985, projected PGA volumes under categories 102(c), 103, 105, 107, and 109 were used to estimate new gas production. The PGA volumes of new gas purchases by NGPA category as shown in Table 5 of the Natural Gas Monthly are assumed to be proportionately correct. New Gas Production for the years 1981–85 was taken from PGA Projected New Gas Production. The sum was divided by the PGA projected total production for the same year. The quotient or fraction was then multiplied by actual total production from FERC Form 15 to obtain an estimate of actual new production. For the years 1981–86, dedicated production was obtained by subtracting new production from total production. The estimated production figure in 1986 was obtained from PGA estimations and extrapolated. Extrapolation was used to calculate total net reserve additions in 1986.

Section 102(d) production was derived by multiplying projected section 102 production volumes by 40% to reflect the portion of 102 production subject to abandonment. The figure is based on an OPPR 1984, section 102(d) production study which estimated 1.1 Tcf of 102(d) production which was 40% of total 102 production in 1984. This OCS gas typically is produced at a much higher production rate than onshore gas, thus any reserve additions of Section 102(d) gas may also be depleted at a high rate.

To calculate the beginning-of-year dedicated reserve volume for 1978, the dedicated production for 1977 was subtracted from the 1977 beginning-of-year dedicated reserve volume and the result added to the 1977 net dedicated reserve additions. The 1978 committed reserve volume was then calculated by subtracting the 1978 dedicated reserve volume from the 1978 total reserve volume. These calculations were repeated for each year 1979 through 1987 (1987 calculations included estimates for total production and net reserve additions for 1986).

The EIA study began with a base year of 1978 end-of-year reserves level. In addition to the same data sources as OPPR, EIA used Dwight's Energy Data. From this data source EIA estimated reserves and production volumes at the regional level and by pipeline. The specifics of the EIA methodology are explained below.

The 1978 end-of-year reserves level from the FERC Form 15 data base was assumed to be the base point from which reserves dedicated under the Natural Gas Act were to be calculated. Since passage of the NGPA in 1978, it was assumed that any new gas reserves contracted to the interstate market were no loncer subject to FERC contract abandonment procedures, thus all production from old gas reserves decreased the level of gas still subject to abandonment procedures. Based upon data available at the state and field level for the years 1978 through 1985 (FERC Form 15 merged with Dwight's Energy Data (from which old vs new gas production was discernible)), the percent of old and new gas produced, per field, in each year was developed and decremented from the 1978 end-of-year reserves. This new reserves level (remaining dedicated reserves and additional new gas reserves (post NGPA)), became the end-of-year reserves for the following year, and the calculation repeated for each year 1979 through 1985. The result was a 1985 end-of-year reserve level per field that represented that gas still dedicated as of 1985. The difference between this and the 1985 total remaining reserves represented the level of gas reserves made up of post NGPA reserve additions.

These field specific data were merged with detail 1985 data at the pipeline level. The percent of dedicated reserves (derived by dividing 1978 reserves by computed 1985 remaining old gas reserves) for the field was then used as an approximation of the pipeline's own level of dedicated reserves in the field.

In some specific states and in instances where nonmatches occurred between data sources, a remaining dedicated reserve level and percentage could not be derived. In these instances, and if PGA data were available at either the field or pipeline level, a ratio of old/new gas purchased in 1985 was calculated, and the result then used to impute a level of remaining dedicated reserves. The percent of PGA old gas 1985 purchases was applied to the Form 15 remaining reserves for pipeline/field to arrive at an estimated level of dedicated reserves.

The intermediate totals for reserve and production shown on the tables approximate those published in the EIA publication "Gas Supplies of Interstate Natural Gas Pipeline Companies—1985." They differ primarily in that the published figures include dedicated plant supplies as well as SNG, miscellanous supplies and storage volumes. EIA tables include only gas supplies identified at the wellhead (i.e., the field). EIA reserve and production data does not include any plant gas or storage gas. At the national level the difference is 5 trillion cubic feet of reserves and 300 billion cubic feet of production. These volumes could be dedicated and/or committed.

EIA notes the following data limitations regarding use of Dwight's Energy Data to derive levels of old/new gas production for the years 1978 through 1985:

1. Dwight's does not provide coverage of the northeast and northcentral United States. Purchased Gas Adjustments (PGA) gas purchase levels were used to provide estimated dedication levels in these States.

2. Dwight's does not distinquish between gas produced for the interstate and intrastate markets. As a result, the percentage of old/new gas produced at the field level represented all production regardless.

3. The distinction between pre-NGPA and post-NGPA production is based upon the date of first production for each gas well. Since Dwight's only provides this item of data for gas wells only, old vs new gas production from oil wells could not be calculated.

Old gas levels included NGPA Sections 104, 106(a), and 102(d), as well as Sections 108 and 107(c) sold under contracts effective prior to February 1977. New gas levels included all other production.

The following table compares the EIA and FERC estimates:

[3] NGPA categories section 107(c)(5), pre-February 19, 1977 wells, section 108 if committed or dedicated prior to Novemher 9, 1978, and sections 104 and 105 volumes remained dedicated but there were no additions to dedicated reserves in these categories.

[4] A staff judgement based on NGPA production filings.

1986 beginning-of-year dedicated reserves Tcf/%	1986 beginning-of-year committed reserves Tcf/%	1985 dedicated production Tcf/%	1985 committed production Tcf/%
OPPR 37.52(44)	47.59(56)	5.24(58)	3.68(42)
EIA 38.54(48)	41.61(52)	5.07(59)	3.53(41)

Comparing the methodologies and data limitations of the studies, the EIA study does not include approximately 5 Tcf of reserves and 300 Bcf of production that is included in the Form 15 data base (and therefore in the OPPR data) which is reported as plant supplied gas to the interstate market from solution and gas well gas reservoirs and reserves and production from storage. This will account for some of the differences in committed and dedicated reserves and production of the two estimates. Some of the difference in dedicated reserves can be explained by the different beginning base years of early 1977 (OPPR) versus end-of-year 1978 (EIA) for estimating reserve additions. OPPR estimates non-dedicated reserves of 2.2 Tcf at the beginning of 1978 which EIA would consider dedicated. Also EIA evidently assumed all new reserves after 1978 were not dedicated. OPPR assumed an adjustment of 13% to account for NGPA section 102(d) additions to dedicated reserves. EIA was able to use actual projected PGA production figures for sections 106(a), 107(c) contracts dated prior to February 19, 1977, and 102(d) categories. OPPR used estimates of these categories assuming percentages of the totals. OPPR assumed NGPA Section 107(c)(5) production was deminutus and not included. Finally EIA merged PGA and Form 15 data and where there were nonmatches used the lower figure. OPPR did not make these adjustments.

Remaining dedicated reserves fall somewhere in the range of 37.5 to 38.5 Tcf. Dedicated reserves accounted for approximately 45% of total dedicated and committed reserves in the U.S. which were 85.1 Tcf in January of 1986. Dedicated reserves accounted for 20% of total U.S. reserves of 193.4 Tcf. Dedicated production for 1985 was in the range of 5.1 Tcf to 5.2 Tcf. This accounts for approximately 58% of dedicated and committed U.S. production and 31% of total U.S. production.

These estimates of dedicated reserves and production demonstrate a progressive deterioration of this gas supply as a percentage of U.S. total supplies. Dedicated reserves have been declining approximately 10% each year since 1976. Dedicated production still plays a significant role (58% in 1985) as part of total interstate production but with dedicated reserves continuously being depleted, the role of dedicated production is diminishing. Dedicated production has been decreasing every year since 1972 (except 1981) declining to 4.3 Tcf in 1986.

In 1985, total residential and commercial gas consumption in the U.S. was 6.8 Tcf which exceeded dedicated interstate production but represented 75% of 1985 dedicated and committed production. The interstate system is becoming increasingly dependent on contractually committed production and reserves (those not subject to abandonment requirements). The role of dedicated production in serving the residential and commercial market will diminish in the future (see the figure on page III–7)

Gas reserves dedicated and committed in January, 1986 accounted for approximately 44% of total U..S. reserves (85.1 Tcf out of 193.4 Tcf). Dedicated and committed production for 1985 was approximately 54% of the U.S. total production (8.9 Tcf [5] out of 16.4 Tcf).[6] Total interstate reserves (dedicated and committed) were increased from 1978 to 1983 by 6%. Until the U.S. gas surplus ballooned to 3.4 Tcf in 1983, price incentives from the NGPA were effective in maintaining the level of supplies either dedicated or committed to interstate commerce.

The remainder of this study will focus on the ability of the interstate system to respond to short term and long term changes in supply and demand. As gas supplies tighten, market pressures should increase gas prices which will stimulate exploration and drilling. But there will be a lag time between the period when supplies tighten and when increased gas production from these reserves are realized. This study will focus on the supply sources that may be available in the short term (within one year) and near term (2 to 3 years). A look at the ability of gas markets to respond to an oil or gas shortage and views of the long term gas market will be reviewed.

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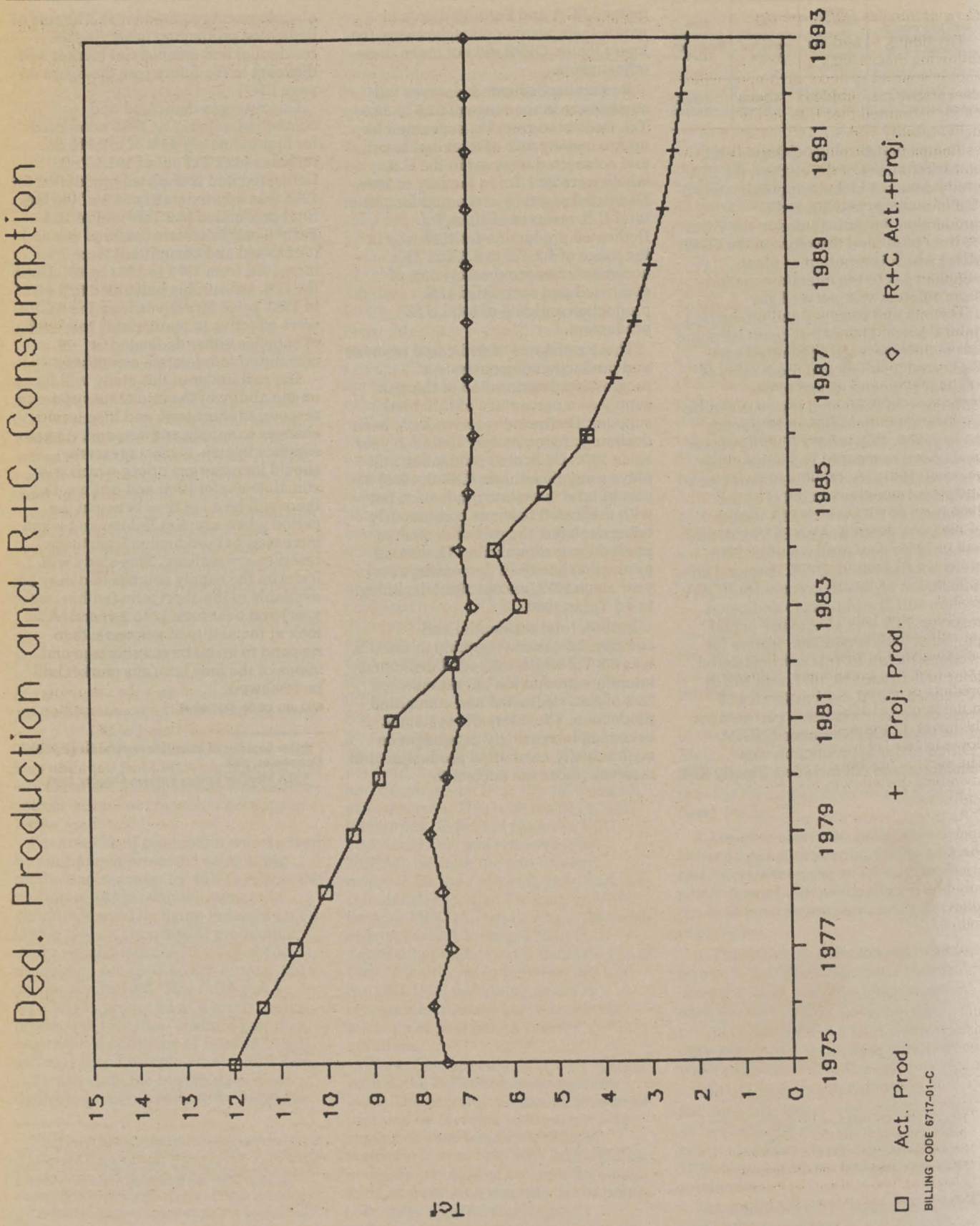
[5] Gas Supplies of Interstate Natural Gas Pipeline Companies, 1985.

[6] EIA Monthly Energy Review, October 1986.



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Current Surplus Deliverability

The timing of and the need for the following discussed supplemental supply sources is dependent upon when the current gas bubble is exhausted. OPPR estimated that U.S. surplus deliverability was 4.7 Tcf in 1986. EIA estimates that surplus deliverability will be 3.6 Tcf in 1987 with estimated production at 13.1 Tcf and total available deliverability at 16.7 Tcf for non-associated gas in the lower-48 states. For all practicable purposes, the difference between flow capacity and production for associated dissolved gas is considered to be zero.

There is disagreement within the natural gas industry over the length of this annual deliverability surplus and the current peak day supply availability.

The low oil and gas prices have brought a depression to the oil and gas exploration and drilling industry. As of June 9, 1986, only 686 drilling rigs were in service [7] compared to 4,530 units at year end 1981.[8] According to AGA oil and gas completions in the first half of 1986 were down 25% from the first half of 1985 and down 33.2% from the first half of 1984.[9] Gas well completions are projected to drop from a level of 13,600 in 1985 to 6,800 in 1986 and 6,300 in 1987.[10]

A Shearson Lehman Bros. Inc. study estimates that the current surplus will be exhausted in 1988.[11] Joe B. Foster, executive vice president of Tenneco predicts peak day shortages are possible in the winter of 1987–88.[12] He notes that the lower-48 gas reserves inventory is down to 160 Tcf from 260 Tcf in 1970. The surplus has been a result of inventory drawdown, not reserve additions.

As this deliverability surplus approaches exhaustion, market signals should begin to bring spot market gas price increases. The price incentive will enhance the effectiveness of the following mentioned supplemental sources.

Fuel Switching Capability of Dual Fuel Industrial Users

The fuel switching capability of dual fuel industrial consumers has historically served as a critical supply source during periods of curtailment and supply shortages. Pipelines and utilities are able to use this dual fuel industrial consumption as a type of storage which can be made available to meet peak day needs and if necessary on a longer term. Due to insufficient data, estimates of this capability vary. The AGA [13] and Dun & Bradstreet Major Industrial Plant Database [14] (MIPD) have collected data on this capability and analyses of these data have been performed by OPPR and EIA [15] respectively.

The AGA study surveys a sample of 37 gas utilities representing approximately 50% of the gas utility industry's industrial/ electric generation markets in 1985.[16] The alternate fuels of the industrial users included under "oil" were identified as residual oil (49%) distillate (36%) and LPG (15%).[17] (In a combined category, identified as "other", alternate fuels of coal, wood, electricity and site-generated waste fuels were separately measured.) The industrial use of the gas or alternate fuel was not identifed.

Firms in the industrial sector which had dual fuel capability with oil represented 52% of gas sales. (In the "other" category an additional 2% capability was reflected.) To derive a volume estimate for nationwide dual fuel capability, OPPR multiplied by this 52% the total natural gas consumption of the U.S. industrial sector which in 1985 was 5.901 Tcf. This product provides an estimate of 3.069 Tcf of dual fuel capability for the industrial sector. (This estimate does not incorporate the capability of those industrial users that could use gas but in 1985 were using oil.)

The MIPD/EIA study provides a review of 1984 data from the 20,000 largest energy consuming plants accounting for over 90% of manufacturing energy use. Residual fuel oil was the only alternate fuel considered in measuring fuel switching capability. The data on the industrial use of gas or residual fuel oil was limited to fuel in dual fired boilers. The MIPD/EIA study limited the analyses to industrial boiler fuel use because of the relative ease of switching from one fuel to another without affecting the product or production process. Gas use in furnaces and as feedstock generally is limited to more stringent fuel use constraints. Fuel switching cannot necessarily be accomplished as rapidly.

The MIPD recorded fuel switching capability between gas and residual oil in dual fired boilers of 1,349 Quadrillion Btu's or approximately 1.31 Tcf. In 1984, these industrial boiler fuel users consumed 1,092 Quads (81%) of gas and 257 Quads (19%) of oil.

Differences in the industrial fuel switching capability derived in the AGA/OPPR study of 3.07 Tcf and the MIPD/EIA study of 1.31 Tcf can be explained by the significant differences in study definitions and data considerations of alternate fuel and plant use. In the AGA data (from 1981) residual oil accounted for approximately 49% [18] of the alternate fuels while in the MIPD data residual oil was 100% of the alternate fuel. By this 49% share of fuel switching capability, dual fuel users who consume residual oil in the AGA data account for approximately 1.50 Tcf (.49 x 3,069 Bcf) of the total fuel switching capability.

In the AGA study the plant use of the gas or alternate fuel is not specified while the scope of the MIPD study is limited to boiler fuel. Table A4 of the EIA/MIPD study shows the following breakdown in fossil fuel consumption by end-use in 1984: Boilers (49.7%), Furnaces (43.5%), and Feedstock (6.7%). The percentage of dual fuel capability installed in furnaces and in feedstock processes is not known; however, in the AGA study it was noted that there was a net gain of 13 Bcf of gas use in industrials from fuel switching to gas from distillate oil and LPG in 1984. Apparently some dual fuel capability exists for distillate oil and LPG in furnaces and feedstock uses. This dual fuel capability would bring the AGA/ OPPR estimate of 1.5 Tcf even closer to the MIPD/EIA estimate of 1.3 Tcf. The following table compares the assumptions of the two studies and results.

[7] July 7, 1986—Oil and Gas Journal.
[8] June 16, 1986—Oil and Gas Journal.
[9] September 15, 1986—Oil and Gas Journal.
[10] August 11, 1986—Oil and Gas Journal.
[11] August 11, 1986—Oil and Gas Journal.
[12] February 23, 1987—Oil and Gas Journal.

[13] "Survey of Industrial Fuel Switching and Dual-Fuel Capability: 1985/1986," Energy Analysis, American Gas Association, May 5, 1986.
[14] 1984 Dun & Bradstreet Major Industrial Plant Database.
[15] "Industrial Fuel Switching," EIA, February 19, 1987.
[16] Estimated gas utility industry sales to the industrial/ electric generation sector were 5.265 Tcf. Total industrial consumption in 1985 was 5.901 Tcf.
[17] Percentages were obtained from: "Percentage of 1981 Gas Use in Dual Fuel Capable Facilities by Alternate Fuel, by Region and Total U.S.," Energy Analysis, American Gas Association September 3, 1982.
[18] In Table A5 of the MIPD/EIA study consumption of distillate oil and other oil represented a combination of 9% of total consumption in boilers in 1984. Residual oil also accounted for 9%. The 1981 data from AGA shows dual fuel industrial consumption of 51% distillate and LPG, 49% residual oil for dual fuel capable facilities.

AGA/OPPR	MIPD/EIA
Data Source	
37 gas utilities representing 50% of gas utility industry's industrial/electric generation market.	20,000 largest energy consuming plants accounting for over 90% of manufacturing energy use.
Alternate Fuel	
Residual oil, LPG, distillate 49%, 15% and 36% respectively.	Residual oil 100%.
Plant Use	
Any manufacturing use where gas is alternate fuel.	Boiler fuel—just dual fired boilers.
Derivation of Fuel Switching Capability	

Fuel use in Dual Fuel Facilities (AGA) X 1985 Industrial Gas Consumption (EIA)

.52 x 5.901 Tcf = *3.069 Tcf = 1.31 Tcf*

1984 Consumption in Dual Fired Boilers (Quads):

Gas	+1,092
Oil	257
Total	1,349

In summary, dual fuel capability of industrial boiler fuel facilities which use residual oil as an alternate fuel appears to be in the area of 1.31 Tcf.[19] The total dual fuel capability of the industrial sector including all uses of gas and its alternate fuel which includes residual oil, distillate, and LPG as the alternate fuel appears to be in the area of 3 Tcf.

With the recent decline in oil prices a trend of industrial fuel switching to gas from oil, which ran from 1982 through 1985, has reversed itself in 1986. In both 1984 and 1985 natural gas showed a net gain of 40 Bcf and 28 Bcf respectively. Based on the first quarter figures of 1986, the estimated net switching to oil was 92 Bcf on an annualized basis. Therefore this 3 Tcf of the displacement capability of 1985 may be reduced when the final figures are in for 1986. The MIPD/EIA study projected 1985 fuel switching capability to be 1.17 Quads, a drop of nearly .2 Quads from 1984.

In addition, these fuel switching estimates assume rather optimistically that all these volumes of alternate fuel users could be made available in times of shortages. A portion of these volumes are consumed totally in the intrastate market where bottlenecks and barriers could arise in times of nationwide shortages. Also, contract terms between these alternate fuel users and producers may inhibit the mobility of these volumes to assist the residential and commercial markets in times of shortage.

Fuel Switching Capability of Electric Utilities

Fuel switching capability of electric utilities is another short term and possibly long term supply source that may be available during periods of gas supply shortages. EIA and AGA have performed studies evaluating this potential fuel switching capability.

The EIA study used historical generation and consumption data from Form EIA–759, "Monthly Power Plant Report" to develop their fuel switching potential.[20] There are three basic methods for reducing the use of natural gas. One method is for a utility to rearrange the mix of generators emphasizing the use of plants fired by alternate fuels to gas. A second method is to use alternate fuel in dual fired boilers that use gas. A final option is for a utility to purchase power rather than generate it with its own gas-fired facilities.

In estimating the potential for reduction in gas consumption, gas, oil and coal consumption were evaluated on a utility-by-utility basis. For each utility with gas-fired generation, potential gas consumption reduction or elimination was evaluated by assessing the ability to switch to an alternate fuel in dual-fired units; to utilize other types of generating ability more intensively, or to combine both methods. If a plant could only burn alternate fuel (oil or coal) for a limited amount of time (30 days or less) it was not considered dual-fired. The study limited its focus to steam electric plants which account for 92% of the gas consumed by electric utilities.[21]

From the aggregated results of all utilities EIA estimates that utility gas consumption can be reduced by 1.706 Tcf. The primary reduction in gas consumption would be due to displacement by oil of 1.608 Tcf. Coal could displace .098 Tcf.

The AGA study of gas utility switching capability was incorporated in the "Survey of Industrial Fuel Switching and Dual-Fired Capability: 1985/1986," in which the industrial fuel switching study was performed. The study surveyed 37 gas utilities representing 50% of the industry's industrial/electric generation market.

The alternate fuel categories in the electric generation market included residual oil and other fuels (other fuels was not defined). The study acknowledged the potential weakness of the data:

> In the electric generation sector the percentage of dual-fired capability (99%) was more reflective of those utilities whose power plant customers are almost entirely dual-fuel capable. It should be borne in mind that these data are only estimates and that they reflect a sample of gas utility companies.

Subject to the above caveats the estimated dual fuel capability of the electric generation market in 1986 would be approximately 2.570 Tcf (99% of EIA estimated total 1986 utility gas consumption—2.600 Tcf).

The .864 Tcf difference in the EIA and AGA estimates can be accounted for primarily by the stricter assumptions of the EIA study and the weakness of the AGA data. The EIA study included only those steam generation plants that could burn alternate fuel on a sustained basis. The alternate fuels considered were limited to oil and coal. The AGA study did not incorporate any of the above restrictions. In addition the AGA study surveyed gas utilities who served the electric generation sector which was by acknowledgement almost entirely dual-fuel capable. The following table (next page) compares the assumptions and conclusions of the two studies.

Estimates of electric generation fuel switching potential range from 1.706 Tcf to 2.570 Tcf. This true potential is probably closer to the 1.706 Tcf estimate. Both studies point out possible problems of exploiting this alternate supply potential. One concern is adequate transportation facilities and arrangements to move volumes from the areas of the greatest fuel switching potential, the Southwest and West to possible problem markets areas such as the Northeast. A large potential source of fuel switching supply is the significant number of electric generation plants in Western Texas. Intrastate pipelines provide the only capacity to transport gas volumes cross the state to interconnect with the interstate trunklines serving the Northwest. The availability of this intrastate capacity during periods of peak conditions cannot be guaranteed. Also due to the price advantage of gas, plants in the Southwest have never relied on oil as a major source of electric generation.

[19] This EIA estimate of 1.31 Tcf includes 1.06 Tcf of boiler fuel use of gas and .25 Tcf oil. So actual fuel switching capability (from oil to gas) in 1984 by the EIA estimate was 1.06 Tcf.

[20] Data for 1986 are preliminary but are estimated to differ less than 1% from final data.

[21] The remaining 8% of gas consumption is by gas turbines and combined cycle plants. The alternate fuel burned, if any, is distillate fuel.

Although some fuel switching capability exists, the true capability of this potential large fuel switching source has hardly been tested. Adequate oil storage is also in question.

Electric Generation Fuel Switching

AGA/OPPR	FIA
Data Source	
37 gas utilities representing 50% of the gas utility industry's industrial/electric generation market.	Data collected from Form EIA-759, "Monthly Power Plant Report." Data for 1986 are preliminary but estimated at only 1% differential.
Alternate Fuel	
Residual oil and other fuels.	Residual fuel oil and coal.
Usage Criteria	
. . . "the percentage of dual-fuel capability (99%) was more reflective of those utilities whose power plant customers are almost entirely dual-fuel capable.".	If alternate fuel can only be burned for a limited amount of time (30 days or less), it is not considered dual-fired.
Fuel Switching Capability	
Total Electric Utility 1986 Fuel Consumption consumption in 1985: 2.600 Tcf × .99 of Dual Fuel capability 2.570 Tcf.	

1986 FUEL CONSUMPTION

Gas (Tcf)	Oil (1,000 BBL/D)	Coal (1,000 short tons)
2.600	632	685,133

REDUCED GAS CONSUMPTION

Oil	1.608 Tcf
Coal	.098 Tcf
Total	=1.706 Tcf

Infill Drilling

Accelerated infill drilling is another source of enhancing short term gas supply. Infill drilling causes a gas field to be produced at a faster rate by drilling more wells with closer spacing. There are two primary considerations of a producer in deciding on infill drilling. A necessary consideration is the approval of the State regulatory body to alter its rules such that well spacing is allowed on a smaller acreage unit. However, depending on the geological structure and the oil and gas composition and age of a field, well spacing can be adjusted. Closer spacing on an older field usually enhances productivity.

The second primary consideration is the profit incentive to the producer. If the producer is obligated by a contract where all wells in a field are priced the same, the price incentive may not exist to consider further development of a field. Also currently depressed oil and gas prices will dampen the producer motivation to infill drill.

In addition to the above potential constraints, infill drilling potential is also limited by the number of drilling rigs and crews available, environmental regulations, and available gathering systems.

Subject to the above considerations the potential for infill drilling production potential can be estimated using drill rig activation rates, drill rates and gas production per well averages. EIA, OPPR and AGA have performed studies attempting to evaluate this infill potential.

The EIA study [22] began with an attempt to quantify a maximum production response from a nationwide infill drilling program. The number of non-associated gas wells producing in the U.S. as of December 31, 1985, was 233,797 onshore gas wells (excluding Alaska). The average daily production (1985) of onshore wells was about 110 Mcf per day. Assuming that one offset well could be completed for each of the 233,797 onshore gas wells in the U.S., the new production would amount to 233,797 x 110 Mcf/day x 365 days or 9.39 Tcf per year. Assuming that half the current non-associated gas wells are stripper wells, the number of infill wells is reduced by half to 120,000 prospects. Assuming among these prospects, many have been drilled, are on low spacing units, or are poor infill drilling prospects, this number was reduced further (by approximately 50%) arriving at between 50,000 to 55,000 prospects that would be suitable for infill drilling. Assuming that these more suitable prospects would produce the national average of 110 Mcf per day, new production from 55,000 infill wells would amount to 2.2 Tcf per year. With proper price incentives these 55,000 infill prospects could be drilled and completed in one to two years.

The EIA study included additional pricing scenarios attempting to obtain more realistic estimates of the infill drilling potential. The results demonstrated that, in general, higher prices would allow infill wells that are deeper and smaller to be economically developed, but the questions of how many of the infill prospects at what price and how much ultimate recovery would be added, have not been answered.

The OPPR study [23] assumed a one year time frame and attempted to determine the volume and timing of gas extraction.

According to oil and gas publications in a period of one year approximately 1,200 rigs could be assembled with crews in areas where infill drilling is most suitable, provided there are no constraints. Using this figure, a finding success ratio of 90% and a national average production of 54 MMcf per non-associated gas well per year (including onshore and offshore), as reported by AGA, 295 Bcf of additional gas would be available from infill drilling in the first year.

According to the AGA study [24] certain producers predicted ultimate reserve increases of as much as 7.6 Tcf in the Hugoton field, 1.4 Tcf in the San Juan area, and as much as 400 Bcf per year on a national basis (no recovery period was identified). Hugoton and San Juan areas are considered prime areas for infill production as they could be developed at very low costs. In consideration of the current low gas market prices, AGA estimates that 50 to 100 Bcf of added production from infill drilling would be feasible within 12 months. With higher natural gas prices this capability increases to 100 to 400 Bcf.

The EIA and the OPPR infill drilling figures are possibly optimistic since constraints such as state spacing and other state regulations, environmental restrictions and especially a lack of pricing incentives will inhibit drilling activity.

The EIA estimate of 2.2 Tcf, when considering more of the nonquantifiable constraints, is extremely optimistic in its one or two year infill drilling potential. The AGA estimate of 50 to 100 Bcf provides a bottom range. The OPPR estimate of approximately .3 Tcf and AGA upper range of .1 to .4 Tcf may be feasible one year estimates. Physical constraints of drilling rigs, equipment and crews; and pipeline gathering systems; regulatory constraints of adopting new spacing policies and environmental concerns; and finally pricing incentive constraints all play major roles in determining the infill

[22] "Infill Drilling Response," EIA, March 3, 1987.

[23] OPPR Infill Drilling Calculations, March 1987.

[24] "Short Term Supply Potential," Energy Analysis, American Gas Association, September 26, 1986.

production potential. A comparison chart of the assumptions and estimates of the three studies follows:

INFILL DRILLING COMPARISON OF RESULTS

	Additional annual production	Assumptions
OPPR	.295 Tcf	(a) Availability of drilling rigs based on historical data. (b) No regulatory constraints such as spacing or environmental restrictions. (c) A 90% success ratio, since these wells would be direct offsets to producing wells.
EIA	2.2 Tcf	(a) For each of the 233,797 gas wells in the U.S. one successful offset could be drilled. (b) One half of U.S. N/A gas wells are Stripper reducing number to 120,000. (c) One half of 120,000 wells are unsuitable prospects. (d) An average of 110 Mcf per well per day in the first year. (e) No regulatory constraints such as spacing and environmental restriction.
AGA	0.1–.4 Tcf	(a) Infill drilling is sensitive to market prices.
	0.5–1.0 Tcf (with higher prices).	(b) Only Hugoton and San Juan areas were considered to arrive at their estimates. (c) All their figures were strictly estimates.

Imports

Imports from Mexico and Canada and LNG imports have in the past served as supplemental supplies to the U.S. gas supply. Currently Canada is the only import source that is operational.

Mexico

Authorized transmission capacity for gas imports from Mexico is currently 300 MMcf per day or 110 Bcf per year. However due to a lack of a market for Mexican gas, falling U.S. gas prices and negotiation problems, Mexican gas imports were suspended November 1, 1984.

According to AGA,[25] Mexican gas production may be over the 1.37 Tcf reported for 1984. With the Mexican reserve to production ratio of over 56 to one, AGA estimates that 1.5 Tcf could be produced, with a Mexican market for 1.3 Tcf leaving a surplus of 200 Bcf. The 110 Bcf per year transmission capacity could also be increased to 200 Bcf per year with minor construction in Mexico and the U.S. EIA[26] is much more optimistic in projecting a potential import of 700 Bcf per year with economic incentives, more pipeline construction, refurbishing existing pipeline facilities, and substantial field development. If justified by U.S. demand, a supplemental supply of 200 Bcf per year and possibly as much as 700 Bcf could be imported.

LNG

LNG deliveries ended in 1985. Terminals at Everett, Massachusetts; Cove Point, Maryland; Elba Island, Georgia; and Lake Charles, Louisiana could be made operational with a capability of recovering the LNG equivalent of 770 to 900 Bcf annually. The constraining factor would be in price. However, on an optimistic note, Panhandle Eastern Corporation recently announced a new agreement with Sonatrach, the Algerian national oil and gas company, to resume imports of LNG for peak day supply for the 1987/88 winter. The agreement calls for no minimum annual purchase obligation, but Sonatrach will make available up to 3 Tcf of supply over 20 years. Volume, terms and selling price are negotiated for each individual sales proposal.

Canada

Canada appears to be the primary and most reliable source of import supply.

Assuming no new facilities and that exporters can honor the maximum licensed export quantities (which appears to be very likely), the five major interconnection points which account for more than 90% of available transmission capacity provide the following available summer (s) and winter (w) capacity:

Company name	Available transmission capacity (MMcf/day)	Current use (est. 1984–85) MMcf/day	Excess (MMcf/day)
Northwest	824	300	524
PGT	1,475 (s) 1,610 (w)	840 (s) 1,140 (w)	635 (s) 470 (w)
Northern Border	1,064 (s) 1,115 (w)	200 (s) 400 (w)	864 (s) 715 (w)
Midwestern	655	250	405
Great Lakes	1,506	1,015 TCPL[1]	491
	5,524 (s) 5,710 (w)	2,605 (s) 3,105 (w)	2,919 (s) 2,605 (w)

[1] TCPL could release capacity to U.S. shippers in emergencies if they do not have the same emergency situations.

OPPR estimates that under current use patterns Canada exports about 900 Bcf per year to 1,000 Bcf per year. Additional exports of approximately 1,000 Bcf per year could be made available through the five major importing pipelines. Imports are currently authorized at approximately 1,700 Bcf per year, thus additional authorization would be needed.[27]

EIA also projects potential Canadian annual import increases of 1,000 Bcf and with added construction Canadian reserves would allow substantial increases of exports.

IV. Summary and Conclusion

Supplies

As indicated above, gas reserves dedicated to interstate commerce as of January 1, 1986 are calculated to be approximately 38 Tcf.

As shown on the following table, potential supplemental sources to meet any sudden supply shortage in the U.S. range from a minimum of 3.92 Tcf to a maximum of 7.69 Tcf. It should be noted that the above mentioned current annual deliverability surplus would first have to be depleted before the following supplies are needed.

POTENTIAL SUPPLEMENTAL SOURCES PER YEAR

[Tcf]

	Minimum	Maximum
Fuel Switching of Dual Fuel Industrials	1.31	3.07
Fuel Switching of Electric Utilities	1.71	2.57
Infill Drilling	.10	.75
Imports:		
Mexico	0	.20
LNG	0	.10
Canada	.80	1.00
Total	3.92	7.69
Two or more years		2.75
		10.44

These are estimates based on the logic and supporting data in the subject studies that form the basis for this paper. If one wanted to be extremely

[25] "Short Term Supply Potential," Energy Analysis, American Gas Association, September 26, 1986.

[26] "Expected U.S. Natural Gas Surplus, Flow Capacity for 1987," EIA, March 3, 1987.

[27] The National Energy Board is considering a plan to increase permitted exports to 1.9 Tcf per year by year-end 1989.

optimistic, the maximum potential could be increased as follows: 1.45 Tcf from the EIA infill drilling projection; .5 Tcf from the EIA Mexican imports projection and an additional .8 Tcf if all LNG terminals could be quickly activated for a total additional supplemental supply potential of 2.75 Tcf. Realistically these additions may be possible in two or more years with the proper price incentives. Natural gas consumption in the U.S. in 1985 for residential and commercial use was 6.8 Tcf so that a significant contribution toward a safety margin for such uses exists in the potential short term gas supply sources even without the 2.75 Tcf of the more difficult to obtain supplemental supplies.

The range of the potential supplements is wide due to the uncertainty over the numerous parameters that impact the effectiveness of these sources. The following discussion will focus on those parameters that bear the most weight and how the gas market might react to shortage scenarios. Certainly these supplemental sources can quickly react to market demand and provide time for additional drilling to bring on longer term sources of supplies.

Oil/Gas Price Relationship

The price of gas has been a significant parameter in determining the potential of the various gas supply sources. A major cause of the gas price decline, in addition to the current gas surplus, is the collapse in oil prices. As long as oil prices remain low the alternate fuel users market will only be maintained by keeping gas prices at similar competitive low levels. As gas supplies tighten market forces will tend to drive up production gas prices but, if oil prices remain low, distributors will be forced to pass increases in the marginal cost of gas to their residential and commercial markets or face load loss of the alternate fuel users market. A tightening of gas supplies may cause gas price increases but as long as a low price of oil exists an upper limit is established on gas price increases in the alternate fuel users market.

Unless gas prices begin to move upward, new gas exploration, infill drilling and Canadian, Mexican, and LNG imports will lack incentive or motivation to expand. Low oil prices inhibit the potential of these sources of supply. At current oil and gas prices the potential supplemental sources of infill drilling and imports are likely to produce only their minimum of .1 and .8 Tcf respectively. Of course low production gas prices indicate gas supplies are still plentiful. As the need for supplemental supply sources increases gas production prices are likely to be on the increase. Also, as gas prices rise, some gas utilities with high average gas costs will be unable to retain all of their dual fuel customers. This would release a portion of the 3.0 to 5.6 Tcf of fuel switchable volumes.

Gas Shortage—Decreasing Deliverability Due to Declining Reserve Base

As 1990 approaches and if the prediction of a tightening gas supply prevails, assuming stable oil prices, a demand/supply imbalance will exert upward pressure on gas prices. Utilities will attempt to maintain their fuel switching market bv attempting to pass on higher gas costs to the residential and commercial markets. However, as was the case in 1985 and 1986, some of the fuel switching market will convert to oil, freeing up at least a portion of the 3 to 5 Tcf available, conservatively 1 Tcf. Higher gas production prices will encourage more infill drilling and production in general, conservatively .1 Tcf. Canada could fairly quickly increase exports by .8 Tcf. If Mexico and Algeria are back on line, another .3 Tcf could be added. In summary, with a tightening of gas supplies and stable oil prices (which assumes stable oil supplies) supplemental sources could conservatively add 2.2 Tcf within a year. Assuming 1 Tcf of fuel switching took place throughout the year, at least a minimum of 2 Tcf of further fuel switching gas would remain available to meet any peak services needs.

Oil Supply Disruption

In the event OPEC attempted an embargo on all exports to the U.S., gas supply should be able to meet demand at least in the short term. An OPEC oil embargo will cause a leap in oil spot prices which will be followed by significant increases in gas spot prices. Assuming a significant shortage of oil supplies dual fuel users will be attempting to purchase any available fuel at the cheapest price. Assuming at the time of the embargo gas supply and demand are in balance, price and supply advantages will initially be with gas. Increased demand from dual fuel consumers will exert pressure on available gas supplies and gas prices will rise. The higher gas prices should encourage infill drilling to reach a level of .75 Tcf and Mexican and Canadian exports to reach their maximum potential of 1.20 Tcf for an increase of 1.95 Tcf. During previous oil embargoes gas production increased by less than 1 Tcf which was the volume required. The Strategic Oil Reserve with a 1986 estimated stock of 511 million barrels (approximately 3 Tcf) [28] will provide a buffer zone for these supplemental supplies to come on line. With this buffer zone and the supplemental sources, supplies should be able to meet demand needs in the short term and in the longer term price incentives should continue to encourage exploration and production.

The overall effectiveness of market signals and the quick response of the participants in the U.S. gas market may be enhanced or inhibited by other factors which warrant a brief discussion.

Dedicated Versus Non-Dedicated Reserves

Dedicated supplies could give some protection to those pipelines having a high percentage of such reserves. Of course the percentage is not uniform throughout the pipeline industry. However, mandatory allocation procedures in Title III of the NGPA covers non-dedicated supplies also. Therefore the distinction between dedicated and non-dedicated supply is not that meaningful during a shortage. As indicated in the reserve analysis above, dedicated reserves have been decreasing at approximately 10% a year since 1976 so that the effect of such reserves will be diminishing as we move toward a predicted period of tighter supply/demand balances.

Caveats

Mobility of Volumes in the Interstate System and Ability To Respond on Short Notice

During the severe shortages of the mid-1970's, a basic problem was the inability of the interstate system to draw on the intrastate system and other nonjurisdictional sources due to regulatory constraints. The NGPA attempted to correct this with price deregulation and section 311 allowing reciprocal transportation in the inter and intrastate systems. Mobility of gas volumes were improved with Order No. 436. This is evidenced by the fact that more than 50% of all volumes moving through the interstate system are now transportation volumes, not sales volumes.

Potential Insufficient Pipeline Capacity to the Northeast

The Northeast region of the U.S. is one of the more prolific consuming regions of gas in the U.S. Yet this area is one of the most remote areas from major

[28] EIA Monthly Energy Review, October, 1986.

production regions in the U.S. During the periods of shortage in the 1970's, this region experienced some difficulty in meeting peak day needs. The potential problem is the lack of available pipeline capacity from the large electric generation and industrial fuel switchable market in Northeast Texas to the major interstate pipeline systems originating in Southwest Texas and Louisiana which are the major trunklines serving the Northeast region of the U.S.

Future Considerations: Gas Supply/Demand in the Year 2000

The AGA, Gas Research Institute (GRI), and EIA have developed forecasting models that forecast the U.S. gas supply/demand scenario. AGA's Total Energy Resource Base Analysis Model (TERA) Base Case 1986 predicts that gas supply and demand will be in balance with a total output of 23.1 Tcf [29] in the year 2000. GRI's 1986 Baseline Projection of U.S. Energy Supply and Demand to 2010 predicts that supply will be 19.7 Tcf and demand 19.1 Tcf in the year 2000. EIA's 1986 Annual Energy Outlook predicts in the year 2000 the projected supply of 18.6 Tcf will be sufficient to meet the projected demand of 17.9 Tcf. The following summary will review assumptions and projections of these models and how they expect gas supplies will be available to meet projected demand.

AGA predicts that between 1985 and 2000 average retail constant dollar gas prices will decrease while the prices of oil, coal and electricity will increase. During this period gas sales will grow more rapidly than these other energy sources. Only nuclear fuel use will increase faster than gas consumption. The model assumed oil prices of $25/bbl. in 1986 and 1987. A rather startling prediction is that gas prices to residential consumers will decrease from $5.33/MMBtu in 1986 to $5.16/MMBtu in 2000.

The model projects conventional lower-48 natural gas will represent 94% of natural gas utility industry supplies in 1985, and about 96% of total U.S. supplies. By 2000 domestic natural gas will represent only 80% of flowing gas supply and this includes 1.1 Tcf of incremental tight formation gas which it is assumed will be technically feasible then. Without this tight gas, conventional supplies will comprise only 75% of total supply. Conventional supplies will decline to 17.1 Tcf in 2000. Supplemental supplies will make up the difference in meeting the expected demand of 23.1 Tcf. Of the 4.7 Tcf of supplemental supplies, imports from Canada and Mexico will account for 57%, other various technologies will supply 22%, and other sources such as LNG, SNG, and coal gas, will make up the remaining 21%. The model optimistically predicts that 2.5 Tcf will be available but not taken.

The most surprising aspect of the TERA projections is the optimistic prediction of lower gas prices in the year 2000 while gas supplies become more dependent on expensive supplemental sources such as LNG, SNG, coal gas and 22% from unknown technologies. As supplies tighten, Canada and Mexico can also be expected to attempt to increase price margins. Gas prices will be determined by the marginal cost of these supplemental supplies and imports.

The GRI baseline projection presents the GRI planning outlook for the economic and energy supply and demand situation to the year 2010. GRI states that as a result of the recent fall in world oil prices, this year has been a particularly difficult period in which to produce a forecast. The projection includes much lower oil prices over the projection time frame reaching $27/bbl. by 2000. The study projects steady economic growth, although at rates less than historical norms, with energy prices gradually increasing from today's low levels.

Natural gas acquisition prices are projected to increase from an average of $2.53/MMBtu in 1985 to $4.01/MMBtu in 2000. Between 1985 and 1990 lower-48 production prices will grow less than 5%.

The significant price increase will begin after 1990 due to the need for increasing new producer investment. Lower-48 prices are projected to grow 55% between 1990 and 2000.

In projecting future gas supply GRI initially assumes a base technology and then advanced technology using unconventional supplies. With this base technology, lower-48 production will begin to decline in the 1990's. Under the base technology lower-48 production will decline from 15.8 Tcf in 1985 to 13.4 Tcf in 2000. Increased availability of supplemental supplies would compensate for the decline in lower-48 natural gas production through the 1990's. But after 2000 the rate of decline of the lower-48 base technology production is projected to accelerate, and at the price of alternate fuels, practicable supplemental supplies from imports and synthetics would be unable to completely compensate for the decline. Overall availability of competitively priced gaseous fuels in the U.S. would begin to decline.

With advanced gas supply technology GRI projects an additional .3 Tcf in 1990, 2.5 Tcf in 2000, and 4.6 Tcf in 2010 at market clearing prices. GRI estimates that average U.S. gas acquisition prices could be reduced by about 25% with the introduction of the advanced technologies. These supplemental supplies in addition to SNG and imports from Canada will comprise most of the supply to meet demand until 2000. After 2000, LNG imports, more SNG and coal gas will add to supplies. In addition the Alaska Natural Gas Pipeline will begin operation in 2002.

In the EIA base case the economy is assumed to maintain an average growth of 2.5% per year through 2000. Oil prices will reach $33 by the year 2000. The average wellhead price of gas will increase at an annual rate of 9% reaching $5.38 Mcf in 2000. The current gas bubble will be absorbed by 1990. Demand for natural gas in all sectors will rise up until 1990 and afterward will decline at 1% per year through 2000. Electric utility demand will outpace gas. The gas industry should satisfy demand with market-based, competitive prices.

In summary all models project adequate supplies in the year 2000. GRI and EIA are not as optimistic as AGA on the costs of obtaining these supplies.

[FR Doc. 87-10884 Filed 5-18-87; 8:45 am]
BILLING CODE 6717-01-M

[29] The model uses quadrillion Btu for which Tcf was substituted.

FEDERAL MARITIME COMMISSION

46 CFR Part 572

[Docket No. 85-22]

Agreements by Ocean Common Carriers and Other Persons Subject to the Shipping Act of 1984

AGENCY: Federal Maritime Commission.

ACTION: Discontinuance of proceeding.

SUMMARY: The Federal Maritime Commission is discontinuing its proposed rulemaking proceeding concerning provisions in agreements subject to the Shipping Act of 1984 that affect or relate back to activities or events which occurred prior to the agreements becoming effective. The Commission will continue to address these matters on an *ad hoc* basis.

DATES: This proceeding is discontinued effective May 19, 1987.

FOR FURTHER INFORMATION CONTACT: Robert D. Bourgoin, General Counsel, Federal Maritime Commission, 1100 L

Street, NW., Washington, DC 20573, (202) 523–5740.

SUPPLEMENTARY INFORMATION: The Commission initiated this proposed rulemaking proceeding by Notice published in the **Federal Register** (50 FR 51418–51420, December 17, 1985). The proposed rule would have amended the Commission's agreement rules by adding a new subparagraph to 46 CFR 572.103 to read as follows:

(h) An agreement filed under the Act shall apply only to prospective, future activities of the parties and may not in any way directly or indirectly affect or rely upon activities, events or payments which occurred prior to the effective date of the agreement.

In proposing this rule, the Commission advised that it had been receiving an increasing number of agreements which contained provisions affecting activities or events which occurred prior to the effective dates of the agreements. The Commission noted that these provisions were particularly pervasive in the area of marine terminal agreements, where ocean common carriers often agree to use port facilities in the future, but in so doing attempt to credit prior use to future formulas or rerate prior use at a new and lower rate once the agreement becomes effective. The Commission explained that agreements with retroactive application raised legal concerns under various provisions of the Shipping Act of 1984 ("1984 Act"), 46 U.S.C. app. 1701 through 1720.

Comments in response to the Notice were received from ocean common carriers, ocean carrier conferences, port authorities, terminal operators, law firms, and the Department of Justice. Some commenters supported the rule as proposed or in a modified form. Several commenters expressed the view that there is no particular need for a rule on "retroactivity" because the parameters of acceptable conduct under the 1984 Act are already clear, as a matter of law. In addition, many of the commenters raised concerns about portions of the proposed rule which appeared to be overbroad, in that they would condemn agreement provisions which have heretofore been considered legitimate. In this regard, some commenters requested that any final rule identify with particularity unacceptable retroactive provisions.

Upon careful consideration of all of the comments submitted, and in light of the regulatory objectives underlying this proceeding, the Commission has decided to withdraw the proposed rule. We do not believe that a formal regulation defining the limits of an agreement's application to past events is either feasible or necessary, at least at this time. Section 10(a)(2) of the 1984 Act, 46 U.S.C. app. 1709(a)(2), prohibits anyone from "operat[ing] under an agreement required to be filed under section 5 * * * that has not become effective under section 6 [of that Act] * * *." Similarly, section 7 of the Act, 46 U.S.C. app. 1706, conveys no antitrust immunity on activity which has occurred prior to an agreement becoming effective. As a result, and because it would be extremely difficult, if not impossible, to prescribe a rule which would address the legitimate concerns of the commenters while at the same time providing clear, definitive guidelines covering all potential variant situations, the Commission has decided to discontinue this rulemaking proceeding and continue to address the issue of possible retroactive agreement provisions on an *ad hoc* basis.

Therefore, It Is Ordered, That the rule proposed in this proceeding is withdrawn and the proceeding discontinued.

By the Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 87–11360 Filed 5–18–87; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 87–128, RM–5675]

Radio Broadcasting Services; Blackduck, MN

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition by Roger Paskvan, proposing the allocation of FM Channel 252A to Blackduck, Minnesota, as that community's first FM broadcast service. Concurrence of the Canadian government is required for the allotment of FM Channel 252A at Blackduck.

DATES: Comments must be filed on or before July 6, 1987, and reply comments on or before July 21, 1987.

ADDRESS: Federal Communications Commission, Washington, DC. 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Harry F. Cole, Bechtel & Cole, Chartered, 2101 L Street, NW. Suite 502, Washington, DC 20036 (counsel for petitioner).

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

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No 87–128, adopted April 17, 1987, and released May 13, 1987. The full test of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1231 for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Mark N. Lipp,

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

[FR Doc. 87–11367 Filed 5–18–87; 8:45 am]

BILLING CODE 6712–01–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 663

[Docket No. 70101–7001]

Pacific Coast Groundfish Fishery; Proposed Inseason Adjustment

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

ACTION: Notice of proposed inseason adjustment and request for comments.

SUMMARY: NMFS announces and requests comments on a proposed inseason adjustment to the 1987 specifications for three species of Pacific Coast groundfish caught in the ocean off Washington, Oregon, and California.

The adjustment would increase the acceptable biological catch (ABC) for widow rockfish by 3 percent to 12,500 metric tons (mt), for chilipepper rockfish by 20 percent to 3,600 mt, and would increase the ABC and optimum yield (OY) for sablefish by 12 percent to 13,400 mt. This action makes use of the best available scientific information for estimating the 1987 specifications and is intended to promote full utilization of available groundfish resources without biological stress to these or other species.

DATE: Comments on this action will be accepted until June 3, 1987.

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

FOR FURTHER INFORMATION CONTACT: Rolland A. Schmitten, 206–526–6150, or E. Charles Fullerton, 213–514–6196.

SUPPLEMENTARY INFORMATION: The implementing regulations for the Pacific Coast Groundfish Fishery Management Plan (FMP) at 50 CFR 663.24(a) state that annual specifications of ABC and OY will not exceed by more than 30 percent the ABCs and OYs specified at the beginning of the previous fishing year. The FMP also provides at § 663.22(b) for inseason increases in OYs that cumulatively do not exceed by more than 30 percent the ABCs and OYs set at the beginning of the current fishing year.

ABCs are specified for all groundfish species, individually or in a group, and are estimates of the annual catch that could be taken without jeopardizing a resource's biological productivity. OYs are specified for six species, including sablefish, and set the maximum amount of fish (round weight) that may be taken and retained, or landed each year from the ocean off Washington, Oregon, and California.

The 1987 specifications of ABC and OY were developed in public meetings of the Pacific Fishery Management Council (Council) in September and November 1986. The preliminary specifications were published at 51 FR 43057 (November 28, 1986) and the final specifications at 52 FR 682 (January 8, 1987). The final 1987 ABCs for widow and chilipepper rockfishes were restricted by the regulations at § 663.24 limiting annual increases to 30 percent. Accordingly, the 1986 ABX for widow rockfish of 9,300 mt was increased the maximum 30 percent to reach the 1987 ABC of 12,100 mt, even though scientific data support a 34 percent increase to 12,500 mt. The 1986 ABC for chilipepper rockfish of 2,300 mt also was increased the maximum amount to reach the 1987 ABC of 3,000 mt. even though scientific data support a 57 percent increase to 3,600 mt. Subsequently, additional increases to the 1987 ABCs for widow and chilipepper rockfishes were recommended at the November 1986 Council meeting, based on the best available scientific information.

The recommendation to increase the ABC and OY for sablefish was made at the April 7–10, 1987, Council meeting after the Groundfish Management Team (State and Federal fishery and social scientists) presented new survey data and revised methods of estimating the available biomass for sablefish. The Council considered this analysis in addition to advice from its Groundfish Advisory Subpanel (industry and consumer representatives) and Scientific and Statistical Committee (State, Federal, and university scientists) in recommending an inseason increase to the 1987 ABC and OY for sablefish based on the best available scientific information.

The Secretary of Commerce concurs with the Council's recommendations. The aggregate data upon which these increases are based are available for public inspection at the Regional Offices at the above addresses during business hours until the end of the comment period.

Widow Rockfish

The Council recommended increasing the 1987 coastwide widow rockfish ABC from 12,100 mt to 12,500 mt, a 3 percent inseason increase and 34 percent greater than the 9,300 mt ABC established at the beginning of 1986. The proposed increase would raise the widow rockfish ABC to the 1987 OY. It is supported by the most recent scientific data indicating that the 1978, 1979, and 1980 year classes, which are contributing to the fishery, are considerably stronger than previously estimated. The ABC could not be raised to 12,500 mt on January 1, 1987, because of the 30 percent limit on annual increases. The OY could be increased to 12,500 mt in January , however, because OY was 10 percent greater than ABC in 1986, i.e., 10,200 mt. Thus the annual increase to OY in 1987 was within the 30 percent limit. This increase would remove the discrepancy between ABC and OY and would not warrant changes to the trip limits for this species because they are based on achieving OY.

Chilipepper Rockfish

The Council recommended increasing the 1987 coastwide chilipepper rockfish ABC from 3,000 mt to 3,600 mt, a 20 percent inseason increase and 57 percent greater than the 2,300 mt ABC in 1986. This increase was not made between seasons because of the 30 percent limit. The proposed increase would raise the chilipepper rockfish ABC to the level supported by a revised assessment methodology, which shows that several large year classes are contributing to the fishery. This increase would be too small to warrant changes to the trip limits for the *Sebastes* complex of rockfishes (which includes this species) south of Coos Bay, Oregon.

Sablefish

The Council recommended increasing the 1987 coastwide ABC and OY for sablefish by 12 percent, from 12,000 mt to 13,400 mt based upon the best available scientific information. This proposed level of 13,400 mt is 200 mt below the 13,600 mt OY for sablefish in 1986, 26 percent greater than the 10,600 mt ABC for sablefish in 1986, and equals the ABC for sablefish each year from 1982 through 1984. This most recent estimate does not reflect growth of the resource but rather results from revised analytical procedures and inclusion of areas that were not previously considered and which have been found to contain some fishable concentrations of sablefish. The regulations at § 663.22(b) require that the following factors be considered in a determination to increase an OY during the fishing year.

(i) Exploitable Biomass and Spawning Biomass Relative to Maximum Sustainable Yield (MSY) Levels

(MSY is the average of the largest catch which can be taken continuously from a stock over a period of years.) Data are inadequate to determine the relationship between the exploitable biomass, the spawning biomass, and the MSY.

(ii) Fishing Mortality Rate Relative to MSY Levels

Although MSY is not known for certain, fishing mortality is expected to exceed the proposed ABC of 13,400 mt if the fishery is not restricted.

(iii) Magnitude of Incoming Recruitment

The sablefish fishery is dominated by

a relatively small number of large year classes. The contribution of the strong 1980 year class is declining, and the strength of subsequent year classes is uncertain; therefore, the magnitude of incoming recruitment is unknown.

(iv) Projected Effort and Corresponding Catches Relative to ABC

Effort on groundfish species is expected to increase as groundfish fisheries in Alaska close and those vessels move to the Washington-Oregon-California fishery. Sablefish landings have exceeded ABC in recent years (OY has been set higher than ABC), with the 5-year average landings (1982–1986) being about 15,000 mt. Since 1982, various management strategies have been used to avoid reaching OY early in the year and closing the fishery. Fishing effort in 1987 is expected to be capable of harvesting the proposed ABC/OY before the end of the year if not restricted.

(v) In the Case of Species Normally Taken in Mixed Catches, the Relative Contribution of the Species to the Total Catch

Although sablefish may be a significant incidental catch in the trawl fishery for Dover sole, adjustment of the sablefish OY is not expected to influence incidental catch rates in the trawl fishery. A target trawl fishery might be slightly encouraged, however.

(vi) The Impact, if any, of the Proposed Increase in OY on Other Species

Sablefish can be caught fairly selectively in a target fishery. The proposed increase in OY should have little or no impact on other species.

Because shore-based processors intend to use all available sablefish, none of the proposed increase would be made available for joint venture processing (JVP) or foreign fishing (TALFF) except for minimal allowances for unavoidable incidental catches.

In 1987 the sablefish OY is allocated 52 percent to trawl gear and 48 percent to fixed gear (52 FR 790, January 9, 1987). Therefore, based on these percentages the proposed increase would change the gear allocations from 6,200 mt to 7,000 mt for trawl gear and from 5,800 mt to 6,400 mt for fixed gear. The proposed increase would be too small to necessitate changes to the current management strategy for this species.

In accordance with the recommendations above, Tables 1 and 2 (published at 52 FR 683 and 684) are proposed to be revised as indicated below. Only these portions (including footnotes) that pertain to widow and chilipepper rockfishes and sablefish are revised and printed here. All other portions remain unchanged except for footnote 2 to Table 2 which was deleted by Amendment 2 to the FMP (52 FR 4910, February 18, 1987) with the elimination of the separate 2,500 mt OY for sablefish in Monterey Bay, California.

TABLE 1.—FINAL ESTIMATES OF ABC FOR 1987 IN METRIC TONS (MT) FOR GROUNDFISH OFF WASHINGTON, OREGON, AND CALIFORNIA BY INTERNATIONAL NORTH PACIFIC FISHERIES COMMISSION AREAS

Species	Vancouver	Columbia	Eureka	Monterey	Conception	Total
Roundfish:						
Sablefish						[3] 13,400
Rockfish						
Widow						[3] 12,500
Other Rockfish: [4]						
Chilipepper						[3] 3,600

[3] Total all areas.
[4] "Other Rockfish" means rockfish species at § 663.2, as amended, which do not have a numerical OY.

TABLE 2.—FINAL SPECIFICATIONS OF OY AND ITS DISTRIBUTION FOR 1987 IN THOUSANDS OF METRIC TONS (MT) FOR GROUNDFISH OFF WASHINGTON, OREGON, AND CALIFORNIA

Species	Total OY	DAP	JVP	DAH	Reserve	TALFF
Sablefish	13.4	13.4	0.0	13.4	0.0	0.0

Classification

This proposed inseason adjustment is made under the authority of §§ 663.22 and 663.23 and complies with Executive Order 12291. This action is covered by the regulatory flexibility analysis prepared for the implementing regulations.

List of Subjects in 50 CFR Part 663

Administrative practice and procedure, Fisheries, Fishing.

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

Dated: May 13, 1987.

James E. Douglas, Jr.,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 87–11428 Filed 5–18–87; 8:45 am]

BILLING CODE 3510–22–M

Notices

Federal Register
Vol. 52, No. 96
Tuesday, May 19, 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.

ARMS CONTROL AND DISARMAMENT AGENCY

General Advisory Committee; Closed Meeting

In accordance with the Federal Advisory Committee Act, as amended, the U.S. Arms Control and Disarmament Agency announces the following meeting:

Name: General Advisory Committee on Arms Control and Disarmament.

Date: May 27, 28, 1987.

Time: 9:00 a.m.

Place: State Department Building, Washington, DC.

Type of Meeting: Closed.

Contact Person: Barry Daniel, Executive Director, General Advisory Committee, U.S. Arms Control and Disarmament Agency, Room 5927, Washington, DC 20451, (202) 647-5177.

Purpose of Advisory Committee: To advise the Director of the U.S. Arms Control and Disarmament Agency on arms control and disarmament policy and activities, and from time to time to advise the President and the Secretary of State respecting matters affecting arms control, disarmament, and world peace.

Agenda: Will present the following discussions and presentations:

May 27, 1987

AM—Receive briefing on and discuss arms control and NATO/WP forces.
PM—Receive briefing on and discuss ATBM issues.

May 28, 1987

AM—Receive briefing on and discuss Verification ATBM issues and requirements. Executive Discussions.

Reason for Closing: The GAC members will be reviewing and discussing matters specifically required by Executive Order to be kept secret in the interest of national defense and foreign policy.

Authority to Close Meeting: The closing of this meeting is in accordance with a determination by the Director of the U.S. Arms Control and Disarmament Agency dated April 1, 1987, made pursuant to the provisions of section 10(d) of the Federal Advisory Committee Act as amended.

William J. Montgomery,
Committee Management Officer.

[FR Doc. 87-11438 Filed 5-18-87; 8:45 am]
BILLING CODE 6020-32-M

DEPARTMENT OF COMMERCE

International Trade Administration

[C-351-029]

Certain Castor Oil Products From Brazil; Preliminary Results of Countervailing Duty Administrative Review

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of preliminary results of countervailing duty administrative review.

SUMMARY: The Department of Commerce has conducted an administrative review of the countervailing duty order on certain castor oil products from Brazil. The review covers the period January 1, 1985 through December 31, 1985 and 15 programs.

As a result of the review, the Department has preliminarily determined the net subsidy for the period of review to be 0.63 percent *ad valorem*. Interested parties are invited to comment on these preliminary results.

EFFECTIVE DATE: May 19, 1987.

FOR FURTHER INFORMATION CONTACT: Richard C. Henderson or Bernard Carreau, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202 377-2786).

SUPPLEMENTARY INFORMATION:

Background

On December 19, 1986, the Department of Commerce ("the Department") published in the **Federal Register** (51 FR 45497) the final results of its last administrative review of the countervailing duty order on certain castor oil products from Brazil (41 FR 8634; March 16, 1976). On March 31, 1986, the petitioner, the American Manufacturers of Castor Oil Products, requested in accordance with § 355.10 of the Commerce Regulations that we conduct an administrative review of the order. We published the initiations on April 18, 1986 (51 FR 13274). The Department has now conducted that administrative review in accordance with section 751 of the Tariff Act of 1930 ("the Tariff Act").

Scope of Review

Imports covered by the review are shipments of Brazilian hydrogenated castor oil and 12-hydroxystearic acid. Such merchandise is currently classifiable under items 178.2000, 490.2650, and 490.2670 of the Tariff Schedules of the United States Annotated.

The review covers the period January 1, 1985 through December 31, 1985 and 15 programs: (1) CACEX export financing; (2) an income tax exemption for export earnings; (3) the export credit premium for the IPI; (4) CIC-CREGF 14-11 financing; (5) incentives for trading companies (Resolution 883); (6) accelerated depreciation for Brazilian-made capital goods; (7) BEFIEX; (8) CIEX; (9) FINEX; (10) duty-free treatment and tax exemption on equipment used in export production ("CDI"); (11) FUNPAR; (12) exemption from state-administered value-added taxes on domestic sales ("ICM"); (13) PROEX; (14) PROSIM; and (15) financing for the storage of merchandise destined for export (Resolution 330).

Analysis of Programs

(1) CACEX Export Financing

Under this program, the Department of Foreign Commerce ("CACEX") of the Banco do Brasil provides short-term working capital financing to exporters at preferential rates. The loans have a duration of up to one year. During the period of review, producers of certain castor oil products could obtain CACEX financing based on the value of their previous year's exports. The maximum amount of CACEX financing that could be obtained in Brazil was 20 percent of the value of the previous year's exports.

Resolution 882, which became effective on January 2, 1984, required the full interest payment at maturity. It also set the maximum interest rate at

monetary correction (calculated by the change in the value of readjustable treasury bonds, "ORTN") plus 3 percentage points.

On August 21, 1984, Resolution 950 superseded Resolution 882 and changed the short-term export financing program substantially. Resolution 950, which was made effective retroactively to January 2, 1984, made working capital financing available through commercial banks at prevailing market rates, with interest due at maturity. It authorized the Banco do Brasil to pay the lending institution an "equalization fee," or rebate, of up to 10 percentage points over the commercial interest rate, which the lending institution can pass on to the borrowers. On May 2, 1985, Resolution 1009 increased the equalization fee to 15 percentage points.

To find the interest differential for Resolution 882 loans, we compared to effective rates. The nominal interest rates on Resolution 882, 950, and 1009 loans are the same as the effective rates because the full amount of interest is paid at maturity. For our benchmark, we took the national average rate for thirty-day discounts of accounts receivable, as reported in *Analise/Business Trends*. This rate includes the 1.5 percent tax on financial transactions ("IOF"), from which preferential loans are exempt. We then compounded this rate to find the effective annual commercial benchmark.

Since the interest charged on CACEX export financing under Resolutions 950 and 1009 is now at prevailing market rates, this program would not be countervailable absent the equalization fee and the exemption from the IOF. Therefore, the interest differential for those loans is equal to the equalization fee plus the 1.5 percent IOF.

We consider the benefit from loans to occur when the borrower makes the interest payments. For Resolution 882, 950, and 1009 loans on which interest was paid during the period of review, we multiplied the interest differential by the loan principal. We allocated the result over each firm's total exports and then weight-averaged each company's benefit by its share of total exports of this merchandise to the United States. On this basis, we preliminarily determine the benefit from this program to be 0.10 percent *ad valorem*.

(2) Income Tax Exemption for Export Earnings

Under this program, exporters of certain castor oil products are eligible for an exemption from income tax on a portion of their profits attributable to exports. The Brazilian government calculates the tax-exempt fraction of profit as the ratio of export revenue to total revenue. Two firms took advantage of this program in 1983.

The nominal corporate tax rate in Brazil is 35 percent. However, Brazilian tax law permits companies to reduce their income taxes by investing up to 28 percent of their tax liability in specified companies and funds. This tax credit effectively reduces the nominal 35 percent corporate tax rates. The firms under review invested in the specified companies and funds.

We calculated the effective tax rates by dividing each company's net tax liability by its taxable profit. We calculated the benefit by multiplying the amount of tax-exempt profit by the effective corporate tax rate and allocating the result over each company's total exports. We then weight-averaged each company's benefit by its share of total exports of the merchandise to the United States. On this basis, we preliminarily determine the benefit from this program to be 0.48 percent *ad valorem*.

(3) The Export Credit Premium for the IPI

Exporters of certain castor oil products are eligible for the maximum export credit premium for the IPI. The Brazilian government pays exporters in cash a percentage of the f.o.b. price of the exported merchandise. The payment is made through the bank involved in the export transaction.

Effective June 26, 1981, the Brazilian government imposed an export tax to offset the benefit of the premium on exports to the United States. Therefore, we preliminarily determine that exporters of this merchandise received no benefits from this program during the period of review.

Further, on May 1, 1985, the Brazilian government eliminated the IPI credit premium for exporters of certain castor oil products.

(4) CIC–CREGE 14–11 Financing

Under its CIC–CREGE 14–11 circular, the Banco do Brasil provides preferential financing to exporters on the condition that they maintain on deposit a minimum level of foreign exchange. Exporters of certain castor oil products participated in this program during the period of review.

There is no maximum interest rate for this program. Interest payments are normally made quarterly or semiannually, with the full principal to be repaid at maturity. We calculated the benefit based on the interest payment date in a manner similar to that used for CACEX export financing, using the same benchmark rate. We preliminarily determine the benefit from this program to be 0.02 percent *ad valorem*.

(5) Incentives for Trading Companies (Resolution 883)

Under this program, CACEX declares trading companies eligible to receive loans at preferential rates. Eligible firms have access to a line of credit that can be drawn down to purchase goods for export. The trading companies use the loans as advance payment for the goods purchased. These loans are subject to interest constraints similar to those on Resolution 882 loans. Normally, the term of the loan does not exceed 180 days, but the actual length varies, running from the date of receipt of the loan to the date of shipment of the goods. The interest is paid in full at maturity.

During the period of review, one firm received benefits under this program for the purchase of certain castor oil products for export. We calculated the benefit in a manner similar to that for CACEX export financing, based on the interest payment date. We allocated the benefit over the firm's total exports and weight-averaged the result by the firm's share of total exports of this merchandise to the United States. On this basis, we preliminarily determine the benefit from this program to be 0.03 percent *ad valorem*.

(6) Accelerated Depreciation for Brazilian-made Capital Goods

Firms may depreciate Brazilian-made capital equipment at twice the normal rate allowed under Brazilian tax laws if they obtain approval from the Industrial Development Council ("CDI") for a plant expansion project. One firm benefited from this page in 1984.

To calculate the benefit, we multiplied the amount of accelerated depreciation declared on the income tax return filed in the review period by the effective corporate income tax rate and divided the result by the firm's total sales in 1985. We then weight-averaged the benefit by the firm's share of total exports of this merchandise to the United States.

On this basis, we preliminarily determine the benefit to be 0.001 percent *ad valorem*.

(7) Other Programs

We also examined the following programs and preliminarily find that exporters of certain castor oil products did not use them during the review period:

a. Fiscal Benefits for Special Export Programs ("BEFIEX");

b. Tax Reductions on Equipment used in Export Production ("CIEX");

c. Export Financing under Resolution 68 ("FINEX");

d. Duty-free treatment and tax exemptions on equipment used in export production ("CDI");

e. Export financing under the Fundo Nacional de Participadoes ("FUNPAR");

f. Exemption from state-administered value-added taxes ("ICM") on domestic sales;

g. Export Promotion Financing ("PROEX");

h. Benefits from Import Substitution ("PROSIM"); and

i. Financing for the storage of merchandise destined for export ("Resolution 330").

Preliminary Results of Review

As a result of our review, we preliminarily determine the net subsidy to be 0.63 percent *ad valorem* for the period of review. The Department intends to instruct the Customs Service to assess countervailing duties of 0.63 percent of the f.o.b. invoice price on all shipments of this merchandise exported on or after January 1, 1985 and on or before December 31, 1985.

The Department intends to instruct the Customs Service to collect a cash deposit of estimated countervailing duties, as provided by section 751(a)(1) of the Tariff Act, of 0.63 percent of the f.o.b. invoice price on all shipments of this merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this administrative review. This deposit requirement shall remain in effect until publication of the final results of the next administrative review.

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 10 days after the date of publication. Any hearing, if requested, will be held 30 days after the date of the publication or the first workday thereafter. Any request for an administrative protective order must be made no later than five days after the date of publication. The Department will publish the final results of this administrative review including the results of its analysis of issues raised in any such written comments or at a hearing.

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 § 355.10 of the Commerce Regulations (50 FR 32556, August 13, 1985).

Dated: May 12, 1987.

Gilbert B. Kaplan,

Deputy Assistant Secretary, Import Administration.

[FR Doc. 87-11393 Filed 5-18-87; 8:45 am]

BILLING CODE 3510-DS-M

Short-Supply Review on Certain Flat-Rolled Steel Products; Request For Comments

AGENCY: Import Administration/ International Trade Administration, Commerce.

ACTION: Notice and request for comments.

SUMMARY: The Department of Commerce hereby announces its review of a request for short supply under Article 8 of the U.S.-EC Arrangement on Certain Steel Products with respect to certain hot-rolled steel sheet and strip used to manufacture bi-metal band saws.

DATE: Comments must be submitted on or before May 29, 1987.

ADDRESS: Send all comments to Nicholas C. Tolerico, Acting Director, Office of Agreements Compliance, Import Administration, U.S. Department of Commerce, Room 3099, 14th Street and Constitution Avenue NW., Washington, DC 20230.Q02

FOR FURTHER INFORMATION CONTACT: Richard O. Weible, Office of Agreements Compliance, Import Administration, U.S. Department of Commerce, Room 3099, 14th Street and Constitution Avenue NW., Washington, DC 20230, (202) 377-0159.

SUPPLEMENTARY INFORMATION: Article 8 of the U.S.-EC Arrangement on Certain Steel Products provides that if the U.S. "* * * determines that because of abnormal supply or demand factors, the US steel industry will be unable to meet demand in the USA for a particular product (including substantial objective evidence such as allocation, extended delivery periods, or other relevant factors), an additional tonnage shall be allowed for such product * * *."

We have received a short-supply request for D6A hot-rolled alloy steel sheet and strip, ranging from 0.080 to 0.125 inch in thickness and from 10 to 16 inches in thickness. This material is used to produce cold-rolled steel sheet and strip for bi-metal band saws.

Any party interested in commenting on this request should send written comments as soon as possible, and no later than May 29, 1987. Comments should focus on economic factors involved in granting or denying this request.

Commerce will maintain this request and all comments in a public file. Anyone submitting business proprietary information should clearly identify that portion of their submission and also provide a non-proprietary submission which can be placed in the public file. The public file will be maintained in the Central Records Unit, Room B-099, Import Administration, U.S. Department of Commerce at the above address.

Gilbert B. Kaplan,

Deputy Assistant Secretary for Import Administration.

May 13, 1987.

[FR Doc. 87-11394 Filed 5-18-87; 8:45 am]

BILLING CODE 3510-DS-M

Short-Supply Review on Certain Flat-Rolled Steel Products; Request For Comments

AGENCY: International Trade Administration/Import Administration, Commerce.

ACTION: Notice and request for comments.

SUMMARY: The Department of Commerce hereby announces its review of a request for a short supply determination under Article 8 of the U.S.-Brazil Arrangement Concerning Trade in Certain Steel Products with respect to certain high carbon flat-rolled products for use in the manufacture of spherical agricultural disk blades.

DATE: Comments must be submitted no later than May 29, 1987.

ADDRESS: Send all comments to Nicholas C. Tolerico, Acting Director, Office of Agreements Compliance, Import Administration, U.S. Department of Commerce, Room 3099, 14th Street and Constitution Avenue NW., Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Richard O. Weible, Office of Agreements Compliance, Import Administration, U.S. Department of Commerce, Room 3099, 14th Street and Constitution Avenue NW., Washington, DC 20230, (202) 377-0159.

SUPPLEMENTARY INFORMATION: Article 8 of the U.S.-Brazil Arrangement Concerning Trade in Certain Steel Products provides that if the U.S. "* * * determines that because of abnormal supply or demand factors, the United States steel industry will be unable to meet demand in the USA for a particular product (including substantial objective evidence such as allocation, extended delivery periods, or other relevant factors), an additional tonnage shall be allowed for such product * * *.

We have received a short supply request for certain high carbon flat-rolled steel products, 0.079 to 0.472 inch in thickness, that is used in the manufacture of disk blades for agricultural machinery. The products are made either:

(a) Through cross-rolling, with widths ranging from 20 to 48 inches and lengths ranging from 176 to 312 inches; or

(b) Through straight-rolling with sulphur inclusion controls, with widths ranging from 20 to 48 inches, in cut lengths from 176 to 312 inches, or in coils.

Any party interested in commenting on this request should send written comments as soon as possible, and no later than May 29, 1987. Comments should focus on economic factors involved in granting or denying this request.

Commerce will maintain this request and all comments in a public file. Anyone submitting business proprietary information should clearly so label the business proprietary portion of the submission and also provide a non-proprietary submission which can be placed in the public file. The public file will be maintained in the Central Records Unit, Room B-099, Import Administration, U.S. Department of Commerce, at the above address.

Gilbert B. Kaplan,

Deputy Assistant Secretary for Import Administration.

May 13, 1987

[FR Doc. 87-11395 Filed 5-18-87; 8:45 am]

BILLING CODE 3510-DS-M

Minority Business Development Agency

Financial Assistance Applications; New York

AGENCY: Minority Business Development Agency, Commerce.

ACTION: Notice.

SUMMARY: The Minority Business Development Agency (MBDA) announces that it is soliciting competitive applications under its Minority Business Development Center (MBDC) Program to operate a MBDC for a 3 year period, subject to available funds. The cost of performance for the first twelve (12) months is estimated at $416,000 for the project performance of October 1, 1987 to September 30, 1987. The MBDC will operate in the Brooklyn Metropolitan Statistical Area (MSA). The first year cost for the MBDC consist of $416,000 in Federal funds and a minimum of $73,412 in non-Federal funds (which can be a combination of cash, in-kind contribution and fees for services).

The funding instrument for the MBDC will be a cooperative agreement and competition is open to individuals, nonprofit and for-profit organization, local and State governments, American Indian tribes and educational institutions.

The MBDC will provide management and technical assistance to eligible clients for the establishment and operation of businesses. The MBDC program is designed to assist those minority businesses that have the highest potential for success. In order to accomplish this, MBDA supports MBDC programs that can: Coordinate and broker public and private sector resources on behalf of minority individuals and firms; offer them a full range of management and technical assistance; and serve as a conduit of information and assistance regarding minority business.

Applications will be judged on the experience and capability of the firm and its staff in addressing the needs of minority business individuals and organizations; the resources availalbe to the firm in providing management and technical assistance; the firm's proposed approach to performing the work requirements included in the application; and the firm's estimated cost for providing such assistance. It is advisable that applicants have an existing office in the geographic region for which they are applying.

The MBDC will operate for a 3 year period with periodic reviews culminating in annual evaluations to determine if funding for the project should continue. Continue funding will be at the discretion of MBDA based on such factors as an MBDC's satisfactory performance, the availability of funds, and Agency priorities.

Closing Date: The closing date for applications is June 18, 1987. Applications must be postmarked on or before June 18, 1987.

ADDRESS: New York Regional Office, Minority Business Development Agency, Jacob J. Javits Federal Building, Rm, 3720, New York, New York 10278, Area Code/Telephone Number (212) 264-3262.

FOR FURTHER INFORMATION CONTACT: Gina A. Sanchez, Regional Director, New York Regional Office.

SUPPLEMENTARY INFORMATION: Questions concerning the preceding information, copies of application kits and applicable regulations can be obtained at the above address.

(11.800 Minority Business Development Catalog of Federal Domestic Assistance).

Dated: May 14, 1987.

William R. Fuller,

Deputy Regional Director, New York Regional Office.

[FR Doc. 87-11439 Filed 5-18-87; 8:45 am]

BILLING CODE 3510-21-M

[Project I.D. Number 06-10-87007-01; Transmittal No. 06-10-87007-01]

Minority Business Development Center (MBDC) Program, Texas; Financial Assistance Application Announcement

SUMMARY: The Minority Business Development Agency (MBDA) announces that it is soliciting competitive applications under its Minority Business Development Center (MBDC) Program to operate an MBDC for a three (3) year period, subject to available funds. The cost of performance for the first twelve (12) months is estimated at $194,118 for the project's performance period of 9/01/87-8/31/88. The MBDC will operate in the Beaumont, Texas Standard Metropolitan Statistical Area (SMSA).

The first year's cost for the MBDC will consist of:

Federal Funding	$165,000
Non-Federal Funding [1]	29,118
Grand Total	194,118

[1] Can be a combination of cash, in-kind contribution and fees for services.

The funding instrument for the MBDC will be a cooperative agreement and competition is open to individuals, nonprofit and for-profit organizations, local and state governments, American Indian Tribes and educational institutions.

The MBDC will provide management and technical assistance (M&TA) to eligible clients for the establishment and operation of businesses. The MBDC program is designed to assist those minority businesses that have the highest potential for success. In order to accomplish this, MBDA supports MBDC programs that can: Coordinate and broker public and private sector resources on behalf of minority individuals and firms; offer them a full range of management and technical assistance (M&TA); and serve as a conduit of information and assistance regarding minority business.

Applications will be judged on the experience and capability of the firm and its staff in addressing the needs of minority business individuals and organizations; the resources available to the firm in providing management and technical assistance (M&TA); the firm's

proposed approach to performing the work requirements included in the application; and the firm's estimated cost for providing such assistance. It is advisable that applicants have an existing office in the geographic region for which they are applying.

The MBDC will operate for a three (3) year period with periodic reviews culminating in annual evaluations to determine if funding for the project should continue. Continued funding will be at the discretion of MBDA, based on such factors as an MBDC's satisfactory performance, the availability of funds, and Agency priorities.

Closing Date: The closing date for receipt of application is June 18, 1987.

ADDRESS: MBDA, Dallas Regional Office, 1100 Commerce Street, Suite 7B23, Dallas, Texas, 75242–0790.

FOR FURTHER INFORMATION, CONTACT: Marie Hearne, Business Development Clerk, Dallas Regional Office, 214/767–8001.

A pre-bid conference will be held: May 26, 1987—10:00 am., MBDA, Dallas Regional Office, 1100 Commerce, Suite 7B23, Dallas, Texas, 75242–0790, 214/767–8001.

SUPPLEMENTARY INFORMATION: Questions concerning the preceding information, copies of application kits and applicable regulations can be obtained at the above address.

Melda Cabrera,

Acting Regional Director, Minority Business Development Agency, Dallas Regional Office.

Section B. Project Specifications

Program Number and Title: *11.800 Minority Business Development*
Project Name: *Beaumont, Texas MBDC* (Geographic Area or SMSA)
Project Identification Number: *06–10–87007–01*
Project Start and End Dates: *9/01/87 thru 8/31/88*
Project Duration: *12 Months*
Total *Federal Funding (85%) $165,000*
Minimum *Non-Federal Funding* Sharing (15%) *29,118*
Total Project Cost (100%) *$194,118*

Closing Date for Receipt of this Application: June 18, 1987.

Geographic Specification: The Minority Business Development Center shall offer assistance in the geographic area of: Beaumont, Texas.

Eligibility Criteria: There are no eligibility restrictions for this project. Eligible applicants may include individuals, non-profit organizations, for-profit firms, local and state governments, American Indian Tribes, and educational institutions.

Project Period: The competitive award period will be for approximately three years consisting of three (3) separate budget periods. Performance evaluations will be conducted, and funding levels will be estimated for each of the three (3) budget periods. The MBDC will receive continued funding, after the initial competitive year, at the discretion of MBDA based upon the availability of funds, the MBDC's performance, and Agency priorities.

MBDA's Minimum Levels of Effort: Financial Packages, $2,266,000; Billable M&TA, $103,000; Procurements, $4,807,000; Number of Clients, 65.

[FR Doc. 87–11464 Filed 5–18–87; 8:45 am]

BILLING CODE 3510–21–M

[Project I.D. No. 06–10–87006–01 Pre-Bid Conference; Transmittal No. 06–10–87006–01]

McAllen Minority Business Development Center (MBDC); Pre-Bid Conference

Summary: The Minority Business Development Agency (MBDA) announces that it is holding a Pre-Bid Conference to answer questions (Re: the RFA) for the McAllen, Texas MBDC competition.

The MBDA advertised the McAllen MBDC request in the **Federal Register** dated May 4, 1987, pages 16295 and 16296. Please refer to this document for additional information.

The Pre-Bid Conference will be held:

Date: May 26, 1987
Place: Dallas Regional Office, 1100 Commerce Street, Room 7B23, Dallas, Texas 75242, Phone: (214) 767–8001
Time: 10:00 a.m.
Closing Date: The closing date for receipt of applications is June 1, 1987.
Address: MBDA-Dallas Regional Office, 1100 Commerce Street, Suite 7B23, Dallas, Texas 75242–0790

For further information, contact: Marie Hearne, Business Development Clerk, Dallas Regional Office, 214/767–8001.

Thomas J. Hawkins,

Acting Regional Deputy Directory, Minority Business Development Agency.

[FR Doc. 87–11465 Filed 5–18–87; 8:45 am]

BILLING CODE 3510–21–M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Export Visa Requirement for Certain Cotton Textile Products Produced or Manufactured in India

May 14, 1987.

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on May 14, 1987. For further information contact Eve Anderson, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377–4212.

Background

Under the terms of the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of Febraury 6, 1987, the Governments of the United States and India have agreed to further amend the existing export visa requirement to designate Category 341–Y for cotton shirts and blouses made from yarn-dyed fabric of two or more colors in the warp or filling and Category 341–O for cotton shirts and blouses made from fabrics other than yarn-dyed. Accordingly, in the letter published below, the Chairman of the Committee for the Implementation of Textile Agreements directs the Commissioner of Customs to permit entry of cotton textile products in Category 341, produced or manufactured in India and exported on and after May 1, 1987 and until further notice visaed as 341–Y and 341–O.

Merchandise in Category 341, exported before July 1, 1987, may be visaed as 341, 341–Y, 341–N or 341–O, provided all other requirements established under this visa arrangement have been met.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983, (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782) July 14, 1986 (51 FR 25386), July 29, 1986 (51 FR 27068) and in Statistical Headnote 5, Schedule 3 of the Tariff Schedules of the United States annotated (1987).

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

May 14, 1987.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Mr. Commissioner: This directive cancels and supersedes the directive of January 28, 1987 which directed you to permit entry or withdrawal from warehouse for consumption in the United States of cotton textile products in Category 341, visaed as 341, 341–Y, 341–N exported from India.

Effective on May 14, 1987 and until further notice, the existing export visa requirement established by the directive of November 26, 1979, as amended, is hereby further amended to permit entry for consumption, or withdrawal from warehouse for consumption, in the United States of cotton textile products in Category 341 which have been visaed as Category 341–Y and 341–O, if exported on and after May 1, 1987. Cotton textile products in Category 341, exported before July 1, 1987, may be visaed as 341, 341–Y, 341–N or 341–O, provided all other requirements established under this visa arrangement have been met.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 533.

Sincerely,

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreement.

[FR Doc. 87–11391 Filed 5–18–87; 8:45 am]

BILLING CODE 3510-DR-M

Exemption of Certain Products in Category 627pt.; Film Strips

May 14, 1987.

The purpose of this notice is to advise the public that, effective on May 14, 1987, shipments of inked ribbon film strips in Category 627 (only TSUSA numbers 389.6260 and 389.6265) exported from all countries are exempt from the terms of bilateral agreements and export visa arrangements negotiated by the United States.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983, (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984) 49 FR 44782), July 29, 1986 (51 FR 27068) and in Statistical Headnote 5, Schedule 3 of the *Tariff Schedules of the United States Annotated* (1987).

FOR FURTHER INFORMATION CONTACT: Marty Walsh, Office of Textiles and Apparel, (202) 377–4212.

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 87–11392 Filed 5–18–87; 8:45 am]

BILLING CODE 3510-DR-M

COMMODITY FUTURES TRADING COMMISSION

Agricultural Advisory Committee; Second Renewal

The Commodity Futures Trading Commission has determined to renew again for a period of two years its advisory committee designated as the "Commodity Futures Trading Commission Agricultural Advisory Committee." As required by section 14(a)(2)(A) of the Federal Advisory Committee Act, 5 U.S.C. App. I, section 14(a)(2)(A), and 41 CFR 101–6.1007 and 101–6.1029, the Commission has consulted with the Committee Management Secretariat of the General Services Administration, and the Commission certifies that the renewal of the advisory committee is in the public interest in connection with duties imposed on the Commission by the Commodity Exchange Act, 7 U.S.C. 1, *et seq.*, as amended.

The objectives and scope of activities of the Agricultural Advisory Committee are to conduct public meetings and submit reports and recommendations on issues affecting agricultural producers, processors, and lenders and others interested in or affected by the agricultural commodities markets, and to facilitate communications between the Commission and the diverse agricultural and agriculture-related organizations represented on the committee.

Commissioner Kalo A. Hineman serves as Chairman and Designated Federal Official of the Agricultural Advisory Committee. The Committee's membership represents a cross-section of interested and affected groups including representives of producers, processors, lenders and other interested agricultural groups.

Interested persons may obtain information or make comments by writing to the Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC 20581.

Issued in Washington, DC, this 13 day of May, 1987 by the Commission.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 87–11357 Filed 5–18–87; 8:45 am]

BILLING CODE 6351-01-M

DEPARTMENT OF DEFENSE

Office of the Secretary

Advisory Committee on Integrated Long-Term Strategy; Meeting

ACTION: Notice of Advisory Committee Meeting.

SUMMARY: The Advisory Committee on Integrated Long-Term Strategy will meet in closed session on 11–12 June 1987 in the Pentagon, Arlington, VA.

The mission of the Advisory Committee on Integrated Long-Term Strategy is to provide the Secretary of Defense and the Assistant to the President for National Security Affairs with an independent, informed assessment of the policy and strategy implications of advanced technologies for strategic defense, strategic offense and theater warfare, including conventional war. At this meeting the Committee will hold classified discussions of national security matters dealing with long term strategy and policy.

In accordance with section 10(d) of the Federal Advisory Committee Act, Pub. L. 92–463, as amended [U.S.C. App. II, (1982)], it has been determined that this Advisory Committee meeting concerns matters listed in 5 U.S.C. 552b(c)(1)(1982), and that accordingly this meeting will be closed to the public.

Patricia H. Means,

OSD Federal Register Liaison Officer, Department of Defense.

May 13, 1987

[FR Doc. 87–11348 Filed 5–18–87; 8:45 am]

BILLING CODE 3810-01-M

Department of the Air Force

USAF Scientific Advisory Board Airlift Cross-Matrix Panel; Meeting

May 11, 1987.

The USAF Scientific Advisory Board Airlift Cross-Matrix Panel will meet at the 314th Tactical Airlift Wing, Little Rock Air Force Base, AK on June 8, 1987 from 8:00 a.m. to 5:00 p.m., at the 443rd Military Airlift Wing, Altus Air Force Base, OK on June 9, 1987 from 8:00 a.m. to 5:00 p.m., and at the 1550th Combat Crew Training Wing, Kirtland Air Force Base, NM on June 10, 1987 from 8:00 a.m. to 5:00 p.m.

The purpose of these meetings is to review, discuss and evaluate the

effectiveness of training facilities and procedures being developed by the Air Force for combat operations.

These meetings concern 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 futher information, contact the Scientific Advisory Board Secretariat at 202-697-8845.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 87-11352 Filed 5-18-87; 8:45 am]

BILLING CODE 3910-01-M

USAF Scientific Advisory Board Committee on Software Expertise and Ada; Meetings Closed

May 11, 1987.

The USAF Scientific Advisory Board Committee on Software Expertise and Ada will conduct closed meetings at the Sacramento Air Logistics Center, McClellan Air Force Base, CA on June 11, 1987 from 8:00 a.m. to 5:00 p.m. and at Space Division, Los Angeles Air Force Station, CA on June 12, 1987 from 8:00 a.m. to 5:00 p.m.

The purpose of these meetings is to review, discuss and evaluate the effectiveness of software expertise being developed by the Air Force and the success of implementing the Ada computer language on aircraft and space systems.

These meetings concern matters listed in section 552b(c) of Title 5, United States Code, specifically subparagraph (1) thereof, and accordingly, will be closed to the public.

For further information, contact the Scientific Advisory Board Secretariat at 202-697-8845.

Patsy J. Connor,

Air Force Federal Register Liaison Officer.

[FR Doc. 87-11350 Filed 5-18-87; 8:45 am]

BILLING CODE 3910-01-M

USAF Scientific Advisory Board Electronic Systems Division Advisory Group; Closed Meeting

May 11, 1987.

The USAF Scientific Advisory Board Electronic Systems Division Advisory Group will conduct closed meetings at the Command Management Center, Hanscom Air Force Base, Bedford, MA on June 30, 1987 from 8:00 a.m. to 5:00 p.m. and on July 1, 1987 from 8:00 a.m. to 1:00 p.m.

The purpose of this meeting is to review, discuss and evaluate software capabilities, image processing systems, strategic defense battle management/C3 testbed, E-3 improvements, Joint Tactical Information Distribution System, Joint Surveillance Target Attack Radar System, Universal Modem, and WWMCCS Information System.

This meeting concerns matters listed in section 552b(c) of Title 5, United States Code, specifically subparagraph (1) thereof, and accordingly, will be closed to the public.

For further information, contact the Scientific Advisory Board Secretariat at 202-697-8845.

Patsy J. Connor,

Air Force Federal Register Liaison Officer.

[FR Doc. 87-11351 Filed 5-18-87; 8:45 am]

BILLING CODE 3910-01-M

DEPARTMENT OF EDUCATION

[CFDA No. 84.199]

Applications for a New Award Under the National Assessment of Educational Progress (NAEP) Program for FY 1988; Invitation

Purpose: Provide a grant to a nonprofit educational organization to conduct the biennial NAEP assessment during the 1987-88 school year and to analyze and report the results of this assessment; to develop the objectives and exercises for the assessment to be conducted during the 1989-90 school year; and, if adequate funding is available, to design, with the States' participation, an assessment to provide comparable data for each State. This grant does not include the conduct of either the 1989-90 biennial assessment or the State comparable assessment of one subject area.

Deadline for transmittal of applications: July 6, 1987.

Applications available: May 22, 1987.

Available funds: $50,000 (fiscal year 1987 appropriation). It is anticipated that up to $10,800,000 will be awarded during the 30-month project period.

Estimated number of awards: 1.

Project period: 30 months.

Applicable regulations: The Education Department General Administrative Regulations, 34 CFR Parts 74, 75, 77, and 78.

Weighting for selection criteria: Educational Department General Administrative Regulations at 34 CFR 75.210(c) authorize the Secretary to distribute an additional 15 points among the selection criteria in 34 CFR 75.210 to bring the total possible points to maximum of 100 points. For the purpose of this competition, the Secretary will distribute the additional points as follows:

Plan of operation: (§ 75.210 (b)(3)). Fifteen (15) additional points will be added for a possible total of 30 points for this criterion.

Information conference: An information conference for prospective applicants will be held on June 1, 1987, from 1:00 p.m. to 4:00 p.m. in Room 326, 555 New Jersey Avene NW., Capitol Place, Washington, DC 20208. Potential applicants who are unable to attend the information conference are invited to contact Eugene Owen for a written report of the conference.

For applications or information contact: Eugene Owen, U.S. Department of Education, 555 New Jersey Avenue NW., Room 306-C, Capitol Place, Washington, DC 20208 Telephone: (202) 357-6746.

Program authority: 20 U.S.C. 1221e.

Dated: May 14, 1987.

Chester E. Finn, Jr.,

Assistant Secretary and Counselor to the Secretary.

[FR Doc. 87-11423 Filed 5-18-87; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. RP82-80-024 and CP82-542-011]

ANR Pipeline Co.; Compliance Filing

May 13, 1987.

Take notice that on April 29, 1987, ANR Pipeline Company (ANR) tendered for filing proposed changes in its FERC Gas Tariff, Original Volume Nos. 1 and 1-A, to become effective November 1, 1987. ANR states that the filing reflects compliance with the Commission's Opinion Nos. 258 and 258-A. The revised Tariff Sheets designated PRO FORMA are listed below:

Original Volume No. 1

Sheet No. 18
Sheet No. 20
Sheet No. 25
Sheet No. 79
Sheet No. 80
Sheet No. 80A
Sheet No. 111
Sheet No. 112
Sheet No. 113
Sheet No. 114

Original Volume No. 1-A

Sheet No. 5
Sheet No. 6
Sheet No. 7
Sheet No. 8.

ANR states that this filing is being made under protest, and with full

reservation of all rights relative to appeal of Opinion Nos. 258 and 258–A and any other lawful action relative to the subject matter. ANR has also stated that it has filed its appeal of Opinion Nos. 258 and 258–A to a Court of competent jurisdiction, and that it anticipates that aspects thereof will be set aside, and may be stayed.

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, NW., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before May 20, 1987. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceedings. Any party wishing to become a party to the proceeding 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. 87–11415 Filed 5–18–87; 8:45 am]

BILLING CODE 6717–01–M

[Docket RP86–105–007 and RP86–169–004]

ANR Pipeline Co.; Tariff Revision

May 13, 1987.

Take notice that on May 7, 1987, ANR Pipelien Company (ANR) tendered for filing with the Federal Energy Regulatory Commission ("Commission") the following revised tariff sheets to Original Volume No. 1–A of its F.E.R.C. Gas Tariff.

Substitute First Revised Sheet No. 6
Substitute First Revised Sheet No. 13
Substitute First Revised Sheet No. 14
Original Sheet No. 14A
Substitute First Revised Sheet No. 35
Substitute First Revised Sheet No. 36
Original Sheet No. 36A
Substitute First Revised Sheet No. 54
Substitute First Revised Sheet No. 55
Substitute First Revised Sheet No. 56
Substitute First Revised Sheet No. 138

ANR states that on April 17, 1987 it indicated in the Public Hearings at Docket Nos. RP86–105–000 and RP86–169–000, that it would revise certain balancing provisions included in Original Volume No. 1–A of its F.E.R.C. Gas Tariff. Accordingly, the revised tariff sheets listed above have been submitted for filing. ANR further states that the above tariff sheets reflect only those revisions necessary to reflect the modified balancing provisions which ANR indicated it would submit for filing to the Commission during the proceeding at the captioned dockets.

ANR has requested an effective date of July 1, 1987 for these tariff sheets. ANR has served copies of this filing on all parties to the captioned proceedings.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211). All such motions or protests should be filed on or before May 20, 1987. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87–11414 Filed 5–18–8; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CI87–486–000]

R. Lacy, Inc., et al.; Application for Abandonment and Pregranted Abandonment for Sales Under Small Producer Certificate

May 12, 1987.

Take notice that on April 13, 1987, as amended on April 23, and 30, 1987, R. Lacy, Inc., *et al.*[1] (Lacy) of P.O. Box 2146, Longview, Texas 25606 filed an application pursuant to section 7(b) of the Natural Gas Act and § 2.77 of the Commission's rules. Lacy requests authorization to abandon sales to Natural Gas Pipeline Company of America (Natural) from the Carthage Field, Panola County, Texas. Lacy also requests pregranted abandonment for three years for sales of such gas under Lacy's small producer certificate in Docket No. CS72–250. Lacy states it is subject to substantially reduced takes without payment. The wells produce NGPA section 104 replacement contract and post-1974 gas and 108 gas. Deliverability is 2,609 Mcf/day. Lacy proposes to make sales of the subject gas in intrastate or interstate commerce.

The circumstances presented in the application meet the criteria for consideration on an expedited basis, pursuant to § 2.77 of the Commission's rules as promulgated by Order No. 436 and 436–A, issued October 9, and December 12, 1985, respectively, in Docket No. RM85–1–000, all as more fully described in the application which is on file with the Commission and open to public inspection.

Accordingly, any person desiring to be heard or to make any protest with reference to said application should on or before 15 days after the date of publication of this notice in the **Federal Register**, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to the proceeding herein must file a petition to intervene in accordance with the Commission's Rules.

Under the procedures herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87–11411 Filed 5–18–87; 8:45 am]

BILLING CODE 6717–01–M

[1] The additional applicants are Sara Harding Deakins, Trustee; Jack E. Price Testamentary Trust; Madge S. Terrell; Ann Ferguson Williams; Ann Lacy Crain; Ann Lacy Crain, II; Bluford Walter Crain, III; Rogers Lacy Crain; Patsy Lacy Griffith (Individually and as Trustee); Estate of A. O. Phillips, Shirley Phillips Mead Trust #1, Shirley Phillips Mead Trust #12, Michael Phillips Trust #5, and Pamela Phillips Trust #5 (Interfirst Bank Tyler, NA, Trustee); B. F. Phillips, Jr.; Wilson-Owens Production Company; Lois Crain Murphy; Lois J. Crain; John Edwin Lacy; Elizabeth Lacy Bond; Kathryn Lacy Keane; and W. H. Mitchell.

[Docket No. CP86–701–003]

Tennessee Gas Pipeline Co., a Division of Tenneco Inc.; Tariff Filing

May 13, 1987.

Take notice that on May 4, 1987, Tennessee Gas Pipeline Company, a Division of Tenneco Inc. (Tennessee), tendered for filing six copies of the following tariff sheets to its FERC Gas Tariff:

Original Volume No. 2

Second Revised Sheet Nos. 3, 6 and 9
First Revised Sheet Nos. 464 through 479
First Revised Sheet Nos. 923, 924, 927, 928, 929 and 945
Original Sheet Nos. 1848 through 1917
Original Sheet Nos. 1918 through 5000

Tennessee states that the purpose of these revised tariff sheets is to

implement new rate schedules for certain long-term transportation agreements that have received authorization in various proceedings before the Commission, to amend existing transportation rate schedules pursuant to Commission authorization, to provide notice of cancellation of Rate Schedule T-66, and to revise the Table of Contents and the Summary of Rates and Charges in Original Volume No. 2.

Tennessee states that copies of this filing have been mailed to all of its jurisdictional customers and affected state regulatory commissions.

Any persons desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before May 20, 1987. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87-11412 Filed 5-18-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. ER87-280-000, et al.]

Electric Rate and Corporate Regulation Filings; American Electric Power Service Corp., et al.

May 12, 1987.

Take notice that the following filings have been made with the Commission:

1. American Electric Power Service Corp.

[Docket No. ER87-280-000]

Take notice that American Electric Power Service Corporation (AEP) on April 17, 1987, tendered for filing on behalf of its affiliates, Appalachian Power Company, Indiana & Michigan Electric Company, Kentucky Power Comnpany, Ohio Power Company, and Wheeling Electric Company, which are all AEP affiliated operating subsidiaries, revisions to the cost support data previously submitted in this docket to take into account a federal tax rate of 34%.

Copies of this filing were served upon the Kentucky Public Service Commission, Public Service Commission of Indiana, Michigan Public Service Commission, Public Utilities Commission of Ohio, State Corporate Commission of Virginia, and Public Service Commission of West Virginia.

Comment date: May 26, 1987, in accordance with Standard Paragraph E at the end of this notice.

2. American Electric Power Service Corp.

[Docket No. ER87-281-000]

Take notice that American Electric Power Service Corporation (AEP) on April 17, 1987, tendered for filing on behalf of its affiliates, Appalachian Power Company, Ohio Power Company, and Wheeling Electric Company, which are all AEP affiliated operating subsidiaries, revisions to the cost support data previously submitted in this docket to take into account a federal tax rate of 34%.

Copies of this filing were served upon the Public Utilities Commission of Ohio, State Corporate Commission of Virginia, and Public Service Commission of West Virginia.

Comment date: May 26, 1987, in accordance with Standard Paragraph E at the end of this notice.

3. American Electric Power Service Corp.

[Docket No. ER87-355-000]

Take notice that American Electric Power Service Corporation (AEP) on April 17, 1987, tendered for filing on behalf of its affiliates, Appalachian Power Company, Indiana & Michigan Electric Company, and Ohio Power Company, which are all AEP affiliated operating subsidiaries, revisions to the cost support data previously submitted in this docket to take into account a federal tax rate of 34%.

Copies of this filing were served upon the Public Service Commission of Indiana, Michigan Public Service Commission, Public Utilities Commission of Ohio, State Corporate Commission of Virginia, and Public Service Commission of West Virginia.

Comment date: May 26, 1987, in accordance with Standard Paragraph E at the end of this notice.

4. Boston Edison Co.

[Docket No. ER87-423-000]

Take notice that on May 5, 1987, Boston Edison Company (Edison) tendered for filing a supplemental Exhibit A to a Service Agreement for Braintree Electric Light Department (Braintree), under its FERC Electric Traffic, Originial Volume No. III, Non/Firm Transmission Service (the Tariff). The Exhibit A specifies the amount and duration of transmission service required by Braintree under the Tariff.

Edison requests waiver of the Commission's notice requirements to permit the Exhibit A to become effective as of the commencement date of the transaction to which it relates, May 1, 1987.

Edison states that it has served the filing on Braintree Electric Light Department and the Massachusetts Department of Public Utilities.

Comment date: May 26, 1987, in accordance with Standard Paragraph E at the end of this notice.

5. Consolidated Edison Co. of New York, Inc.

[Docket No. ER87-421-000]

Take notice that on May 5, 1987, Consolidated Edison Company of New York, Inc. ("Con Edison") tendered for filing, as an initial rate schedule, an agreement to provide interruptible transmission service to Atlantic City Electric Company ("Atlantic Electric"). The agreement provides for a change of 2.6 mills per kilowatthour for transmission of power purchased by Atlantic Electric from companies in the New England Power Pool.

Con Edison requests waiver of the notice requirements of Section 35.3 of the Commission's regulations so that the Rate Schedule can be made effective as of September 1, 1986.

Con Edison states that a copy of this filing has been served by mail upon Atlantic Electric.

Comment date: May 26, 1987, in accordance with Standard Paragraph E at the end of this notice.

6. The Dayton Power and Light Co. and the Ohio Edison Co.

[Docket No. ER 87-333-000]

Take notice that The Dayton Power and Light Company on May 7, 1987 tendered for filing, on its own behalf, and on behalf of The Ohio Edison Company, a revision to the Interconnection Agreement filed in this docket March 26, 1987. Specifically, DP&L has reduced the minimum charge associated with economy transactions.

This filing was served upon the Public Utilities Commission of Ohio.

Comment date: May 26, 1987, in accordance with Standard Paragraph E at the end of this notice.

7. Pacific Gas and Electric Co.

[Docket No. ER87-424-000]

Take notice that Pacific Gas and Electric Company (PGandE) tendered for filing, on May 6, 1987, the 1985 recorded cost of thermal capacity to be

used in calculating the Capacity Account repurchase rate that PGand E charges the Western Area Power Administration (Western) pursuant to Article 22(c)(1)(i) of Contract No. 14–06–200–2948A.

Copies of this filing were served upon Western and the California Public Utilities Commission.

Comment date: May 26, 1987, in accordance with Standard Paragraph E at the end of this notice.

8. Southern California Edison Co.

[Docket No. ER87–422–000]

Take notice that, on May 5, 1987, Southern California Edison Company ("Edison") tendered for filing, as an initial rate schedule, the following Agreement, which has been executed by Edison and the City of Anaheim, California ("Anaheim").

Edison-Anaheim Deseret Firm Transmission Service Agreement

Under the terms and conditions of the Agreement, Edison, will make available to Anaheim firm transmission service for its purchases of nonintegrated capacity and energy from Deseret Generation and Transmission Cooperative, Inc. ("Deseret") to the Point of Delivery at Lewis Substation, Anaheim, California.

The Agreement is proposed to become effective when executed by the Parties and accepted for filing by the Commission (without changes unacceptable to either party); and as such, Edison requests, to the extent necessary, waiver of notice requirements.

Copies of this filing were served upon the Public Utilities Commission of the State of California and the City of Anaheim California.

Comment date: May 26, 1987, in accordance with Standard Paragraph E at the end of this notice.

9. System Energy Resources, Inc.

[Docket No. ER82–616–031]

Take notice that on April 17, 1987, System Energy Resources, Inc. (SERI) tendered for filing supplemental information with respect to the Nuclear Decommissioning Trust Fund Agreement which has been proposed for accumulation of money intended to compensate for SERI's share of anticipated decommissioning expenses for Unit 1 of its Grand Gulf Nuclear Electric Station.

Comment date: May 26, 1987, in accordance with Standard Paragraph E at the end of this document.

10. Utilicorp United Inc.

[Docket No. ES87–26–000]

Take notice that on April 29, 1987, UtiliCorp United Inc., pursuant to section 204 of the Federal Power Act, filed an application for authorization to issue 400,000 shares of common stock, par value $1.00 per share pursuant to its Savings Plan, 100,000 shares of its common stock, par value $1.00 per share pursuant to its 1986 Employee Stock Purchase Plan and 200,000 shares of its common stock, par value $1.00 per share pursuant to its Dividend Reinvestment and Stock Purchase Plan. Utilicorp is requesting that the Commission grant authorization effective retroactive to April 1, 1987.

Comment date: May 28, 1987, in accordance with Standard Paragraph E at the end of this notice.

11. Utilicorp United Inc.

[Docket No. ES87–27–000]

Take notice that on April 29, 1987, UtiliCorp United Inc., pursuant to section 204 of the Federal Power Act, filed an application for authorization to issue up to and including 300,000 shares of common stock, par value $1.00 per share, pursuant to a proposed two percent stock dividend based on the number of shares outstanding as the record date and requesting exemption from the competitive bidding requirements of the Commission's Regulations.

The securities will be issued pro rata on the basis of one new share for each fifty shares held for record. Should a shareholder have shares not evenly divisible by two, a fractional share cash payment will be made based on the closing price on the New York Stock Exchange at such record date.

Comment date: May 28, 1987, in accordance with Standard Paragraph E at the end of this notice.

12. UtiliCorp United Inc.

[Docket No. ES87–28–000]

Take notice that on April 29, 1987, UtiliCorp United Inc., pursuant to section 204 of the Federal Power Act, filed an application for authorization for UtiliCorp to issue common stock to holders of existing shares of common stock on a three for two basis, based on the number of shares outstanding as of the record date established by the Executive Committee of UtiliCorp and requesting exemption from the competitive bidding requirement of § 34.2 of the Commission's Regulations.

The securities will be issued pro rata on the basis of one additional share for each two shares held of record, such record date to be determined by UtiliCorp's Executive Committee after receipt of all regulatory approvals. Should a shareholder have shares not evenly divisible by two, a fractional share cash payment will be made based on the closing price on the New York Stock Exchange at such date to be fixed by the Executive Committee.

Comment date: May 28, 1987, in accordance with Standard Paragraph E at the end of this document.

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 protestant's 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. 897–11409 Filed 5–18–87; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. CP86–408–002, et al.]

Natural Gas Certificate Filings; Southern Natural Gas Co., et al.

May 12, 1987.

Take notice that the following filings have been made with the Commission:

1. Southern Natural Gas Co.

[Docket No. CP86–408–002]

Take notice that on April 27, 1987, Southern Natural Gas Company (Southern), P.O. Box 2563, Birmingham, Alabama 35202–2563, filed in Docket No. CP86–408–002 a petition pursuant to section 7(c) of the Natural Gas Act to further amend the certificate issued in Docket No. CP86–408–000, so as to permit Southern to increase the currently authorized transportation volume for Atlanta Gas Light Company (Atlanta) and to extend the authorized transporation term for such services, all as more fully set forth in the petition to amend, which is on file with the Commission and open to public inspection.

Southern proposes in Docket No. CP86–408–002 to increase the volumes of gas transported on an interruptible basis for Atlanta, acting as agency for Anglo-American Clays Corporation (Anglo-American), from 4,700 MMBtu per day to 12,000 MMBtu per day. It is stated that Anglo-American has arranged to obtain additional sources of gas and has requested that Southern add these volumes to those presently authorized for transportation. In addition, Southern proposes to extend the term of the transporation service to October 31, 1988. It is stated that this extension would permit Southern to continue to transport gas for Anglo-American beyond the October 31, 1987, termination date authorized in Docket No. CP86–408–001. It is asserted that the proposed extension of the transportation term is consistent with Southern's policy statement filed in Docket Nos. CP86–277–001, *et al.* Southern further states it will receive take-or-pay relief on gas Anglo-American may receive from its suppliers.

Comment date: June 2, 1987, in accordance with Standard Paragraph F at the end of this notice.

2. Southern Natural Gas Co.

[Docket Nos. CP86–400–002 and CP86–467–002]

Take notice that on April 23, 1987, Southern Natural Gas Company (Southern), P.O. Box 2563, Birmingham, Alabama 35202–2563 filed in Docket Nos. CP86–400–002 and CP86–467–002 petitions pursuant to section 7(c) of the Natural Gas Act to further amend the certificates issued in Docket Nos. CP86–400–000 and CP86–467–000, so as to permit Southern to increase the currently authorized transportation volume and, in Docket No. CP86–467–002, to extend the authorized transportation term, all as more fully set forth in the petitions which are on file with the Commission and open to public inspection.

Southern requests authorization in Docket No. CP86–400–002 to increase the volumes of interruptible natural gas transported by Southern for Engelhard Corporation (Engelhard), with Atlanta Gas Light Company acting as agent, from 20,000 MMBtu of gas per day to 30,000 MMBtu of gas per day, for a limited term ending October 31, 1988. It is stated that Engelhard had obtained additional gas supplies and has requested that Southern add these volumes to those presently authorized for transportation. Southern further states it will receive take-or-pay relief on gas Engelhard may receive from its suppliers.

Southern requests authorization in Docket No. CP86–467–002 to increase the volumes of natural gas transported on an interruptible basis by Southern for the City of Austell Natural Gas System (Austell) from 6,500 MMBtu of gas per day to 20,000 MMBtu of gas per day, for a limited term ending October 31, 1988. It is stated that Austell has arranged to obtain additional gas supplies and has requested that Southern add these volumes to those presently authorized for transportation. It is explained that both Engelhard and Austell have arranged to obtain the additional gas supplies in order to gain access to more competitively priced gas. Southern further states it will receive take-or-pay relief on gas Austell may obtain from its suppliers.

In Docket No. CP86–467–002 Southern also requests authorization to amend the certificate by extending the transportation term to October 31, 1988, in order that Southern may continue to transport gas for Austell beyond the October 31, 1987, termination date authorized in Docket No. CP86–467–001. It is asserted that the proposed extension of the transportation term is consistent with Southern's policy statement filed in Docket Nos. CP–86–277–001, *et al.*

Comment date: June 2, 1987, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

Standard Paragraph

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10) All protests filed with the Commission will be considered by it in detemining 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 motin to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87–11413 Filed 5–18–87; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL 3203–4]

Fuels and Fuel Additives

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency has reconsidered a portion of a fuel waiver granted under section 211(f) of the Clean Air Act to E. I. DuPont de Nemours and Company, Inc. (DuPont) on January 10, 1985. This waiver was previously reconsidered and modified on October 31, 1986 (51 FR 39800). Today's notice approves the use of an alternative corrosion inhibitor, DMA–67, in DuPont's gasoline-alcohol fuel.

ADDRESS: Copies of the information relative to this notice are available for inspection in public docket EN–84–06 at the Central Docket Section (LE–131A) of EPA, Gallery 1—West Tower, 401 M Street SW., Washington, DC 20460, (202) 382–7548, between the hours of 8:00 a.m. and 4:00 p.m. As provided in 40 CFR Part 2, a reasonable fee may be charged for copying materials in the docket.

FOR FURTHER INFORMATION CONTACT: Sylvia I. Correa, Attorney/Advisor, Field Operations and Support Division (EN–397F), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, (202) 382–2635.

SUPPLEMENTARY INFORMATION:

I. Background

Section 211(f)(1) of the Clean Air Act (Act), 42 U.S.C. 7545(f)(1), states that effective upon March 31, 1977, it shall be unlawful for any manufacturer of any fuel or fuel additive to first introduce

into commerce or to increase the concentration in use of any fuel or fuel additive for general use in light-duty motor vehicles manufactured after model year 1974, which is not substantially similar to any fuel or fuel additive utilized in the certification of any model year 1975, or subsequent model year, vehicle or engine under section 206 of the Act. Section 211(f)(4) of the Act, 42 U.S.C. 7545(f)(4), provides that the Administrator of EPA, upon application of any manufacturer of any fuel or fuel additive, may waive the prohibitions established under section 211(f)(1), if the Administrator determines that the applicant has established that such fuel or fuel additive or a specified concentration thereof, or the emission products of such fuel or additive or specified concentration thereof, will not cause or contribute to a failure of any emission control device or system (over the useful life of any vehicle in which such device or system is used) to achieve compliance by the vehicle with the emission standards with respect to which it has been certified pursuant to section 206 of the Act. If the Administrator does not act to grant or deny an application within 180 days of receipt of the application, the waiver authorized by section 211(f)(4) shall be treated as granted.

DuPont submitted a waiver application for a gasoline-alcohol blend on July 16, 1984. On January 10, 1985, the Administrator granted the waiver, subect to certain conditions. 50 FR 2615. On March 18, 1985, the Oxygenated Fuels Association (OFA), on behalf of its member companies, filed petitions for reconsideration. On April 22, 1986 (51 FR 15064), EPA granted OFA's petition for reconsideration and, on October 31, 1986 (51 FR 39800), EPA decided to rescind one condition of the waiver and to modify certain other conditions.

One of the conditions that was modified concerned which corrosion inhibitor formulation could be used in the waived fuel. In that notice, EPA allowed the use of corrosion inhibitor, Petrolite's TOLAD MFA–10, as an alternative to the inhibitor originally allowed under the waiver (DuPont's DGOI–100). At the same time, EPA invited other corrosion inhibitor manufacturers to submit test data to the Agency to establish, on a case-by-case basis, whether their formulations are environmentally acceptable.

On November 13, 1986, DuPont requested that EPA allow the use of its corrosion inhibitor, DMA–67, in its gasoline-alcohol fuel blend which otherwise would not be allowed under the waiver. DMA–67 is a formulation consisting of a corrosion inhibitor and a carburetor detergent. The physical properties of DMA–67 are shown in Table 1 in the DuPont Docket (EN–84–06), document no. VIII–A–3.

On March 31, 1987, EPA published a notice in the **Federal Register** (52 FR 10261) announcing receipt of DuPont's request and inviting comment on it. The comment period closed on April 30, 1987.

II. Discussion

One of the major areas of concern to EPA in reviewing any waiver request is the problem of materials compatibility. Materials compatibility date could show a potential failure of fuel systems, emissions-related parts and emission control parts from use of the fuel of additive. Any failure could result in greater emissions.

Initially, DuPont had requested the use of DGOI–100 or its equivalent in the final fuel. However, at that time the Agency had no measure of equivalency that could be used to test other corrosion inhibitors. The Agency decided, therefore, to look at corrosion inhibitors on a case-by-case basis to establish whether each formulation was environmentally acceptable. Subsequently, EPA did recise the waiver to allow the use of Tolad MFA–10 as an alternative to DGOI–100.

DuPont has submitted information demonstrating that DMA–67 has the same level of corrosion inhibitor and carburetor detergent as was used in its original 50,000-mile waiver test data. The principal ingredient of both DMA–67 and DGOI–100 relative to vehicle emissions in DuPont's DMA–54. DMA–54 is a widely used carburetor detergent in the United States.

The principal ingredient of both DMA–67 and DGOI–100 relative to corrosion inhibition is DCI–11. DCI–11 is currently used in over 80 percent of the fuel grade ethanol in the United States. It was specifically designed to provide corrosion protection to gasoline-alcohol blends.

In order to determine whether the DuPont waiver would meet the criteria of section 211(f)(4) DMA–67 is used as an inhibitor, EPA reviewed all data submitted with the application. No comments regarding DMA–67 have been received at this time.

III. Finding and Conclusion

Based on the information submitted by DuPont in its application, I conclude that DMA–67 is comparable to DGOI–100 and TOLAD MFA–10. Therefore, I am modifying condition (3) of the waiver to read as follows:

(3) Any one of the following three corrosion inhibitor formulations must be included:

(a) DuPont's proprietary corrosion inhibitor formulation, DGOI–100, blended in the final fuel at 41.2 milligrams per liter (mg/1); OR.

(b) Petrolite's corrosion inhibitor formulation, TOLAD MFA–10, blended in the final fuel at 42.7 mg/1; OR

(c) DuPont's corrosion inhibitor formulation, DMA–67, blended in the final fuel at 31.4 mg/1.

This should provide additional flexibility to manufacturers wishing to produce the DuPont blend. Since EPA is still unaware of any single test which assure the environmental compatibility of an inhibitor, the Agency will continue to examine the emissions impact of any specific future corrosion inhibitor formulation on a case-by-case basis.

IV. Miscellaneous

EPA has determined that this action does not meet any of the criteria for classification as a major rule under Executive Order 12291. Therefore, no regulatory impact analysis is required.

This action is not a "rule" as defined in the Regulatory Flexibility Act, 5 U.S.C. 601(2), because EPA is not required to undergo "notice and comment" under section 553(b) of the Administrative Procedure Act of other law. Therefore, EPA has not prepared a supporting regulatory flexibility analysis addressing the impact of this action on small business entities.

This is a final Agency action of national applicability. Jurisdiction to review the action lies exclusively in the U.S. Court of Appeals for the District of Columbia Circuit. Under section 307(b)(1) of the Act, judicial review of this action is available only by the filing of a petition for review in the U.S. Court of Appeals for the District of Columbia Circuit within 60 days of the date of publication of this notice. Under section 307(b)(2), judicial review may not be obtained in any subsequent judicial proceeding brought by the Agency to enforce the statutory prohibitions.

Dated: May 13, 1987.

Lee M. Thomas,

Administrator.

[FR Doc. 87–11408 Filed 5–18–87; 8:45 am]

BILLING CODE 6560–50–M

[PF–482; FRL: 3204–1]

Pesticide Tolerance Petition

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice amends a pesticide petition by Ciba-Geigy Corp. proposing tolerances for the combined residues of the fungicide 1-[[2-)2,4-dichlorophenyl)-4-propyl-1, 3-dioxolan-2-yl]-methyl[1*H*1, 2, 4-triazole and its metabolites, determined as 2, 4-dichlorobenzoic acid and expressed as the parent compound, in or on certain agricultural commodities. The amendment proposed to increase tolerance levels and proposes additional tolerances on certain commodities.

ADDRESS: By mail, submit comments identified by the document control number [PF-482] at the following address:

Information Services Section (TS-757C) (Attn: Product Manager (PM-21)), Program Management and Support Division, Office of Pesticide Programs, Environmental Protection Agency, 401 M Street SW., Washington, DC 20460.

In person, bring comments to:

Information Services Section (TS-757C), Room 227, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202.

Information submitted as a comment concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR Part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. Written comments filed in response to this notice will be available for public inspection in the Information Services Section office at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail:

Lois Rossi, PM-21, Registration Division (TS-767C), Environmental Protection Agency, Office of Pesticide Programs, 401 M Street SW., Washington, DC 20460.

Office location and telephone number: Room 227, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202 (703-557-1900).

SUPPLEMENTARY INFORMATION: EPA issued a notice, published in the **Federal Register** of May 23, 1984 (49 FR 21796), which announced that Ciba-Geigy Corp., P.O. Box 18300, Greensboro, NC 27419, submitted pesticide petition 4F3074 to EPA propsoing tolerances for the fungicide 1-[[2-)2,4-dichlorophenyl)-4-propyl-1, 3-dioxolan-2-yl]-methyl[1*H*1, 2, 4-triazole and its metabolites, determined as 2, 4-dichlorobenzoic acid and expressed as the parent compound, in or on certain agricultural commodities. Ciba-Geigy Corp. has amended the petition as follows:

1. By increasing the tolerance levels for the kidney and liver of cattle, goats, hogs, horses, poultry, and sheep from 0.1 part per million (ppm) to 0.2 ppm.

2. By adding tolerances for fat, meat, and meat byproducts (except kidney and liver) of cattle, goats, hogs, horses, poultry, and sheep at 0.1 ppm; eggs at 0.1 ppm; and milk at 0.05 ppm.

The proposed analytical method for determining residues is gas liquid chromatograph equipped with an electron capture detector.

Authority: 21 U.S.C. 346a.

Dated: May 15, 1987.

Edwin F. Tinsworth,

Director, Registration Division Office of Pesticide Programs.

[FR Doc. 87-11490 Filed 5-18-87; 8:45 am]

BILLING CODE 6560-50-M

[OPTS-42080B; FRL 3203-6]

Testing Consent Agreement Development for Chemical Substances Under TSCA Section 4; Solicitation for Public Participation

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA issued a proposed test rule on three triethylene glycol ethers (triethylene glycol monomethyl ether, CAS No. 112-35-6; triethylene glycol monoethyl ether, CAS No. 112-50-5; triethylene glycol monobutyl ether, CAS No. 143-22-6) published in the **Federal Register** of May 15, 1986 (51 FR 17883). The Agency is considering a testing consent agreement for these three chemicals and is soliciting public participation in the process. EPA invites persons interested in becoming involved in or monitoring negotiations for the development of a consent agreement to identify themselves as "interested parties". A public meeting is announced to discuss the Agency's consideration of a testing consent agreement for these chemicals.

DATES: Submit written notice of interest to be designated an "interested party" on or before June 8, 1987. A public meeting will be held on May 28, 1987.

ADDRESS: Submit written notice of interest in being designated an "interested party" in triplicate identified by the document control number (OPTS-42080B) to:

TSCA Public Information Office (TS-793), Office of Toxic Substances, Environmental Protection Agency, Rm. NE-G004, 401 M Street, SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Edward A. Klein, Director, TSCA Assistance Office (TS-799), Office of Toxic Substances, Environmental Protection Agency, Rm. E-543, 401 M Street, SW., Washington, DC 20460, (202) 554-1404.

Persons interested in attending the public meeting should notify EPA by telephone before May 26, 1987.

SUPPLEMENTARY INFORMATION: EPA has issued amendments to the procedural regulations in 40 CFR Part 790, which govern the development and implementation of testing requirements under section 4 of TSCA. These amendments establish procedures for using enforceable consent agreements to develop testing requirements under section 4 of the Act. This notice serves three purposes under those procedures. First, it announces a public meeting to initiate testing negotiations for the chemicals. Second, it requests "interested parties", who wish to participate in testing negotiations for the three triethylene glycol ethers proposed for testing by EPA, to identify themselves to the Agency. Third, it proposes a target schedule for implementation of the consent agreement process for the chemicals under consideration.

I. Identification of Interested Parties

Under 40 CFR 790.22 the testing negotiation procedures are initiated by the publication of a **Federal Register** notice which invites persons interested in participating in or monitoring negotiations for the development of a consent agreement to notify the Agency in writing. Those individuals and groups who respond to EPA's notice by the deadline established in the notice will have the status of "interested parties" and will be afforded opportunities to participate in the negotiation process. These "interested parties" will not incur any obligations by being designated "interested parties". The procedures for these negotiations are described in 40 CFR 790.22.

Individuals and groups desiring to have the status of "interested parties" in the development of testing consent agreements for the three triethylene glycol ethers should submit a written notice of this fact to the Agency at the address given above on or before June 8,

1987. The Agency is considering initiating the consent agreement process rather than finalizing the proposed rule for these chemicals because EPA believes the consent agreement process will lead to the development of necessary test data significantly earlier.

The Agency has not previously applied the consent order process to chemicals for which testing has already been proposed, but in this instance an exception is being made because: (1) The Interim Final Rule on consent order procedures was published after the proposed rule on the triethylene glycol ethers, and (2) an industry group approached EPA with some testing in progress and plans for further studies. EPA would like to examine this proposal in the context of a testing consent order.

II. Public Meetings

A public meeting will be held to discuss EPA's evaluation of testing needs for these chemicals and industry's proposal on May 28, 1987 at 1:30 p.m. This meeting will be held in Room 103, Northeast Mall, EPA Headquarters, 401 M Street, SW., Washington, DC 20460. Persons interested in attending this meeting should notify the EPA TSCA Assistance Office by telephone at the telephone number listed above on or before May 26, 1987.

III. Timetable for Negotiating Consent Agreements

In accordance with the procedures for the development of consent agreements established in 40 CFR 790.22, the following target schedule is established for the three triethylene glycol ethers. EPA has shortened the negotiating time for these chemicals because: (1) The process is beginning after the proposal, and (2) an industry group has already come together and been able to agree on some joint testing.

May 28, 1987—Public meeting to discuss EPA's preliminary testing decisions.

June 8, 1987—Deadline for the notice of interested party designation.

June 19, 1987—Decision by EPA on whether to use consent order or finalize test rule.

July 13, 1987—Draft consent order sent to interested parties for comment (if EPA decides to use the consent order).

October 5, 1987—Issue consent order.

Dated: May 14, 1987.

J. Merenda,

Director, Existing Chemical Assessment Division.

[FR Doc. 87-11476 Filed 5-18-87; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

Applications for Consolidated Hearing; Thaddeus Bishop et al.; Correction

On April 23, 1987, the Commission published two Notices regarding Applications for Consolidated Hearing involving Thaddeus Bishop, et al. The first Notice is corrected by changing the MM Docket No., at the top of page 13517, in the last column, from 87-82 to 87-83. The second Notice is corrected by changing the MM Docket No., in the middle of page 13517, in the last column, from 87-83 to 87-86.

William J. Tricarico,

Secretary.

[FR Doc. 87-11366 Filed 5-18-87; 8:45 am]

BILLING CODE 6712-01-M

[Report No. 1658]

Petitions for Reconsideration of Actions in Rulemaking Proceedings

May 11, 1987.

Petitions for reconsideration have been filed in the Commission rule making proceeding listed in this Public Notice and published pursuant to 47 CFR 1.429(e). The full text of these documents are available for viewing and copying in Room 239, 1919 M Street, NW., Washington, DC, or may be purchased from the Commission's copy contractor, International Transcription Service (202-857-3800). Oppositions to these petitions must be filed May 19, 1987. See § 1.4(b)(1) of the Commission's rules (47 CFR 1.4(b)(1)). Replies to an opposition must be filed within 10 days after the time for filing opposition has expired.

Subject: Revision and Update of Part 22 of the Public Mobile Radio Service Rules. (CC Docket No. 80-57) Number of petitions received: 2.

Subject: Implementation and Scope of the International Settlements Policy for Parallel International Communications Routes. (CC Docket No. 85-204) Number of petitions received: 1.

Subject: Amendment of § 73.202(b), Table of Allotments, FM Broadcast Stations. (Livingston, Texas) (MM Docket No. 86-268, RM-5265) Number of petitions received: 1.

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc. 87-11375 Filed 5-18-87; 8:45 am]

BILLING CODE 6712-01-M

[MM Docket No. 86-484; FCC 87-113]

Comparative Licensing, Distress Sales and Tax Certificate Policies Premised on Racial, Ethnic or Gender Classifications; Order

AGENCY: Federal Communications Commission.

ACTION: Order.

SUMMARY: This action modifies one aspect of the Commission's *Notice of Inquiry*, 52 FR 596 (January 7, 1987), to provide that in comparative licensing cases in which a racial, ethnic, or gender-based enhancement credit is dispositive: (1) Initial decisions will issue and will make alternative findings as to the successful applicants if the subject credit is allowed or disallowed; (2) appeal of an initial decision can be taken and decided by the Commission's Review Board or the Commission itself; and (3) final decisions will be held in abeyance pending the conclusion of the Commission's general inquiry only if the enhancement credit is held to be dispositive and the case is no longer subject to appeal. This action is taken to avoid unnecessary delay of comparative licensing cases and to expedite provision of radio and television service to the public.

ADDRESS: Federal Communications Commission, 1919 M Street, NW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Terry L. Haines, Policy and Rules Division, Mass Media Bureau, (202) 632-7792.

SUPPLEMENTARY INFORMATION: This is the complete text of the Commission's *Order* in MM Docket No. 86-484, adopted April 7, 1987, and released April 22, 1987.

Federal Communications Commission.

Wiliam J. Tricarico,

Secretary.

[FR Doc. 87-11374 Filed 5-18-87; 8:45 am]

BILLING CODE 6712-01-M

FEDERAL DEPOSIT INSURANCE CORPORATION

Information Collection Submitted to OMB For Review

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Notice of information collection submitted to OMB for review and approval under the Paperwork Reduction Act of 1980.

Title of Information Collection: Quarterly Report of Pledged Assets (OMB No. 3064–0010).

Background: In accordance with requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), the FDIC hereby gives notice that it has submitted to the Office of Management and Budget a request for OMB review for the information collection system identified above.

ADDRESS: Written comments regarding the submission should be addressed to Robert Fishman, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503 and to John Keiper, Assistant Executive Secretary (Administration), Federal Deposit Insurance Corporation, Washington, DC 20429.

COMMENTS: Comments on this collection of information should be submitted on or before June 3, 1987.

FOR FURTHER INFORMATION CONTACT: Requests for a copy of the submission should be sent to John Keiper, Assistant Executive Secretary (Administration), Federal Deposit Insurance Corporation, Washington, DC 20429, telephone (202) 898–3810.

SUMMARY: The FDIC is requesting OMB approval to extend, for a three-year period, the Quarterly Report of Pledged Assets information collection system. The current clearance for this information collection expires on July 31, 1987. There is no change in the method or substance of the collection. The information collection requirements are contained in 12 CFR Part 346 of FDIC's rules and regulations.

Reports of pledged assets are submitted to the FDIC by insured U.S. branches of foreign banks and by the depositories holding the pledged assets. The purpose of the pledge of assets is to provide protection to the deposit insurance fund against the risks entailed in insuring the domestic deposits of a foreign bank whose activities, assets, and personnel are in large part outside the jurisdiction of the United States. The provision for the pledge of assets by an insured U.S.-based branch of a foreign branch is contained in section 5(c) of the Federal Deposit Insurance Act (12 U.S.C. 1815(c)). While no form is prescribed for the reporting, the items of information to be furnished are prescribed in § 346.19(e) of 12 CFR Part 346. The FDIC requires the reporting to verify that foreign banks are in compliance with the statute and FDIC's regulation. It is estimated that the reporting creates an annual burden of 132 hours on the respondents collectively.

Dated: May 13, 1987.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 87–11342 Filed 5–18–87; 8:45 am]

BILLING CODE 6714–01–M

Request for Comments on Proposed Guidelines Regarding Bank Bribery Law

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Request for comments on proposed guidelines.

SUMMARY: The Bank Bribery Amendments Act of 1985 requires that Federal agencies with responsibility for regulating financial institutions establish guidelines to assist financial institution officials in complying with this law. The proposed guidelines were developed by the Interagency Bank Fraud Working Group. The guidelines proposed by the Federal Deposit Insurance Corporation ("FDIC") encourage all FDIC-insured state-chartered banks that are not members of the Federal Reserve System and all FDIC-insured state-licensed branches of foreign banks to adopt codes of conduct that describe the prohibitions of the bank bribery law. The guidelines also identify situations that, in the opinion of the FDIC, do not constitute violations of the Federal bank bribery law.

DATE: Comments must be received on or before July 20, 1987.

ADDRESS: Comments regarding the proposed guidelines should be submitted to Hoyle L. Robinson, Executive Secretary, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429, or delivered to Room 6108 at the same address between the hours of 9:00 a.m. and 5:00 p.m. on business days. Comments will be available for photocopying and inspection between 9:00 a.m. and 5:00 p.m. on business days at the Office of the Executive Secretary.

FOR FURTHER INFORMATION CONTACT: James R. Dudine, Chief, Special Activities Section, Division of Bank Supervision (202–898–6750), or Ronald R. Glancz, Assistant General Counsel, Legal Division (202–898–7266), 550 17th Street, NW., Washington, DC 20429.

Guidelines on Bank Bribery Law

Background

The Comprehensive Crime Control Act of 1984 (Pub. L. 98–473, Title 11, October 12, 1984) amended the Federal bank bribery law, 18 U.S.C. Section 214, to prohibit employees, offices, directors, agents and attorneys of financial institutions from seeking or accepting anything of value in connection with any transaction or business of their financial institution. The amended law also prohibited anyone from offering or giving anything of value to employees, officers, directors, agents or attorneys of financial institutions for or in connection with any transaction or business of the financial institution. Because of its broad scope, the 1984 Act raised concerns that it might have made what is acceptable conduct unlawful.

In July 1985, the Department of Justice issued a Policy Concerning Prosecution Under the New Bank Bribery Statute. In that Policy, the Department of Justice discussed the basic elements of the prohibited conduct under section 215, and indicated that cases to be considered for prosecution under the new bribery law entail breaches of fiduciary duty or dishonest efforts to undermine financial institution transactions. Because the statute was intended to reach acts of corruption in the banking industry, the Department of Justice expressed its intent not to prosecute insignificant gift giving or entertaining that does not involve a breach of fidiciary duty or dishonesty.

Congress decided that the broad scope of the statute provided too much prosecutorial discretion. Consequently, Congress adopted the Bank Bribery Amendments Act of 1985 (Pub. L. 99–370, August 4, 1986) to narrow the scope of 18 U.S.C. section 215 by adding a new element, namely, an intent to corruptly influence or reward an office in connection with financial institution business. As amended, section 215 provides in pertinent part:

Whoever—

(1) Corruptly gives, offers, or promises anything of value to any person, with intent to influence or reward an officer, director, employee, agent, or attorney of a financial institution in connection with any business or transaction of such institution; or

(2) As an officer, director, employee, agent, or attorney of a financial institution, corruptly solicits or demands for the benefit of any person, or corruptly accepts or agrees to accept, anything of value from any person, intending to be influenced or rewarded in connection with any business or transaction of such institution; shall be [guilty of an offense]

The law now specifically excepts the payment of bona fide salary, wages, fees, or other compensation paid, or expenses paid or reimbursed, in the usual course of business. This exception is set forth in subsection 215(c).

The penalty for violation remains the same as it was under the 1984 Act. If the value of the thing offered or received exceeds $100, the offense is a felony

punishable by up to five years imprisonment and a fine of $5,000 or three times the value of the bribe or gratuity. If the value does not exceed $100, the offense is a misdemeanor punishable by up to one year imprisonment and a maximum fine of $1,000.

In addition, the law now requires the financial institution regulatory agencies to publish guidelines to assist employees, officers, directors, agents and attorneys of financial institutions in complying with the law. The legislative history of the 1985 Act makes it clear that the guidelines would be relevant to, but not dispositive of, any prosecutorial decision the Department of Justice may make in any particular case. 132 Cong. Rec. 5944 (daily ed. Feb. 4, 1986). Therefore, the guidelines developed by the financial regulatory agencies are not a substitute for the legal standard set forth in the statute. Nonetheless, in adopting its own prosecution policy under the bank bribery statute, the Department of Justice can be expected to take into account the appropriate financial institution regulatory agencies' expertise and judgment in defining those activities or practices that the agencies believe do not undermine the duty of an employee, officer, director, agent or attorney to the financial institution. *United States Attorneys' Manual* section 9–40.439.

Proposed Guidelines

The proposed guidelines encourage all FDIC-insured state-chartered banks that are not members of the Federal Reserve System and all FDIC-insured State-licensed branches of Foreign banks ("insured state nonmember banks") to adopt internal codes of conduct or written policies or to amend their present codes of conduct to include provisions that explain the general prohibitions of the bank bribery law. The proposed guidelines relate only to the bribery law and do not address other areas of conduct that an insured state nonmember bank would find advisable to cover in its code of ethics. The code should, consistent with the statute, prohibit any employee, officer, director, agent or attorney of an insured state nonmember bank (hereinafter "Bank Official(s)") from (1) Soliciting for themselves or for a thrid party (other than the bank itself) anything of value from anyone in return for any business, service or confidential information of the bank and (2) accepting anything of value (other than normal authorized compensation) from anyone in connection with the business of the bank either before or after a transaction is discussed or consummated.

The insured state nonmember bank's codes or policies should be designed to alert Bank Officials about the bank bribery statute, as well as to establish and enforce written policies on acceptable business practices.

In its code of conduct, the insured state nonmember bank may, however, specify appropriate exceptions to the general prohibition of accepting something of value in connection with bank business. There are a number of instances where a Bank Official, without risk of corruption or breach of trust, may accept something of value from one doing or seeking to do business with the insured State nonmember bank. The most common examples are the business luncheon or the special occasion gift from a customer. In general, there is no threat of a violation of the statute if the acceptance is based on a family or personal relationship existing independent of any business of the institution; if the benefit is available to the general public under the same conditions on which it is available to the Bank Official; or if the benefit would be paid for by the insured state nonmember bank as a reasonable business expense if not paid for by another party. Indeed, by adopting a code of conduct with appropriate allowances for such circumstances, an insured State nonmember bank recognizes that acceptance of certain benefits by its Bank Officials does not amount to a corrupting influence on the bank's transactions.

In issuing guidance under this statute in the area of business purpose entertainment or gifts, it is not advisable for the FDIC to establish rules about what is reasonable or normal in fixed dollar terms. What is reasonable in one part of the country may appear lavish in another part of the country. An insured State nonmember bank should seek to embody the highest ethical standards in its code of conduct. In doing this, an insured state nonmember bank may establish in its own code of conduct a range of dollar values which covers the various benefits that its Bank Officials may receive from those doing or seeking to do business with the bank.

The code of conduct should provide that, if a Bank Official is offered, receives, or anticipates receiving something of value from a customer beyond what is expressly authorized in the bank's code of conduct or written policy, the Bank Official must disclose that fact to an appropriately designated official of the bank. The insured state nonmember bank should keep contemporaneous written reports of such disclosures. An effective reporting and review mechanism should serve to prevent situations that might otherwise lead to implications of corrupt intent or breach of trust and should enable the insured State nonmember bank to better protect itself from self-dealing. However, a Bank Official's full disclosure evidences good faith only when such disclosure is made in the context of properly exercised supervision and control. Thus, the prohibitions of the bank bribery statute cannot be avoided by simply reporting to management the acceptance of various gifts unless management reviews the disclosures and determines that what is accepted is reasonable and does not pose a threat to the integrity of the insured State nonmember bank.

The FDIC recognizes that a serious threat to the integrity of an insured State nonmember bank occurs when its Bank Officials become involved in outside business interests or employment that gives rise to a conflict of interest. Such conflicts of interest may evolve into corrupt transactions that are covered under the bank bribery statute. Accordingly, insured State nonmember banks are encouraged to prohibit, in their codes of conduct or policies, their Bank Officials fromn self-dealing or otherwise trading on their positions with the bank or accepting from doing or seeking to do business with the bank a business opportunity not generally available to the public. In this regard, an insured State nonmember bank's code of conduct or policy should require that its Bank Officials disclose all potential conflicts of interest, including those in which they have been inadvertenly placed due to either business or personal relationship with customers, suppliers, business associates, or competitors of the bank.

Exceptions

In its code of conduct or written policy, an insured State nonmember bank may describe appropriate exceptions to the general prohibition regarding the acceptance of things of value in connection with bank business. These exceptions may include those that:

(a) Permit the acceptance of gifts, gratuities, amenities or favors based on obvious family or personal relationships (such as those between the parents, children or spouse of a Bank Official) where the circumstances make it clear that it is those relationships rather than the businees of the bank concerned which are the motivating factors;

(b) Permit acceptance of meals, refreshments or entertainment of reasonable value in the course of a

meeting or other occasion the purpose of which is to hold bona fide business discussions (the bank may establish a specific dollar limit for such an occasion);

(c) Permit acceptance of loans from other banks or financial institutions on customary terms to finance proper and usual activities of Bank officials, such as home mortage loans, except where prohibited by law;

(d) Permit acceptance of advertising or promotional material of nominal value, such as pens, pencils, note pads, key chains, calendars and similar items;

(e) Permit acceptance of discounts or rebates on merchandise or services that do not exceed those available to other customers;

(f) Permit acceptance of gifts of modest value that are related to commonly recognized events or occasions, such as a promotion, new job, wedding, retirement, holiday or birthday (the bank may establish a specific dollar limit for such an occasion); or

(g) Permit the acceptance of civic, charitable, educational, or religious organization awards for recognition of service and accomplishment (the bank may establish a specific dollar limit for such an occasion).

The policy or code may also provide that, on a case by case basis, an insured state nonmember bank may approve of other circumstances, not identified above, in which a Bank Official accepts something of value in connection with bank business, *Provided That* such approval is made in writing on the baiss of a full written disclosure of all relevant facts and is consistent with the bank bribery statute.

Disclosures and Reports

To make effective use of these guidelines, the FDIC recommends the following additional procedures:

(a) The insured state nonmember bank should maintain a copy of any code of conduct or written policy it establishes for its Bank Officials, including any modifications thereof;

(b) The insured state nonmember bank should require periodic written acknowledgement from its Bank Officials of its code or policy and the Bank Officials' agreement to comply therewith; and

(c) The insured State nonmember bank should maintain contemporaneous written reports of any disclosures made by its Bank Officials in connection with a code of conduct *or* written policy.

By Order of the Board of Directors, this 12th day of May, 1987.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 87-11343 Filed 5-18-87; 8:45 am]

BILLING CODE 6714-01-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA-790-DR]

Massachusetts; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the Commonwealth of Massachusetts (FEMA-790-DR), dated April 18, 1987, and related determinations.

DATED: May 11, 1987.

FOR FURTHER INFORMATION CONTACT: Sewall H.E. Johnson, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472, (202) 646-3616.

Notice: The notice of a major disaster for the Commonwealth of Massachusetts, dated April 18, 1987, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of April 18, 1987:

The communities of Ashby and Billerica in Middlesex County; Hubbardston, Phillipston, and Warren in Worcester County; Georgetown, Hamilton, Manchester, Methuen, Middleton, Newbury, Rowley, Topsfield, Amesbury, and Boxford in Essex County; and Blandford, Chester, and Granville in Hampden County for Public Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

Dave McLoughlin,

Deputy Associate Director, State and Local Programs and Support, Federal Emergency Management Agency.

[FR Doc. 87-11345 Filed 5-18-87; 8:45 am]

BILLING CODE 6718-02-M

Anti-Arson Program; Solicitation for Award of Cooperative Agreement

AGENCY: Federal Emergency Management Agency.

ACTION: Notice of solicitation for award of cooperative agreement.

Notice of Solicitation is hereby given that the Federal Emergency Management Agency, under the Fire Prevention and Control Act of 1974, will issue a Request for Assistance (RFA) No. EMW-87-S-2561 on May 29, 1987, regarding the design and implementation of anti-arson strategy program for Community-Based Anti-Arson Programs. This program is limited to Community-Based Organizations.

The purpose of this assistance is to focus on nationwide efforts to reduce the number of arson related fires that occur every year throughout this country.

Some broad objectives of this program are:

- To encourage neighborhood involvement in reducing arson fires through new and innnovative broad spectrum programs.
- To expand the neighborhood involvement to a community-wide participation in fighting arson.
- To make information available to other neighborhoods and communities regarding successful programs.
- To increase the cooperation between neighborhood residents, community groups and public service organizations such as fire, police, building and code departments.
- To build a comprehensive community anti-arson program.

Applications for assistance must be requested in writing and addressed as follows: Federal Emergency Management Agency, Office of Acquisition Management, 500 C Street, SW., Room 728, Washington, DC 20472, ATTN: Mark Russell, Contract Specialist.

Request for Assistance No. EMW-87-S-2561.

Please include a self-addressed mailing label with the request.

Cooperative Agreements are anticipated to be awarded as a result of this request for assistance. It is anticipated that a minumum of five (5) and a maximum of thirty (30) assistance awards will be made. The anticipated funding levels of this program are between $5,000.00 to $25,000.00 based on the criteria shown in Attachment C of the solicitation package.

Joseph A. Pegnato,

Acting Director, Office of Acquisition Management.

May 4, 1987.

[FR Doc. 87-11346 Filed 5-18-87; 8:45 am]

BILLING CODE 6718-01-M

FEDERAL MARITIME COMMISSION

[Fact Finding Investigation No. 17]

Rates, Charges and Services Provided at Marine Terminal Facilities; Order of Investigation

May 14, 1987.

On September 5, 1985, International Transporation Service, Inc. (ITS), a marine terminal operator (MTO), filed a petition for declaratory order on the issue of whether a lump-sum charge to an ocean carrier for wharfage, dockage, and stevedoring would have to be filed with the Commission. In a subsequently filed "Supplemental Statement Regarding Facts and Grounds Prompting the Petition" ITS outlined certain practices that have developed in the MOT industry which prompted it to file the petition. The Commission, on April 4, 1986, denied the petition on procedural grounds but in so doing noted that an MTO's charges for terminal services must be set forth in a tariff or an agreement on file with the Commission. The Commission further advised that it wold initiate an informal investigation into MTO practices to ensure compliance with the shipping statutes and the Commission's regulations.

As a result of this informal inquiry, the Commission has learned that a widespread practice appears to have developed in the MTO industry whereby MTOs are providing services to ocean carriers pursuant to negotiated agreements which may be required to be filed with the Commissin but which have not been so filed. As there appeared to be industry-wide uncertainty regarding the applicable filing requirements and in order to encourge compliance with these requirements, the Commission determined to waive the assessment of penalties for previously implemented but unfiled terminal service agreements if submitted to the Commission within 120 days of the Commission's Notice. Notice of Waiver of Penalties, 51 FR 23154 (June 25, 1986) (June Notice).

A number of terminal service agreements were filed with the Commission in apparent response to the June Notice. The Commission also received numerous requests for clarification of its filing requirements and expressions of concern as to their commerical impact and regulatory necessity. In addition several marine terminal/stevedore associations filed petitions seeking either an enlargement of time to comply with the Commission's requirements or exemption from these requirements pursuant to section 16 of the Shipping Act of 1984, 46 U.S.C. app. 1715 or section 35 of the Shipping Act, 1916, U.S.C. app. 833(a).[1] As a result of these communications, the Commission extended indefinitely the waiver of penalties provided by the June Notice. Supplemental Notice of Waiver of Penalties, 51 FR 36755 (October 15, 1986) (October Notice).[2]

One of the primary reasons given by MTOs or their associations for the uncertainty regarding the Commission's filing requirements is the maritime industry's transition from breakbulk carriage to containerized and Ro-Ro operations. As a result of this technological development, the traditional line demarcation between MTOs and stevedores has allegedly become blurred. stevedores which has not heretofore been regulated by the Commission, are said to have gegun to offer services other than physically moving cargoes an and off vessels. Consequently, we are advised that stevedoring/MTO agreements oftern provide for a combination of terminal and stevedoring or other services and that it is difficult, allegedly, to distinguish in which category a particular service would fall and whether it would be subject to the Commission's jurisdiction and, in particular, its filing requirements.

Because of this difficulty in distinguishing the various services, certain MTOs/stevedores view the Commission's filing requirements as unduly burdensome. Other have advised the Commission that their lump-sum all-inclusive rates are confidential commercial information which should not be subject to the Commission's filing requriements.

The Commission believes that a nonadjudicatory investigation initiated pursuant to Subpart R of its Rules of Practice and Procedure, 46 CFR 502.281, would be the most appropriate vehicle for examining the various issues arising from the Commission's June Notice and the responses received thereto. Given the absence of a factual record, and the industry-wide uncertainty regarding the Commission's requirements, a nonadversarial proceeding like that provided by Subpart R would appear to be the most appropriate vehicle for gathering information to facilitate the resolution the issues raised concerning the Commission's requirements.

Accordingly, the Commission is initiating a nonadjudicatory investigation and will appoint an Investigative Officer who will identify and make recommendations as to which services being furnished at terminal facilities, as well as the rates and charges therefor, should be classified as rates and services subject to the Commission's jurisdiction. In this connection, the Investigative Officer should determine the scope and impact of the Commission's filing requirements and assess the advisability of exempting certain kinds of services or the rates therefor from the Commission's filing requirements. This investigation shall also address such other matters as the Investigative Officer may determine to be relevant to the Commission's resolution of this matter.

Therefore, It Is Ordered, That pursuant to sections 11 and 12 of the Shipping Act of 1984, 46 U.S.C. app. 1710 and 1711; sections 22 and 27 of the Shipping Act, 1916, 46 U.S.C. app. 821 and 826; and Subpart R of Title 46 of the Code of Federal Regulations, 46 CFR 502.281, a nonadjudicatory investigation is hereby instituted into the furnishing of marine terminal facilities and services in connection with the transfer of cargo between an ocean common carrier, on the one hand, and a shipper or consignee or other means of transportation, on the other.

It Is Further Ordered, That the Investigative Officer shall be Commissioner Thomas F. Moakley of the Commission. The Investigative Officer shall direct the investigation and shall be assisted by such staff as may be assigned by the Commission's Managing Director;

The Investigative Officer shall have the full authority of the Commission to hold public or nonpublic sessions, to resort to all compulsory processes authorized by law (including the

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[1] The Commission received petitions or requests for clarification from the New York Terminal Conference, the Port of Philadephia Marine Terminal Association, Inc., the Traffic Board of the North Atlantic Ports Association, the Baltimore Marine Terminal Association, the New Orleans Steamship Association, Maher Terminals, Inc., West Gulf Maritime Association and the law firm of Lillick, McHose & Charles. In general, the parties urge the Commission to extend the waiver period until the Commission clarifies its filing requirements. They argue that the Commission's regulations do not clearly require the filing of agreements which provide for lump-sum rates for both terminal and stevedoring services. These parties further argue that it would be unduly burdensome to require MTOs to segregate their terminal service rates from their stevedoring rates and to file the former with the Commission. In this connection, it is alleged that it is difficult, given modern technology, to categorize the services MTOs provide carriers. Accordingly, many MTOs urge the Commission to exempt terminal service agreements from its filing requirements.

Some of the petitions were held in abeyance in the October Notice. The Commission will now hold all of the various petitions or requests for clarification in abeyance pending its further Order.

[2] By a separate Order served this date, the Commission has further clarified the waiver of penalties for marine terminal service agreements.

issuance of subpoenas), to administer oaths and to perform such other duties as may be necessary in accordance with the laws of the United States and the regulations of the Commission;

It Is Further Ordered, That any person having an interest and desiring to participate in this proceeding, shall file a statement with the Investigative Officer, describing its interest on or before June 15, 1987;

It Is Further Ordered, That the Investigative Officer shall issue to the Commission interim progress reports at least every three months, and a final report of findings and recommendations no later than one year after publication of this Order in the **Federal Register** all such reports to remain confidential unless and until the Commission rules otherwise; and

It Is Further Ordered, That Notice of this Order be published in the **Federal Register**.

By the Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 87-11362 Filed 5-18-87; 8:45 am]

BILLING CODE 6730-01-M

Marine Terminal Service Agreements

May 14, 1987.

AGENCY: Federal Maritime Commission.

ACTION: Second supplemental notice of waiver of penalties.

SUMMARY: This Second Supplemental Notice clarifies that the Commission's waiver of the assessment of penalties under the Shipping Act, 1916, and the Shipping Act of 1984 for pre-filing implementation of marine terminal service agreements: (1) Applies only to marine terminal service agreements, and not to leases, licenses, assignments, or other agreements of a similar nature for the use of marine terminal property; (2) extends to penalties which could otherwise be assessed for failure to file the rates and charges set forth in such terminal service agreements in a marine terminal tariff; and (3) encompasses marine terminal agreements entered into after June 25, 1986.

DATE: May 19, 1987.

FOR FURTHER INFORMATION CONTACT: Robert G. Drew, Director, Bureau of Domestic Regulation, Federal Maritime Commission, 1100 L Street, NW., Washington, DC 20573, (202) 523-5796.

SUPPLEMENTARY INFORMATION: On October 15, 1986, the Commission published in the **Federal Register** (51 FR 36755) a Supplemental Notice of Waiver of Penalties (October Notice), which extended indefinitely its June 25, 1986 Notice of Waiver of Penalties (June Notice) (51 FR 23154) concerning the pre-filing implementation of marine terminal service agreements.

The October Notice stated that the Commission was extending until further notice its waiver of penalties for terminal service agreements pending a formal study to determine the scope and impact of the Commission's filing requirement. The Commission also intended to explore whether an exemption would be appropriate for certain such agreements.

The Commission has by separate Order issued this date instituted a non-adjudicatory fact finding investigation into the nature and scope of marine terminal services and their relationship to the Commission's agreement filing requirements. However, in the interim, there is a need to clarify the Commission's policy with regard to terminal service agreements, particularly with respect to its waiver of penalties in this area.

On the basis of its experience to date under the June and October Notices, the Commission has determined it necessary to clarify its intention that the waiver applies only to marine terminal service agreements, and not to leases, licenses, assignments, or other agreements of a similar nature for the use of marine terminal property.[1] The Commission is also clarifying its intention that the waiver extend to penalties which could otherwise be assessed for failure to file the rates and charges set forth in the unfiled marine terminal service agreements in a marine terminal tariff as required by 46 CFR Part 515. Finally, the Commission desires to hereby clarify that this waiver of penalties encompasses marine terminal service agreements entered into after June 25, 1986.

Parties to marine terminal service agreements are, of course, free to file such agreements with the Commission under the 1916 and 1984 Acts pursuant to 46 CFR Part 560 and/or 46 CFR Part 572, respectively, during this period.

Accordingly, notice is hereby given that, until further notice, the penalty provisions of sections 32(a) and 32(c) of the Shipping Act, 1916, 46 U.S.C. app. 831, and section 13 of the Shipping Act of 1984, 46 U.S.C. app. 1712, will not be invoked against parties to terminal service agreements, including agreements entered into after June 25, 1986, for failure to file such agreements with the Commission as required by section 15 of the Shipping Act, 1916, 46 U.S.C. app. 814, and/or section 5 of the Shipping Act of 1984, 46 U.S.C. app. 1704; or for failure to file the rates and charges set forth in such unfiled marine terminal service agreements in the marine terminal operator's terminal tariff, as required by 46 CFR Part 515.

This notice supersedes the October Notice.

By the Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 87-11361 Filed 5-18-87; 8:45 am]

BILLING CODE 6730-01-M

[1] For the purpose of this notice, "terminal service agreement" means an agreement which relates to rates and charges for terminal services including, but not limited to, "services" as defined in 46 CFR 515.6(d), performed for common carriers pursuant to negotiated contracts. The term "terminal service agreement" does not, however, include leases, licenses, assignments or other arrangements of a similar nature for the use of marine terminal property.

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.: 217-011098.

Title: Shipping Corporation of New Zealand Limited/Pacific Australia Direct Line Reciprocal Space Charter Agreement.

Parties:

Shipping Corporation of New Zealand Limited

Pacific Australia Direct Line

Synopsis: The proposed agreement would permit the parties to charter space on one another's vessels and to interchange containers and related equipment in the trade between North American Pacific Coast ports and ports in Australia.

Dated: May 14, 1987.

By Order of the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 87-11381 Filed 5-18-87; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

Asia Bancshares, Inc., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than June 11, 1987.

A. **Federal Reserve Bank of New York** (William L. Rutledge, Vice President) 33 Liberty Street, New York, New York 10045:

1. *Asia Bancshares, Inc.*, Flushing, New York; to become a bank holding company by acquiring 100 percent of the voting shares of Asia Bank, National Association, Flushing, New York.

B. **Federal Reserve Bank of St. Louis** (Randall C. Sumner, Vice President) 411 Locust Street, St., Louis, Missouri 63166:

1. *Arkansas Union Bancshares, Inc.*, Benton, Arkansas; to become a bank holding company by acquiring at least 80 percent of the votong shares of Union Bancshares of Benton, Inc., Benton, Arkansas, and thereby indirectly acquire The Union Bank of Benton, Benton, Arkansas.

Board of Governors of the Federal Reserve System, May 13, 1987.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 87-11336 Filed 5-18-87; 8:45 am]

BILLING CODE 6210-01-M

Bankcore, Inc.; Application To Engage de Novo in Permissible Nonbanking Activities

The company listed in this notice has 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.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than June 11, 1987.

A. **Federal Reserve Bank of Boston** (Robert M. Brady, Vice President) 600 Atlantic Avenue, Boston, Massachusetts 02106:

1. *Bankcore, Inc.*, North Conway, New Hampshire; to engage *de novo* in data processing advisory services and management consulting to depository institutions pursuant to § 225.25(b)(7) and (b)(11) of the Board's Regulation Y. These activities will be conducted in the State of New Hampshire.

Board of Governors of the Federal Reserve System, May 13, 1987.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 87-11337 Filed 5-18-87; 8:45 am]

BILLING CODE 6210-01-M

Change in Bank Control; Acquisitions of Shares of Banks or Bank Holding Companies; Alan E. Johnson et al.

The notifications listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than June 3, 1987.

A. **Federal Reserve Bank of Atlanta** (Robert E. Heck, Vice President) 104 Marietta Street, NW., Atlanta, Georgia 30303:

1. *Alan E. Johnson*, Jacksonville, Florida; to acquire 38.80 percent of the voting shares of St. Petersburg, St. Petersburg, Florida.

B. **Federal Reserve Bank of St. Louis** (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *Charles D. Campbell*, Paragould, Arkansas; to acquire 59.94 percent of the voting shares of Mountain Bancshares, Inc., Yellville, Arkansas, and thereby indirectly acquire The Bank of Yellville, Yellville, Arkansas.

2. *Louis H. Schlafly*, Kenneth W. Stumpf; Horce C. Volkert; William E. Mixon III; Harold A. Dashner; and

Gernald L. Giffhorn; all of Columbia, Illinois; to acquire 25.14 percent of the voting shares of Columbia Bancshares, Inc., Columbia, Illinois, and thereby indirectly acquire Columbia National Bank, Columbia, Illinois.

Board of Governors of the Federal Reserve System, May 13, 1987.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 87-11338 Filed 5-18-87; 8:45 am]

BILLING CODE 6210-01-M

Rebank Netherlands Antilles, N.V.; Formation of, Acquisition by, or Merger of Bank Holding Companies; and Acquisition of Nonbanking Company

The company listed in this notice has applied under § 225.14 of the Board's Regulation Y (12 CFR 225.14) for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) to become a bank holding company or to acquire voting securities of a bank or bank holding company. The listed company has also applied under § 225.23(a)(2) of Regulation Y (12 CFR 225.23(a)(2)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbaking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies, or to engage in such an activity. Unless otherwise noted, these activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be acompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than June 8, 1987.

A. **Federal Reserve Bank of Atlanta** (Robert E. Heck, Vice President) 104 Marietta Street, NW., Atlanta, Georgia 30303:

1. *Rebank Netherlands Antilles, N.V.*, Miami, Florida; to become a bank holding company by acquiring 100 percent of the voting shares of Republic Banking Corporation of Florida, Miami, Florida.

In connection with this application, Applicant also proposes to acquire Rebank Mortgage Corporation, Miami, Florida, and thereby engage in making and servicing mortgage loans pursuant to § 225.25(b)(1)(iii) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, May 13, 1987.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 87-11339 Filed 5-18-87; 8:45 am]

BILLING CODE 6210-01-M

Applications To Engage de Novo in Permissible Nonbanking Activities; Valley Bancorporation; Correction

This notice corrects a previous **Federal Register** notice (FR Doc. 87-10624) published at page 17638 of the issue for Monday, May 11, 1987.

Under the Federal Reserve Bank of Chicago, the entry for Valley Bancorporation is revised to read as follows:

A. **Federal Reserve Bank of Chicago** (David S. Epstein, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Valley Bancorporation*, Appleton, Wisconsin; to acquire Valley Systems, Inc., Appleton, Wisconsin, and thereby engage in data processing activities pursuant to § 225.25(b)(7) of the Board's Regulation Y.

Comments on this application must be received by June 1, 1987.

Board of Governors of the Federal Reserve System, May 13, 1987.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 87-11340 Filed 5-18-87; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control

Cooperative Agreements for Community Chronic Disease Prevention; Availability of Funds for Fiscal Year 1987

Introduction

The Centers for Disease Control (CDC) announces the availability of funds in Fiscal Year 1987 for competitive applications for cooperative agreements for building State capacity for community chronic disease prevention.

Authority

This cooperative agreement is authorized by section 301(a)[42 U.S.C. 241(a)] of the Public Health Service Act, as amended. The Catalog of Federal Domestic Assistance Number is 13.283.

Eligible Applicants

Because the intent of this cooperative agreement program is to develop State capacity to assist communities in the development and implementation of community-based chronic disease prevention programs, competition is limited to the official State public health agencies, including the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, the Northern Mariana Islands, American Samoa, the Federated States of Micronesia, the Republic of the Marshall Islands and the Republic of Palau. No other applications will be accepted.

Program Background and Objectives

The purpose of this program is to assist States to build a capacity for assistance to communities in the development of community-based chronic disease prevention programs, which relate to cardiovascular disease (CVD) and cancer. These chronic diseases are of obvious importance as a public health issue in the United States; they rank as numbers 1 and 2 for a variety of negative health indicators, including leading causes of death, total hospital days, and expected years of life lost. Thus, they rank overall as the two most important diseases in this nation.

Objectives for this cooperative agreement are:

- To develop State's internal capacity to process and analyze community-level chronic disease behavioral risk factor data.
- To demonstrate the capacity of these same States to assist two or more communities each to design and implement effective community-based

interventions focusing on measurable, local chronic disease priorities related to CVD and cancer.

It is expected that 50 percent of the resources specified for intervention activities under this cooperative agreement will be directed at high risk and minority populations.

Availability of Funds

Approximately $400,000 will be available in Fiscal Year 1987 to award 3–5 cooperative agreements. The average award will be $100,000 with individual cooperative agreements ranging from approximately $50,000 to $130,000. It is expected that cooperative agreements will begin on or about September 30, 1987. The cooperative agreements will be awarded in 12 month budget periods within a 3 year project period. Funding estimates outlined above may vary and are subject to change.

Application Submission and Deadline

The original and two copies of the application must be submitted to Chief, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control, 255 East Paces Ferry Road NE., Room 321, Atlanta, Georgia, 30305, on or before July 15, 1987.

1. Deadline

Applications will be considered to meet the deadline if they are either:

a. Received at the above address on or before the deadline date, or

b. Sent on or before July 15, 1987, and received in time for submission to the independent review group. (Applicants should request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier. Private metered postmarks will not be accepted as proof of timely delivery).

2. Late Applications

Applications which do not meet the above criteria are considered late applications. Late applications will not be considered in the current competition and will be returned to the applicant.

Other Submission and Review Requirements

Applications are not subject to review as governed by Executive Order 12372, Intergovernmental Review of Federal Programs.

Where to Obtain Additional Information

Information on application procedures, copies of application forms and other material may be obtained from Nealean Austin, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control, 255 East Paces Ferry Road NE., Room 321, Atlanta, Georgia 30305, telephone (404) 262–6575, or FTS 236–6575. Technical assistance may be obtained from James S. Belloni, Division of Health Education, Center for Health Promotion and Education, Centers for Disease Control, Atlanta, Georgia 30333, telephone (404) 329–3452 or FTS 236–3452.

Dated: May 13, 1987.

Robert L. Foster,

Acting Director, Office of Program Support, Centers for Disease Control.

[FR Doc. 87–11324 Filed 5–18–87; 8:45 am]

BILLING CODE 4160–18–M

Food and Drug Administration

[Docket No. 87B–0025]

Preproduction Quality Assurance Planning; Draft Recommendations for Medical Device Manufacturers

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of draft recommendations entitled "Preproduction Quality Assurance Planning: Recommendations for Medical Device Manufacturers—February 1987." The draft recommendations were prepared by FDA's Center for Devices and Radiological Health (CDRH). FDA is making available the draft recommendations to assist a device manufacturer to plan and implement a preproduction quality assurance program to provide reasonable assurance of the safety and effectiveness of the designs of medical devices before the manufacturer releases the designs to production for routine manufacturing.

DATE: Comments by August 17, 1987.

ADDRESS: Written requests for single copies of the draft recommendations to the Division of Small Manufacturers Assistance (HFZ–220), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857. Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, Room 4–62, 5600 Fishers Lane, Rockville, MD 20857. The draft recommendations are also on file, and available for review, at the Dockets Management Branch.

FOR FURTHER INFORMATION CONTACT: Sharon Kalokerinos, Center for Devices and Radiological Health (HFZ–330), Food and Drug Administration, 8757 Georgia Avenue, Silver Spring, MD 20910, 301–427–7984.

SUPPLEMENTARY INFORMATION: FDA, through CDRH, develops and carries out a national program to ensure the safety and effectiveness of medical devices. One aspect of this program involves regulatory activities under the laws administered by the agency. As an important adjunct to its regulatory program, CDRH conducts a variety of educational efforts, such as making available recommendations that anesthesia professionals perform a daily checkout and inspection procedure of the anesthesia gas machine before using it (52 FR 5583; February 25, 1987).

FDA now is making available draft recommendations intended to assist a device manufacturer to plan and implement a preproduction quality assurance program to provide reasonable assurance of the safety and effectiveness of the designs of its devices before the manufacturer releases the designs to production for routine manufacturing.

CDRH prepared the draft recommendations for preproduction quality assurance planning for device designs following its evaluation of over 1,000 device recalls that manufacturers have made during 1983 through 1985. CDRH believes that the device problems that resulted in about half of these recalls would not have occurred had the manufacturers established and implemented a preproduction quality assurance program for device designs. These draft recommendations are based on 30 cited scientific references describing good design practices that CDRH has adapted to medical device manufacturing.

FDA often formulates and disseminates recommendations about matters which are authorized by, but do not involve direct regulatory action under, the laws administered by the agency. Accordingly, FDA is making these draft recommendations available under 21 CFR 10.90(c) of the agency's administrative practices and procedures regulations.

Comments received before August 17, 1987, will be considered by FDA during its preparation of final recommendations on this matter; however, comments on these draft recommendations may be submitted at any time. The comments will be considered in determining whether amendments of the recommendations are warranted.

Interested persons may, on or before August 17, 1987 submit to the Dockets Management Branch (address above)

written comments regarding these draft recommendations. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the document number found in brackets in the heading of this document. Received comments may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: May 12, 1987.

John M. Taylor,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 87-11328 Filed 5-18-87; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF THE INTERIOR

Alaska Land Use Council; Meeting

As required by the Alaska National Interest Lands Conservation Act (ANILCA), Pub. L. 96-487, dated December 2, 1980, Section 1201, Paragraph (h), the Alaska Land Use Council will meet at 10:00 a.m., Thursday, June 4, 1987, in the Juneau City and Borough Assembly Chamber, 155 South Seward Street, Juneau, Alaska.

The Tentative Agenda will include Council consideration of:

—Kodiak and Kanuti NWR Comprehensive Conservation Plans,
—Council Work Program Recommendations for 1986-87,
—Council Call for Work Program Items,
—Recreation Use of Land, State of Alaska, House Bill 198,
—Cooperative Planning Zones Recommendations,
—National Park Service Proposed Mining Rule, 36 CFR Part 9,
—Trans-Alaska Gas System EIS Status,
—U.S. FWS Development of Regulations for Subsistence Hunting of Migratory Birds,
—Tongass Timber Reform Act,
—Other items as may be appropriately considered by the Council.

Any individual desiring to appear before the Council to address any of the above matters or matters of general concern to the Council should contact either Cochairman's office before the close of business Thursday, May 21, 1987.

FOR FURTHER INFORMATION CONTACT:

Alaska Land Use Council, Office of the Federal Cochairman, P.O. Box 10012, Anchorage, Alaska 99510, (907) 272-3422, (FTS) 271-54f85;

Alaska Land Use Council, Office of the State Cochairman Designee, Pouch AM, Juneau, AK 99811, (907) 465-3562 or 2600 Denali St, Suite 700, Anchorage, AK 99503, (907) 274-3528.

The public is invited to attend.

William P. Horn,

Assistant Secretary for Fish and Wildlife and Parks.

May 13, 1987.

[FR Doc. 87-11341 Filed 5-18-87; 8:45 am]

BILLING CODE 4310-10-M

Office of the Secretary

Reservation of Colorado River Water for Use on Federally Owned Lands in Arizona; Boulder Canyon Project

Pursuant to the authority contained in the Boulder Canyon Project Act, dated December 21, 1928 (45 Stat. 1057), as amended; section 301(b) of the Colorado River Basin Project Act, dated September 30, 1968 (82 Stat. 887); and consistent with the Supreme Court Opinion of June 3, 1963 (373 U.S.C. 546); the Supreme Court Decree of March 9, 1964, in *Arizona v. California et al.* (376 U.S. 340), as supplemented January 9, 1979 (439 U.S. 419); and the February 9, 1944, contract between the United States and the State of Arizona, notice is given that there is hereby reserved to the United States out of the waters of the Colorado River the annual consumptive use of 1,930 acre-feet for use on Federally owned lands in Arizona which are administered by the Bureau of Land Management of the Department of the Interior. The water so reserved is in addition to 800 acre-feet previously reserved for said purpose in Arizona by notice dated August 30, 1973, (**Federal Register**, Volume 38, No. 173, Pages 24389 and 24390, Friday, September 7, 1973), and 1,280 acre-feet previously reserved for said purpose in Arizona by notice, dated September 29, 1981, (**Federal Register**, Volume 46, No. 194, Pages 49654 and 49655, Wednesday, October 7, 1981). The water is for culinary, sanitary, and related nonagricultural domestic uses on Bureau of Land Management campsites, concession areas, cabinsites, and other purposes involved in the recreational program of the Bureau of Land Management along the Lower Colorado River in Arizona.

In times of shortage, the quantity of water available for delivery under this reservation will be accorded equal priority with all similar uses of water in Arizona authorized by contracts or other arrangements after September 30, 1968, irrespective of the order in which such contracts or other arrangements were made after September 30, 1968.

The aforesaid reservation of water is suject to:

(a) The provisions of the Colorado River Compact signed in Santa Fe, New Mexico, November 24, 1922;

(b) The provisions of the Boulder Canyon Project Act of December 21, 1928 (45 Stat. 1057), as amended;

(c) The provisions of the Supreme Court Opinion, dated June 3, 1963 (373 U.S. 546), and the Supreme Court Decree of March 9, 1964, in *Arizona v. California, et al.* (376 U.S.C 340), as supplemented January 9, 1979 (439 U.S. 419);

(d) The provisions of the Mexican Water Treaty, signed in Washington, DC, February 3, 1944, and Minute 242 of the International Boundary and Water Commission, United States and Mexico, dated August 30, 1973; and

(e) The provisions of section 301(b) of the Colorado River Basin Project Act of September 30, 1968 (82 Stat. 885).

For further information, you may contact Mr. LeGrand Neilson, Contracts and Repayment Branch, Bureau of Reclamation, P.O. Box 427, Boulder City, Nevada 89005, at (702) 293-8536.

Dated: April 27, 1987.

Donald P. Hodel,

Secretary of the Interior.

[FR Doc. 87-11365 Filed 5-18-87; 8:45 am]

BILLING CODE 4310-09-M

Bureau of Indian Affairs

Reservation Establishment; Pueblo of Santa Ana, NM; Determination; Correction

May 5, 1987.

In FR Doc. 87-7992 appearing on page 11756, in the issue for Friday, April 10, 1987, the following correction is hereby made:

Appearing in the first paragraph, line 8, after "Interior" delete the word "received" and insert the words "did not receive any".

Ross O. Swimmer,

Assistant Secretary, Indian Affairs.

[FR Doc. 87-11353 Filed 5-18-87; 8:45 am]

BILLING CODE 4310-02-M

Bureau of Land Management

[NV-930-4212-24; N-42565]

Termination of Airport Lease Application Involving Lands in Clark County, NV

Notice is hereby given that airport lease application N-42565, involving the following described lands, has been withdrawn:

Mount Diablo Meridian, NV

T.13S., R.70E.,

Sec. 15, All,
Sec. 16, E½,
Sec. 21, E½,
Sec. 22, W½,
Sec. 27, NW¼,
Sec. 28, NE¼.

the segregative effect of the airport lease application is hereby removed upon publication of this notice in the **Federal Register.**

Dated: May 11, 1987.

Charles Frost,

Acting District Manager.

[FR Doc. 87-11329 Filed 5-18-87; 8:45 am]

BILLING CODE 4310-HC-M

[CO-070-07-4410-08]

Colorado; Availability of the Approved Grand Junction Resource Management Plan and Record of Decision

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability.

SUMMARY: Pursuant to the National Environmental Policy Act of 1969 (40 CFR 1505.2), the Department of the Interior, Bureau of Land Management (BLM), has prepared a record of decision for the approved Grand Junction Resource Management Plan and Environmental Impact Statement. The BLM also has designated eight areas of critical environmental concern (ACECs).

ADDRESS: Copies of the record of decision and approved resource management plan are available upon request at the Grand Junction Resource Area Office, Bureau of Land Management, 764 Horizon Drive, Grand Junction, Colorado 81506.

FOR FURTHER INFORMATION CONTACT: John Singlaub, Area Manager, Bureau of Land Management, Grand Junction Resource Area Office, 764 Horizon Drive, Grand Junction, Colorado 81506.

SUPPLEMENTARY INFORMATION: The Grand Junction Resource Management Plan is approved. The plan was prepared under the regulations for implementing the Federal Land Policy and Management Act (FLPMA) of 1976 (43 CFR Part 1600). An environmental impact statement was prepared for this plan in compliance with the National Environmental Policy Act (NEPA) of 1969. The approved plan is identical to the one set forth in the proposed plan and associated final environmental impact statement published in November 1985.

Decisions

—Withdraw an additional 171,320 acres from mineral entry.

—Identify approximately 390,000 acres of the Book Cliffs potential coal development area as acceptable for further coal leasing consideration.

—Increase fuelwood harvesting approximately 8 percent, from 2,600 to 2,800 cords per year.

—Manage deer, elk, and bighorn sheep as the key wildlife species on about 80 percent of the resource area.

—Continue to manage livestock grazing as described in the Grand Junction Grazing Management Environmental Statement. Reevaluate existing allotment management plans to ensure consistency with objectives for riparian and critical erosion area goals.

—Expand the Little Book Cliffs Wild Horse Range by 2,380 acres for a total of 30,261 acres and manage for 65 to 120 wild horses.

—Protect approximately 35 percent of the resource area's visual resources from impairment.

—Designate 480,110 acres as open, 640,323 acres as limited, and 156,627 acres as closed to off-road vehicle use. Allow competitive events and intensive off-road vehicle activity on approximately 11,000 acres.

—Recommend four wilderness study areas totaling 166,340 acres as preliminarily suitable for wilderness designation.

—Dispose of approximately 25,000 acres of mostly small, isolated, and difficult to manage public land tracts.

—Designate eight areas covering 23,240 acres as areas of critical environmental concern (ACECs) and as either research natural areas (RNAs) or outstanding natural areas (ONAs).

ACEC Designations

1. Fruita Paleontological Site (280 acres)

Designate as an RNA and ACEC to protect fossils. Close the area to off-road vehicle travel. Continue the withdrawal for locatable minerals under the 1872 Mining Laws, as amended. Close the area to mineral material disposal. Designate the area as unsuitable for public utilities. Place a no surface occupancy stipulation on all new oil and gas leases and on applications for permit to drill existing oil and gas leases.

2. Rabbit Valley Paleontological Site (280 acres)

Designate as an RNA and ACEC for educational purposes and to protect fossils. Limit off-road vehicle travel to designated roads and trails. Close the area to mineral material disposal. Identify the area as unsuitable for public utilities. Place a no surface occupancy stipulation on all new oil and gas leases and on applications for permit to drill existing oil and gas leases.

3. Unaweep Seep RNA (37 acres)

Designate this RNA as an ACEC and manage to protect a sensitive butterfly. Close the area to off-road vehicle travel and wood harvesting. Place a no surface occupancy stipulation on all new oil and gas leases and on applications for permit to drill existing oil and gas leases.

4. Badger Wash (1,520 acres)

Designate as an ACEC and manage to protect sensitive plants and a hydrologic study area. Identify the entire ACEC as sensitive to placement of public utilities. Protect the sensitive plants on the entire ACEC by placing an avoidance stipulation on all proposed projects. Prohibit surface-disturbing activities on 685 acres (the Badger Wash hydrologic study area) of this ACEC. Close the hydrologic study area to mineral material disposal. Place a no surface occupancy stipulation on new oil and gas leases and on applications for permit to drill existing oil and gas leases in the hydrologic study area.

5. Pyramid Rock (470 acres)

Designate as an RNA and ACEC. Manage to protect sensitive and endangered plants. Limit off-road vehicle travel to designated roads and trails. Place a no surface occupancy stipulation on new leases and on applications for permit to drill existing oil and gas leases. Close the ACEC to mineral material disposal.

6. Rough Canyon (1,470 acres)

Designate as an RNA and ACEC. Manage to protect endangered and sensitive plants, scenic, geologic, and cultural values. Limit off-road vehicle travel to existing roads and trails. Maintain the existing natural recreation setting and recreational opportunities in this special recreation management area. Place a no surface occupancy stipulation on all new oil and gas leases and on applications for permit to drill existing oil and gas leases. Close the ACEC to mineral material disposal, public utilities, and wood sales. Classify as a visual resource management class

II area to retain the landscape character. Provide for continued educational and interpretive uses.

7. Gunnison Gravels (5 acres)

Designate as an RNA and ACEC. Manage to protect the sand and gravel deposit (geologic processes). Close the area to off-road vehicle travel. Close the area to mineral material disposal. Identify the area as unsuitable for public utilities. Place a no surface disturbance stipulation on all new oil and gas leases and on applications for permit to drill existing oil and gas leases.

8. The Palisade (19,178 acres)

Designate as an RNA and ACEC. Manage to protect scenic values. Close 1,920 acres to off-road vehicle use and limit 17,258 acres to designated roads and trails. Maintain the national setting and recreational opportunities in this special recreation management area. Classify 1,920 acres as a visual resource management class I area to preserve the natural landscape character and 17,258 acres as a visual resource management class II area to retain the landscape character. Place a no surface occupancy stipulation on new oil and gas leases and on applications for permit to drill existing oil and gas leases. Design firewood sales to protect scenic values and to remain compatible with other ONA management objectives. Close the area to mineral material disposal and to public utilities.

Dated: May 8, 1987.

Kenneth D. Witt,

Acting State Director.

[FR Doc. 87-11330 Filed 5-18-87; 8:45 am]

BILLING CODE 4310-JB-M

[NV-943-07-4220-11; Nev-044542 and Nev-051770]

Proposed Modification and Continuation of Withdrawals; Nevada

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) proposes that the two withdrawals aggregating 40 acres for an air navigation site near Reno, Nevada, be modified to establish a 20-year term. The land will remain closed to surface entry and mining, but will be opened to application under the mineral leasing laws.

DATE: Comments should be received by August 17, 1987.

FOR FURTHER INFORMATION CONTACT: Vienna Wolder, Bureau of Land Management, Nevada State Office, P.O. Box 12000, Reno, NV 89520 (702) 784-5481.

SUPPLEMENTARY INFORMATION: The FAA proposes that the existing withdrawals made by Secretarial Order of January 31, 1936, and BLM Order of April 3, 1957, be modified to establish a 20-year term. This action is taken pursuant to section 204 of the Federal Land Policy and Management Act of 1976 (90 Stat. 2751; 43 U.S.C. 1714). The lands are described as follows:

Mount Diablo Meridian, NV

T.19 N., R. 21 E.,

Sec. 8, W½SW¼NE¼, E½SE¼NW¼.

The area described aggregates 40 acres in Washoe County.

The purpose of the withdrawals is to provide the minimum essential acreage required to protect the construction, operation, and maintenance of this site from electronic or physicial interference for flight safety purposes. The withdrawals segregate the land from operation of the public land laws, including the mining laws, but not the mineral leasing laws. No change is proposed in the purpose. The segregative effect of the withdrawals will be modified to allow applications under the mineral leasing laws.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments in connection with the proposed withdrawals continuation may present their views in writing to the Chief, Branch of Lands and Minerals Operations, Bureau of Land Management, Nevada State Office, P.O. Box 12000, Reno, Nevada 89520.

The authorized officer of the Bureau of Land Management will undertake such investigations as are necessary to determine the existing and potential demand for the land and its resources. A report will also be prepared for consideration by the Secretary of the Interior, the President, and the Congress, who will determine whether or not the withdrawals will be continued and, if so, for how long. The final determination on the continuation of the withdrawals will be published in the **Federal Register**. The existing withdrawals will continue until such final determination is made.

Dated: May 11, 1987.

Marla B. Bohl,

Acting Deputy State Director, Operations.

[FR Doc. 87-11331 Filed 5-18-87; 8:45 am]

BILLING CODE 4310-HC-M

[WO-150-07-4830-11]

National Public Lands Advisory Council; Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of meeting of the National Public Lands Advisory Council.

SUMMARY: Notice is hereby given that the National Public Lands Advisory Council will meet June 19, 1987. The meeting will be held at the Sheraton Hotel, 401 East Sixth Avenue, Anchorage, Alaska, from 8:00 a.m. to 5:00 p.m. Preceding the June 19 meeting, Council members will participate in a field tour of BLM-managed lands in Alaska. The proposed agenda for the meeting is:

Friday, June 19

Morning

Status report on gas transmission system development; Discussion of the Department's Arctic National Wildlife Refuge (ANWR) report; Placer mining operations in Alaska; Meeting and Council Subcommittees (Energy and Minerals, Lands, and Renewable Resources).

Afternoon

Public Statement Period; Council old and new business, to include Department responses to previous Council resolutions; Presentation on the Automated Land Records System; Alaska conveyance issues; Final meeting of Council subcommittees; Report from subcommittees to full Council, and consideration of Council resolutions.

All meetings of the Council are open to the public. Opportunity will be given for members of the public to make oral statements to the Council, beginning at 1:00 p.m. on June 19. Speakers should address specific national public lands issues on the meeting agenda and are encouraged to submit a copy of their written testimony prior to oral delivery. Please send written comments by June 12 to the Bureau of Land Management's Alasks State Office at the address listed below. Depending on the number of people who wish to address the Council, it may be necessary to limit the length of oral presentations.

DATE: June 19—Council Meeting and Public Statements.

ADDRESS: Copies of public statements should be mailed by June 12 to: Director, Alaska State Office (912), Bureau of Land Management, Box 13, 701 C Street, Anchorage, Alaska 99513.

FOR FURTHER INFORMATION, CONTACT: Karen Slater, Washington, D.C. Office BLM, telephone (202) 343–2054; or Joette Storm, Alaska State Office, BLM, telephone (907) 271–5555.

SUPPLEMENTARY INFORMATION: The Council advises the Secretary of the Interior through the Director, Bureau of Land Management, regarding policies and programs of a national scope related to public lands and resources under the jurisdiction of BLM.

Dated: May 13, 1987.

Robert F. Burford,

Director.

[FR Doc. 87–11364 Filed 5–18–87; 8:45 am]

BILLING CODE 4310–84–M

[MT–070–07–4212–13; M72225]

Realty Action; Exchange of Public and Private Lands; Lewis and Clark County, MT

AGENCY: Butte District Office Bureau of Land Management, Interior.

ACTION: Notice of Realty Action Exchange of public and private lands in Lewis and Clark County.

SUMMARY: The following described lands have been determined to be suitable for disposal by exchange under section 206 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1716.

Principal Meridian, Montana

T. 13 N., R. 5 W.,
Sec. 2, Lot 4, S½NW¼, N½SE¼,
Sec. 4, S½NW¼,
Sec. 6, Lot 1,
Sec. 10, SE¼SW¼, SW¼SE¼,
Sec. 20, E½NE¼, N½NW¼, SW¼NW¼,
Sec. 26, E½NE¼, NW¼NE¼,
Sec. 28, W½NW¼, SW¼, W½SE¼, SE¼SE¼,
Sec. 33, Lot 1, N½SE¼,
Sec. 34, NE¼, N½NW¼, SW¼NW¼, SE¼SW¼, S½SE¼.
T. 13 N., R. 4 W.,
Sec. 18; Lot 1,
T. 13 N., R. 3 W.,
Sec. 32; W½NW¼SE¼, W½SE¼ NW¼SE¼.
Aggregating 1609.71 acres of public land.

In exchange for these lands, the United States will acquire a portion of the following described lands:

Principal Meridian, Montana

T. 14 N., R. 4 W.,
Sec. 32; SE¼,
Sec. 34; SE¼SW¼, SW¼SE¼.
T. 13 N., R. 3 W.,
Sec. 18; Lots 1,3,4, E½NW¼, NE¼SW¼.
T. 13 N., R. 4 W.,
Sec. 3; All,
Sec. 9; All lands in the N½N½ located east of the Interstate R/W,
Sec. 10; S½N½,
Sec. 11; S½NW¼, N½SW¼, NW¼SE¼,
Sec. 13; NE¼, N½NW¼.
T. 12 N., R. 3 W.,
Sec. 22; W½,
Sec. 27; NW¼, N½SW¼,SW¼, SW¼,
Sec. 28; S½NW¼, N½SW¼, SE¼SE¼.
Aggregating 2553.81 acres of private lands.

DATE: For a period of on or before July 6, 1987, interested parties may submit comments to the address shown below. Any adverse comments will be evaluated by the BLM, Montana State Director, who may vacate, sustain, or modify this realty action and issue a final determination. In the absence of any objections, this realty action will become the final determination of the Department of Interior.

FOR FURTHER INFORMATION CONTACT: Information relating to the exchange, including the environmental assessment and land report, is available at the Butte District Office, P.O. Box 3388, Butte, Montana 59702.

SUPPLEMENTARY INFORMATION: The purpose of this exchange is to acquire additional public lands in the Sleeping Giant area which have high recreational and wildlife values in exchange for small, isolated public domain tracts which are difficult and uneconomical to manage.

The publication of this notice segregates the public lands described above from settlement, sale, location and entry under the public land laws, including the mining laws but not from exchange pursuant to section 206 of the Federal Land Policy and Management Act of 1976.

The exchange will be made subject to:

1. A reservation to the United States of a right-of-way for ditches or canals in accordance with 43 U.S.C. 945.

2. All valid existing rights (e.g., rights-of-way, easements and leases of record).

3. Value equalization by cash payments or acreage adjustments.

4. The exchange must meet the requirements of 43 CFR 4110.4–2(b).

This exchange is consistent with Bureau of Land Management policies and planning and has been discussed with State and local officials. The public interest will be served by completion of this exchange.

Dated: May 8, 1987.

James A. Moorhouse,

District Manager.

[FR Doc. 87–11354 Filed 5–18–87; 8:45 am]

BILLING CODE 4310–DN–M

National Park Service

To Negotiate Concession Contract; Temple Bar Resort

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 contract with Temple Bar Resort authorizing it to continue to provide lodging, food and beverage, merchandising, trailer village, marina and related facilities and services for the public at Lake Mead National Recreation Area, Nevada for a period of fifteen (15) years from January 1, 1988, through December 31, 2002.

The proposed contract requires a construction and improvement program which was previously described in the Environmental Impact Statement (September 11, 1986 FES–86–27) for the General Management Plan for Lake Mead National Recreation Area.

The foregoing concessioner has performed its obligations to the satisfaction of the Secretary under an existing contract which expires by limitation of time on December 31, 1987, and therefore, pursuant to the Act of October 9, 1965, as cited above, is entitled to be given preference in the renewal of the contract and in the negotiation of a new contract as defined in 36 CFR 51.5.

The Secretary will consider and evaluate all proposals received as a result of this notice. Any proposal, including that of the existing concessioner, must be postmarked or hand-delivered on or before the sixtieth (60th) day following publication of this notice to be considered and evaluated.

Interested parties should contact the Regional Director, Western Regional Office, 450 Golden Gate Avenue, San Francisco, California 94102, for information as to the requirements of the proposed contract.

Dated: April 22, 1987.

Howard H. Chapman,

Regional Director, Western Region.

[FR Doc. 87–11424 Filed 5–18–87; 8:45 am]

BILLING CODE 4310–70–M

National Register of Historic Places; Pending Nominations; Arkansas, et al

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before May 9, 1987. Pursuant to § 60.13 of 36 CFR Part

60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, U.S. Department of the Interior, Washington, DC 20243. Written comments should be submitted by June 3, 1987.

Carol D. Shull,

Chief of Registration, National Register.

ARKANSAS

Phillips County

Helena, *Helena Depot,* Natchez and Missouri Sts.

KENTUCKY

Laurel County

London, *Pennington Infirmary,* 411 Main St.

MARYLAND

Baltimore (Independent City)

Coleman, Robert W., School, 2201 Walbrook Ave.

Prince George's County

Berwyn Heights, *O'Dea House,* 5804 Ruatan St.

MASSACHUSETTS

Essex County

Newburyport, *Newburyport Harbor Rear Range Light (Lighthouses of Massachusetts TR),* Water St., near Merrimac River

Plymouth County

Brockton, *Brockton Edison Electric Illuminating Company Power Station,* 70 School St.

Suffolk County

Boston, *Abbotsford,* 300 Walnut Ave.

Worcester County

Athol, *Athol Historical Society Museum,* 1307 Main St.
Westborough, *West Main Street Historic District,* Roughly bounded by Milk, Main, Blake, and Fay Sts.
Winchendon, *Old Centre Historic District,* Roughly Old County and Baldwinsville Rds., Halle St., and Teel Rd.

MISSOURI

St. Charles County

St. Charles, *St. Charles Historic District (Boundary Increase), 1000 S. Main St.*

NEW JERSEY

MIddlesex County

Edison, *Shotwell, Benjamin, House,* 26 Runyon's Lane

NEW MEXCIO

Chaves County

Roswell, *Chaves County Courthouse (County Courthouses of New Mexcio TR),* 400 Blk. Main St.

Colfax County

Raton, *Colfax County Courthouse (County Courthouses of New Mexico TR),* Third and Savage
Springer, *Colfax County Courthouse in Springer (County Courthouses of New Mexcio TR),* 614 Maxwell Ave.

Curry County

Clovis, *Curry County Courthhouse (County Courthouses of New Mexico TR),* 700 Blk. Main St.

De Baca County

Fort Sumner, *De Baca County Courthouse (County Courthouses of New Mexico TR),* 500 Blk. Ave. C

Dona Ana County

Les Cruces, *Dona Ana County Courts Building (County Courthouses of New Mexico TR),* NW corner Church and Griggs Ave.

Guadalupe County

Puerto de Luna, *Guadalupe County Courthouse (County Courthouses of New Mexico TR),* S side NM 91
Santa Rosa, *Guadalupe County Courthouse in Santa Rosa (County Courthouses of New Mexico TR),* NW corner S. Fourth St. and Parker Ave.

Harding County

Mosquero, *Harding County Courthouse (County Courthouses of New Mexico TR),* Pine St.

Hidalgo County

Lordsburg, *Hidalgo County Courthouse (County Courthouses of New Mexico TR),* 300 S. Shakespeare St.

Lea County

Lovington, *Lea County Courthouse (County Courthouses of New Mexico TR),* 100 Blk. Main St.

McKinley County

Gallup, *McKinley County Courthouse (County Courthouses of New Mexico TR),* 205–209 W. Hill St.

Rio Arriba County

Tierra Amarilla, *Rio Arriba County Courthouse (County Courthouses of New Mexico TR),* NM 162, SE of US. 84

Union County

Clayton, *Union County Courthouse (County Courthouses of New Mexico TR),* Court St.

OREGON

Marion County

Silverton, *Silverton Commercial Historic District,* Roughly bounded by High and Oak Sts., Silver Creek, Lewis, Water, and First Sts.
St. Paul vicinity, *Kirk, John, W., and Thomas F., House,* 4686 St. Paul Hwy. NE

Multnomah County

Portland, *Dosch, Henry E., Investment Property,* 425 NW 18th Ave.
Portland, *Portland Thirteenth Avenue Historic District,* NW Thirteenth St. between Davis and NW Johnson Sts.

TEXAS

El Paso County

El Paso, *Plaza Theater,* 125 Pioneer Plaza

WASHINGTON

Thurston County

Olympia, *Aller House Hotel (Downtown Olympia MRA),* 114–118 N. Jefferson
Olympia, *American Legion Hall (Downtown Olympia MRA),* 219 W. Legion Way
Olympia, *Jeffers Studio (Downtown Olympia MRA),* 502 and 502 S. Washington
Olympia, *Olympia National Bank (Downtown Olympia MRA),* 422 S. Capitol Way
Olympia, *Town Square (Downtown Olympia MRA),* Bounded by Seventh, Legion, Capitol Way, and S. Washington

WYOMING

Sweetwater County

Natural Corrals Archaeological Site (48SW336)

[FR Doc. 87–11380 Filed 5–18–87; 8:45 am]
BILLING CODE 4310–70–M

Office of Surface Mining Reclamation and Enforcement

Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S. C. Chapter 35). Copies of the proposed collection of information and related forms and explantory material may be obtained by contacting the Bureau's clearance officer at the phone number listed below. Comments and suggestions on the requirement should be made within 30 days directly to the Bureau clearance officer and to the Office of Management and Budget Interior Department Desk Officer, Washington, DC 20503, telephone 202–395–7340.

Title: Requirements for Permits and Permit Processing 30 CFR Part 773.

Abstract: Sections 507, 508, and 513 of Pub. L. 95–87 requires procedures for public participation in the approval or disapproval of the permit application. Information is used by the regulatory authority to evaluate the permit application.

Bureau Form Number: None.

Frequency: On occasion.

Description of respondents: Coal Mine Operators.

Annual responses: 5,950.

Annual burden hours: 26,352.

Bureau clearance officer: Darlene Grose-Boyd (202) 343–5447.

Dated: April 14, 1987.

Carson W. Culp,

Assistant Director, Budget and Administration.

[FR Doc. 87–11332 Filed 5–18–87; 8:45 am]

BILLING CODE 4310–05–M

DEPARTMENT OF LABOR

Mine Safety and Health Administration

[Docket No. M–87–95–C]

Birchfield Mining, Inc.; Petition for Modification of Application of Mandatory Safety Standard

Birchfield Mining, Inc., 41 Eagles Road, Beckley, West Virginia 25801 has filed a petition to modify the application of 30 CFR 75.1701 (abandoned areas, adjacent mines; drilling of boreholes) to its No. 1 Mine (I.D. No 46–07273) located in Boone County, West Virginia. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that whenever any working place approaches within 50 feet of abandoned areas in the mine as shown by surveys made and certified by a registered engineer or surveyor, or within 200 feet of any other abandoned areas of the mine which cannot be inspected and which may contain dangerous accumulations of water or gas, or within 200 feet of any workings of an adjacent mine, a borehole or boreholes shall be drilled to a distance of at least 20 feet in advance of the working face of such working place and shall be continually maintained to a distance of at least 10 feet in advance of the advancing working face. When there is more than one borehole, they shall be drilled sufficiently close to each other to insure that the advancing working face will not accidentally hole through into abandoned areas or adjacent mines. Boreholes shall also be drilled not more than 8 feet apart in the rib of such working place to a distance of at least 20 feet and at an angle of 45 degrees.

2. The Birchfield No. 1 Mine is a new operation which is currently mining in a southeastern direction which will approach within 100 feet of the west bleeder entries of the Quinland No. 1 Mine.

3. Petitioner requests a modification of the standard to allow mining to within 100 feet of the Quinland No. 1 Mine, without the drilling of boreholes. In support of this request, petitioner states that:

(a) The west bleeder entries of the Quinland No. 1 Mine are being ventilated and evaluated in compliance with the approved ventilated plan;

(b) The west bleeder entries of the Quinland No. 1 Mine do not contain dangerous accumulations of water or gas;

(c) A resurvey was carried from the Birchfield No. 1 Mine permanent underground points into the affected area of the Quinland No. 1 Mine as a second check on the coordinates and location of the Quinland mine workings; and

(d) Birchfield and Quinland employ the same engineering firm for engineering services (spads and maps) which gives assurance that the mine maps of the Quinland No. 1 and Birchfield No. 1 Mines are compatible and contain consistent references to each mine since both mines are on the same coordinate system.

4. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before June 18, 1987. Copies of the petition are available for inspection at that address.

Dated: May 8, 1987.

Patricia W. Silvey,

Associate Assistant Secretary for Mine Safety and Health.

[FR Doc. 87–11383 Filed 5–18–87; 8:45 am]

BILLING CODE 4510–43–M

[Docket No. M–87–110–C]

Fox Coal Co.; Petition for Modification of Application of Mandatory Safety Standard

Fox Coal Company, 1744 Grand Avenue, Tower City, Pennsylvania 17980 has filed a petition to modify the application of 30 CFR 75.1400 (hoisting equipment; general) to its Little Vein Slope (I.D. 36–02000) located in Dauphin County, Pennsylvania. The petition is filed under section 1010(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that cages, platforms or other devices which are used to transport persons in shafts and slopes be equipped with safety catches or other approved devices that act quickly and effectively in an emergency.

2. Petitioner states that no such safety catch or device is available for the steeply pitching and undulating slopes with numerous curves and knuckles present in the main haulage slopes of this anthracite mine.

3. Petitioner further believes that if "makeshift" safety devices were installed they would be activated on knuckles and curves when no emergency existed and cause a tumbling effect on the conveyance.

4. As an alternate method, petitioner proposes to operate the man cage or steel gunboat with secondary safety connections securely fastened around the gunboat and to the hoisting rope, above the main connecting device. The hoisting ropes would have a factor of safety in excess of the design factor as determined by the formula specified in the American National Standard for Wire Rope for Mines.

5. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before June 18, 1987. Copies of the petition are available for inspection at that address.

Dated: May 6, 1987.

Patricia W. Silvey,

Associate Assistant Secretary for Mine Safety and Health.

[FR Doc. 87–11384 Filed 5–18–87; 8:45 am]

BILLING CODE 4510–43–M

[Docket No. M–87–98–C]

G & G Coal & Equipment Co., Inc.; Petition for Modification of Application of Mandatory Safety Standard

G & G Coal & Equipment Co., Inc., Route 1, Box 152, Woodbine, Kentucky 40771 has filed a petition to modify the application of 30 CFR 75.313 (methane monitor) ot its Mine No. 1 (I.D. No. 15–14261) located in Knox County, Kentucky, and its Mine No. 4 (I.D. No.

15–15833) located in Whitley County, Kentucky. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that a methane monitor be installed on any electric face cutting equipment, continuous miner, longwall face equipment and loading machine and shall be kept operative and properly maintained and frequently tested.

2. Petitioner states that no methane has been detected in the mine. The three wheel tractors are permissible DC powered machines, with no hydraulics. The bucket is a drag type, where approximately 30–40% of the coal is hand loaded. Approximately 20% of the time that the tractor is in use, it is used as a man trip and supply vehicle.

3. As an alternate method, petitioner proposes to use hand held continuous oxygen and methane monitors in lieu of continuous methane monitors on three wheel tractors. In further support of this request, petitioner states that:

(a) Each three wheel tractor will be equipped with a hand held continuous monitoring methane and oxygen detector and all persons will be trained in the use of the detector;

(b) A gas test will be performed, prior to allowing the coal loading tractor in the face area, to determine the methane concentration in the atmosphere. The air quality will be monitored continuously after each trip, provided the elapse time between trips does not exceed 20 minutes. This will provide continuous monitoring of the mine atmosphere for methane to assure any undetected methane buildup between trips;

(c) If one percent of methane is detected, the operator will manually deenergize his/her battery tractor immediately. Production will cease and will not resume until the methane level is lower than one percent;

(d) A spare continuous miner will be available to assure that all coal hauling tractors will be equipped with a continuous miner;

(e) Each monitor will be removed from the mine at the end of the shift, and will be inspected and charged by a qualified person. The monitor will also be calibrated monthly; and

(f) No alterations or modifications will be made in addition to the manufacturer's specifications.

4. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before June 18, 1987. Copies of the petition are available for inspection at that address.

Dated: May 8, 1987.

Patricia W. Silvey,

Associate Assistant Secretary for Mine Safety and Health.

[FR Doc. 87–11385 Filed 5–18–87; 8:45 am]

BILLING CODE 4510–43–M

[Docket No. M–87–99–C]

Laurel Fork Mining Co.; Petition for Modification of Application of Mandatory Safety Standard

Laurel Fork Mining Company, Route 2, Box 1043, Wartburg, Tennessee 37887 has filed a petition to modify the application of 30 CFR 77.1605(k) (berms or guards) to its Mine No. 7 (I.D. No. 40–02944) located in Morgan County, Tennessee. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that berms or guards be provided on the outer banks of elevated roadways.

2. Petitioner states that application of the standard will result in a diminution of safety to the miners affected because berms confine water runoff to the road surface which washes away the surfacing materials, resulting in a dangerous road surface. The berms also hamper the removal of snow and ice with a motor grader.

3. As an alternate method, petitioner states that:

(a) Daily inspections of all coal-hauling vehicles will be made. Any defects will be corrected before the vehicle is put into service;

(b) A specific traffic system will be developed for the roads. These rules will be posted on the bulletin boards throughout the mine area, and they will become a part of the training and retraining programs;

(c) Warning signs will be posted designating curves, steep grades, where trucks should shift to a lower gear, and where roadways are reduced to one-lane traffic. Stop signs will be posted where one road intersects another, giving main haulage traffic the right-of-way, and signs will be posted designating passing points. Passing of one vehicle by another vehicle while traveling in the same direction is prohibited; except in the case where one vehicle is parked in a run-around area out of the normal lanes of traffic.

(d) All haulage vehicles will have original manufacturers brakes and an emergency braking system;

(e) All equipment operators will be trained in the use of haulage equipment and the safety of vehicles on haulage roads;

(f) Where abrupt drop-offs occur along the outer banks, elevation will be provided to cause the vehicles to gravitate toward the highwall side of the road;

(g) Roadway surfaces will be kept free of debris, excessive water, snow, and ice, and maintained as free as practicable of small ditches (washboard effects); and

(h) The speed at which trucks will be operated will be consistent with conditions of roadway clearance, visibility and traffic. Trucks operating on any descending grade will be restricted to 10 miles per hour.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before June 18, 1987. Copies of the petition are available for inspection at that address.

Dated: May 8, 1987.

Patricia W. Silvey,

Associate Assistant Secretary for Mine Safety and Health.

[FR Doc. 87–11386 Filed 5–18–87; 8:45 am]

BILLING CODE 4510–43–M

Pension and Welfare Benefits Administration

[Application Nos. D–5598 and D–5776]

Amendment to Prohibited Transaction Exemption (PTE) 81–6 Involving Lending of Securities by Employee Benefit Plans

AGENCY: Pension and Welfare Benefits Administration, Department of Labor.

ACTION: Adoption of amendment to PTE 81–6.

SUMMARY: This document amends PTE 81–6. PTE 81–6 is a class exemption that permits the lending of securities by

employee benefit plans to certain broker-dealers and banks which are parties in interest with respect to the plans. The amendment affects participants, beneficiaries and fiduciaries of plans engaging in the described transactions, banks, and certain broker-dealers.

EFFECTIVE DATE: January 23, 1981.

FOR FURTHER INFORMATION CONTACT: Paul Kelty of the Office of Regulations and Interpretations, Pension and Welfare Benefits Administration, Department of Labor, (202) 523-8196. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: On March 21, 1986, notice was published in the **Federal Register** (51 FR 9900) of the pendency before the Department of two proposed amendments to PTE 81-6. PTE 81-6 provides an exemption from the prohibited transaction restrictions of section 406(a)(1) (A) through (D) of the Employee Retirement Income Security Act of 1974 (ERISA or the Act) and from the taxes imposed by section 4975 (a) and (b) of the Internal Revenue Code of 1986 (the Code) by reason of section 4975(c)(1) (A) through (D) of the Code.

Manufacturers Hanover Trust Company (Manufacturers Hanover) requested the first proposed amendment to PTE 81-6 by application dated June 29, 1984 (Application No. D-5598). The second proposed amendment was requested by Merrill Lynch, Pierce, Fenner & Smith (Merrill Lynch) in an application dated September 26, 1984 (Application No. D-5776). Both applications were submitted pursuant to section 408(a) of ERISA and section 4975(c)(2) of the Code [1] and in accordance with ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). The amendment requested by Merrill Lynch was withdrawn by the applicant by letter dated January 9, 1987.

Information collection requirements contained in PTE 81-6 have been approved by the Office of Management and Budget under the provisions of the Paperwork Reduction Act of 1980 (Pub. L. 96-511) and have been assigned OMB #1210-0065 approved for use through May 31, 1987.

The notice gave interested persons an opportunity to comment on the proposal. Public comments were received pursuant to the provisions of section 408(a) of ERISA and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75-1.

1. Description of the Exemption

PTE 81-6 permits an employee benefit plan to lend securities to a broker-dealer registered under the Securities Exchange Act of 1934 (the 1934 Act) or to a bank, provided certain conditions are met. These conditions include a requirement that the lending plan must receive from the borrower collateral consisting of cash, securities issued or guaranteed by the United States Government or its agencies, or irrevocable bank letters of credit. In the absence of an exemption, securities lending transactions would be prohibited under circumstances where the borrowing broker-dealer or bank is a party in interest or disqualified person with respect to the plan under section 3(14) of ERISA or section 4975(e)(2) of the Code.

The amendment to PTE 81-6 granted pursuant to this notice, requested by Manufacturers Hanover, adds broker-dealers which are exempted from registration under section 15(a)(1) of the 1934 Act as dealers in exempted Government securities to the categories of securities borrowers with whom plans may engage in transactions in reliance on the class exemption. The amendment requested by Merrill Lynch would have expended the types of premissible collateral under the exemption to include qualifying irrevocable surety bonds. Since Merrill Lynch no longer contemplates the use of surety bonds as collateral in securities lending transactions and, therefore, has withdrawn its request for exemptive relief, the proposed amendment has not been adopted. For the sake of convenience, the entire text of PTE 81-6, as amended, is reprinted with this notice.

2. Discussion of Comments Received

The Department received three letters commenting on various aspects of the proposed amendments to PTE 81-6. Both the American Bankers Association (ABA) and the California Bankers Association expressed support for the proposal. A letter from the ABA noted that, under the existing class exemption, a bank trustee of an employee benefit plan would be hesitant to lend securities to a dealer in Government securities if the dealer is not registered under the 1934 Act unless it can clearly be demonstrated that the dealer is not a party in interest with respect to the plan. According to the ABA, the burden of proving that a dealer is not a party in interest may be a deterrent to making the securities loan. However, Government securities dealers are major market participants and plans should not be precluded from lending securities to them. The ABA stated that, if the proposed amendments were adopted, employee benefit plans would benefit from the additional income resulting from the wider universe of eligible borrowers.

A letter submitted on behalf of the Committee on Securities Lending of the Robert Morris Associates, a trade group of over 35 banks representing securities lenders, asserted that the availability of surety bonds as acceptable collateral under PTE 81-6 would diminish the level of protection for employee benefit plans lending securities. In view of Merrill Lynch's decision to withdraw its request for amendment of PTE 81-6, it is unnecessary for the Department to respond to this comment.

3. Miscellaneous

Paragraph 2 of PTE 81-6 states that "securities issued or guaranteed by the United States Government or its agencies" are acceptable collateral to secure loans of securities made in reliance on the class exemption. The Department was asked by a fourth commentator to clarify the scope of the phrase "securities issued or guaranteed by the United States Government or its agencies." In this respect, the Department has concluded that obligations of instrumentalities of the United States Government are sufficiently similar to U.S. Government obligations that they are appropriate collateral for securities lending transactions. Thus, the Department has modified paragraph 2 of the final exemption to clearly indicate that securities issued or guaranteed by instrumentalities of the U.S. Government are acceptable collateral.[2]

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of ERISA does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of ERISA and the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary

[1] Section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978), effective December 31, 1978 (44 FR 1065, January 3, 1979), transferred the authority of the Secretary of the Treasury to issue exemptions of this type to the Secretary of Labor.

[2] In the Department's view, it would not be proper for a plan fiduciary to accept U.S. Government or Governmental instrumentality securities as collateral in a securities lending transaction unless the securities are sufficiently liquid to be readily marketable in the event of default. U.S. Government securities were included within the categories of permissible collateral under the original exemption because such securities are essentially treated by investors as being equivalent to cash.

responsibility provisions of section 404 of ERISA which require, among other things, that a fiduciary discharge his or her duties respecting the plan solely in the interests of the participants and beneficiaries of the plan; nor does it affect the requirement of seciton 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) In accordance with section 408(a) of ERISA, the Department makes the following determinations:

(i) The amendment set forth herein is administratively feasible,

(ii) It is in the interests of plans and of their participants and beneficiaries, and

(iii) It is protective of the rights of the participants and beneficiaries of plans;

(3) The class exemption is applicable to a particular transaction only if the transaction satisfies the conditions specified in the exemption; and

(4) The amendment is supplemental to, and not in derogation of, any other provisions of ERISA and the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction.

Exemption

Accordingly, PTE 81–6 amended under the authority of section 408(a) of ERISA and section 4975(c)(2) of the Code and in accordance with ERISA Procedure 75–1 (40 FR 18471, April 28, 1975).

Effective January 23, 1981, the restrictions of section 406(a)(1)(A) through (D) of the Act and the taxes imposed by section 4975 (a) and (b) of the Code by reason of section 4975(c)(1) (A) through (D) of the Code shall not apply to the lending of securities that are assets of an employee benefit plan to a broker-dealer registered under the Secutities Exchange Act of 1934 (the 1934 Act) or exempted from registration under section 15(a)(1) of the 1934 Act as a dealer in exempted Government securities (as defined in section 3(a)(12) of the 1934 Act) or to a bank, if:

1. Neither the borrower nor an affiliate of the borrower has discretionary authority or control with respect to the investment of the plan assets involved in the transaction, or renders investment advice (within the meaning of 29 CFR 2510.3–21(c)) with respect to those assets;

2. The plan receives from the borrower (either by physical delivery or by book entry in a securities depository) by the close of the lending fiduciary's business on the day in which the securities lent are delivered to the borrower, collateral consisting of cash, securities issued or guaranteed by the United States Government or its agencies or instrumentalities, or irrevocable bank letters of credit issued by a person other than the borrower or an affiliate thereof, or any combination thereof, having, as of the close of business on the preceding business day, a market value or, in the case of letters of credit a stated amount, equal to not less than 100 percent of the then market value of the securities lent;

3. Prior to the making of any such loan, the borrower shall have furnished the lending fiduciary with (1) the most recent available audited statement of the borrower's financial condition, (2) the most recent available unaudited statement of its financial condition (if more recent than such audited statement), and (3) a representation that, at the time the loan is negotiated, there has been no material adverse change in its financial condition since the date of the most recent financial statement furnished to the plan that has not been disclosed to the lending fiduciary. Such representation may be made by the borrower's agreeing that each such loan shall constitute a representation by the borrower that there has been no such material adverse change;

4. The loan is made pursuant to a written loan agreement, the terms of which are at least as favorable to the plan as an arm's-length transaction with an unrelated party would be. Such agreement may be in the form of a master agreement covering a series of securities lending transactions;

5. (a) The plan (1) receives a reasonable fee that is related to the value of the borrowed securities and the duration of the loan, or (2) has the opportunity to derive compensation throught the investment of cash collateral. Where the plan has that opportunity, the plan may pay a loan rebate or similar fee to the borrower, if such fee is not greater than the plan would pay in a comparable transaction with an unrelated party;

(b) The plan receives the equivalent of all distributions made to holders of the borrowed securities during the term of the loan, including, but not limited to, cash dividends, interest payments, shares of stock as a result of stock splits and rights to purchase additional securities;

6. If the market value of the collateral at the close of trading on a business day is less than 100 percent of the market value of the borrowed securities at the close of trading on that day, the borrower shall deliver, by the close of business on the following business day, an additional amount of collateral (as described in paragraph 2) the market value of which, together with the market value of all previously delivered collateral, equals at least 100 percent of the market value of all the borrowed securities as of such preceding day.

Notwithstanding the foregoing, part of the collateral may be returned to the borrower if the market value of the collateral exceeds 100 percent of the market value of the borrowed securities, as long as the market value of the remaining collateral equals at least 100 percent of the market value of the borrowed securities;

7. The load may be terminated by the plan at any time, whereupon the borrower shall deliver certificates for securities identical to the borrowed securities (or the equivalent thereof in the event of reorganization, recapitalization or merger of the issuer of the borrowed securities) to the plan within (1) the customary delivery period for such securities, (2) five business days, or (3) the time negotiated for such delivery by the plan and the borrower, whichever is lesser; and

8. In the event the loan is terminated, and the borrower fails to return the borrowed securities or the equivalent thereof within the time described in paragraph 7, above, (i) the plan may, under the terms of the loan agreement, purchase securities identical to the borrowed securities (or their equivalent as described above) and may apply the collateral to the payment of the purchase price, any other obligations of the borrower under the agreement, and any expenses associated with the sale and/or purchase, and (ii) the borrower is obligated, under the terms of the loan agreement, to pay, and does pay to the plan the amount of any remaining obligations and expenses not covered by the collateral plus interest at a reasonable rate.

Notwithstanding the foregoing, the borrower may, in the event the borrower fails to return borrowed securities as described above, replace non-cash collateral with an amount of cash not less than the then current market value of the collateral, provided such replacement is approved by the lending fiduciary.

If the borrower fails to comply with any condition of this exemption in the course of engaging in a securities lending transaction, the plan fiduciary who caused the plan to engage in such transaction shall not be deemed to have caused the plan to engage in a transaction prohibited by section 406(a)(1)(A) through (D) of the Act solely by reason of the borrower's failure to

comply with the conditions of the exemption.

For purposes of this class exemption the term "affiliate" of another person shall include: (i) Any person directly or indirectly, through one or more intermediaries, controlling, controlled by, or under common control with such other person; (ii) any officer, director, or partner, employee or relative (as defined in section 3(15) of the Act) of such other person; and (iii) any corporation or partnership of which such other person is an officer, director or partner. For purposes of this definition the term "control" means the power to exercise a controlling influence over the management or policies of a person other than an individual.

Signed at Washington, DC, this 13th day of May, 1987.

David M. Walker,

Deputy Assistant Secretary, Pension and Welfare Benefits Administration, U.S. Department of Labor.

[FR Doc. 87-11430 Filed 5-18-87; 8:45 am]

BILLING CODE 4510-29-M

Occupational Safety and Health Administration

National Advisory Committee on Occupational Safety and Health; Full Committee Meetings

Notice is hereby given that the National Advisory Committee on Occupational Safety and Health (NACOSH) meeting previously announced in the **Federal Register** May 7, 1987 (Vol. 52 No. 86 page 17344) for May 20 and 21, 1987 will be meeting only on May 21 1987 at 9:00 am in Room C-2313 in the Frances Perkins Department of Labor Building, 200 Constitution Avenue, NW., Washington, DC

NACOSH was established under section 7 (a) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 656) to advise the Secretary of Labor and the Secretary of Health and Human Services on matters relating to the administration of the Act.

The public is invited to attend these meetings. The committe will discuss general issues affecting the workplace safety and health. A detailed agenda will be prepared, made publicly available and sent to members prior to the meetings. Anyone who wishes to make an oral presentation should notify the Division of Consumer Affairs before the meeting date. The request should include the amount of time desired, the capacity in which the person will appear, and a brief outline of the content of the presentation. Oral presentations will be scheduled at the discretion of the Committee chairperson to the extent to which time permits.

For additional information contact: Tom Hall, Division of Consumer Affairs, Occupational Safety and Health Administration, Room N-3647, Third Street and Constitution Avenue, NW., Washington, DC., 20210. Telephone: 202-523-8615.

Official records of the meetings will be available for public inspection at the Division of Consumer Affairs.

Signed at Washington, DC this 15th day of May, 1987.

John A. Pendergrass,

Assistant Secretary.

[FR Doc. 87-11494 Filed 5-15-87; 3:26 pm]

BILLING CODE 4510-26-M

Pension and Welfare Benefits Administration

[Prohibited Transaction Exemption 87-37; Exemption Application No. D-5612 et al.]

Grant of Individual Exemptions; Retirement Plan for Employees of Hemphill-Wells Co.

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Grant of individual exemptions.

SUMMARY: This document contains exemptions issued by the Department of Labor (the Department) from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1954 (the Code).

Notices were published in the **Federal Register** of the pendency before the Department of proposals to grant such exemptions. The notices set forth a summary of facts and representations contained in each application for exemption and referred interested persons to the respective applications for a complete statement of the facts and representations. The applications have been available for public inspection at the Department in Washington, DC. The notices also invited interested persons to submit comments on the requested exemptions to the Department. In addition the notices stated that any interested person might submit a written request that a public hearing be held (where appropriate). The applicants have represented that they have complied with the requirements of the notification to interested persons. No public comments and no requests for a hearing, unless otherwise stated, were received by the Department.

The notices of pendency were issued and the exemptions are being granted solely by the Department because, effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type proposed to the Secretary of Labor.

Statutory Findings

In accordance with section 408(a) of the Act and/or section 4975(c)(2) of the Code and the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975), and based upon the entire record, the Department makes the following findings:

(a) The exemptions are administratively feasible;

(b) They are in the interests of the plans and their participants and beneficiaries; and

(c) They are protective of the rights of the participants and beneficiaries of the plans.

Retirement Plan for Employees of Hemphill-Wells Co. (the Plan) Located in Lubbock, TX

[Prohibited Transaction Exemption 87-37; Exemption Application No. D-5612]

Exemption

The restrictions of sections 406(a) and 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the leasing from July 1, 1984 through April 30, 1986 of certain parcels of real property by the Plan to Hemphill-Wells Company provided all of the terms of the leases were as favorable to the Plan as those obtainable in an arm's-length transaction with an unrelated party.

Effective Date: This exemption will be effective July 1, 1984 through April 30, 1986.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on December 5, 1986 at 51 FR 43991.

For Further Information Contact: Linda Hamilton of the Department, telephone (202) 523-8194. (This is not a toll-free number.)

The Longmont National Bank Pension Plan (the Pension Plan); The Longmont National Bank Profit Sharing Plan (the Profit Sharing Plan); and the Harvey Potts Individual Retirement Account (the IRA) Located in Longmont, CO

[Prohibited Transaction Exemption 87–40; Exemption Application Nos. D–6363, D–6364, and D–6365]

Exemption

The restrictions of section 406(b)(2) of the Act shall not apply to the October 10, 1984 sale of two portions of a U.S. Treasury Note by the IRA, one portion each to the Pension Plan and the Profit Sharing Plan, provided such transaction was consummated at fair market value on the date of the sale.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on March 9, 1987 at 52 FR 7235.

Effective Date: This exemption is effective October 10, 1984.

For Further Information Contact: Gary H. Lefkowitz of the Department, telephone (202) 523–8881. (This is not a toll-free number.)

Diamond Shamrock Employee Stock Ownership Plan and the Employee Shareholding and Investment Plan of Diamond Shamrock Corporation (the Savings Plan; collectively, the Plans)

Located in Cleveland, OH

[Prohibited Transaction Exemption 87–42; Exemption Application Nos. D–6380 & D–6381]

Exemption

The restrictions of sections 406(a) and 407(a) of the Act shall not apply, effective October 30, 1985, to (1) the acquisition and holding by the Plans of certain Units (the Units) representing limited partnership interests in Diamond Shamrock Offshore Partners, Ltd. (the Partnership) distributed as dividends to the Plans as shareholders of Diamond Shamrock Corporation (DSC) Common Stock (the Stock); and (2) the acquisition and holding by the Plans of Units acquired on the open market as a result of either the Plans' reinvestment of cash distributions made with respect to the Units or the purchase by the Savings Plan of Units with contributions from participants of the Savings Plan in accordance with directions given by those participants.

Effective Date: The effective date of this exemption is October 30, 1985.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on September 9, 1986 at 51 FR 32141.

Written Comments: The Applicants submitted certain comments on the proposed exemption.

First, the Applicants represent that on July 17, 1986, DSC announced that beginning with the third quarter of 1986 and continuing for a period of unknown duration, DSC's quarterly dividend distributions will consist only of cash and will not include Units. However, the Applicants state that the exemption as proposed is still necessary since the distribution of the Units as dividends may be resumed at some future time. In addition, the Plans will continue to acquire Units in open-market transactions as a result of the Plans' reinvestment of cash which is distributed to the Plans by the Partnership with respect to Units already held by the Plans. Finally, the exemption is necessary for the open-market acquisition of Units pursuant to the directions of Savings Plan participants as of the first date such transactions are permitted.

Second, in response to the Department's suggestion, the Applicants state that additional Units will not be acquired and held for any participant's account in the Plan if, immediately before such acquisition, the Units comprise ten percent or more of the value of the participant's account balance. The Applicants also state that if Units comprise less than ten percent of the value of a participant's account immediately before the acquisition, but would exceed ten percent immediately after the acquisition, then the acquisition and holding of such additional Units for the participant's account would be carried out only to the extent that it is possible to do so without exceeding the ten percent limit. The Applicants represent that at no time prior to the date of their comment letter had any Units held for a participant's account in either of the Plans exceeded ten percent of the value of such participant's account.

Third, the Applicants have requested clarification as to whether the ten percent limitation would be violated by the receipt by a participant's account of additional Units as a distribution with respect to securities held for the participant's account. The Department does not belive that the ten percent limitation should preclude a participant's account from receiving Units that the account would otherwise be entitled to receive as a holder of any security. In addition, the Department does not believe that the ten percent limitation should impose upon the Trustee of the Plans an obligation to dispose of any Units merely because the value of the Units exceeds ten percent of the value of the participant's account on a date subsequent to the date the Units were acquired due to, for example, an increase in the market value of the Units.

After consideration of the entire record, the Department has determined to grant the exemption.

For further Information Contact: Mr. E.F. Williams of the Department, telephone (202) 523–8881. (This is not a toll-free number.)

The Blossman Companies, Inc. Employee Stock Ownership Plan and Trust (the Plan) Located in Ocean Springs, MI

[Prohibited Transaction Exemption 87–43; Exemption Application No. D–6641]

Exemption

The restrictions of section 406 (a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to: (1) the proposed sales by the Plan of certain improved real property (the Property) and a lease with respect to the Property to Alpha Investment Corporation (Alpha), a party in interest with respect to the Plan; and (2) the assumption by Alpha, in connection with the proposed sale, of a first deed of trust obligation of the Plan, provided the terms of the transactions are at least as favorable to the Plan as those obtainable in arm's length transactions with an unrelated party.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on February 13, 1987 at 52 FR 4686.

For Further Information Contact: Ms. Jan D. Broady of the Department, telephone (202) 523–8196. (This is not a toll-free number.)

Gainesville Medical Group—Andrews & Associates, P.A. Profit Sharing Plan (the Plan) Located in Gaineville, FL

[Prohibited Transaction Exemption 87–44; Exemption Application No. D–6650]

Exemption

The restrictions of section § 406(a), 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the lease of real property located in the North Florida

Doctors Office Park in Gainesville, Florida, by the Plan to GMG Enterprises, a partnership whose partners are composed of the Plan's trustees, provided that the terms and conditions of the transaction are at least as favorable to the Plan as those obtainable in an arm's-length transaction with an unrelated party.

For a more complete statement of the fact and representation supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on March 17, 1987 at 52 FR 8376.

For Further Information Contact: Alan H. Levitas of the Department, telephone (202) 523–8194. (This is not a toll-free number.)

Tuscaloosa News, Inc. Profit Sharing Plan and Trust (the Plan) Located in Tuscaloosa, AL

[Prohibited Transaction Exemption 87–45; Exemption Application No. D–6832]

Exemption

The restrictions of section 406(a), 406 (b)(1) and (b)(2) of the Act and the sanction resulting from the application of section 4975 of the Code, by reason of section 4975 (c)(1)(A) through (e) of the Code, shall not apply on the cash sale on December 15, 1986 by the Plan of three unsecured promissory notes (the Notes) to the Tuscaloosa News Division of the New York Times Company, the sponsor of the Plan, provided that the sales price for each of the Notes was no less than the fair market value of each Note on the date of sale.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on March 9, 1987 at 52 FR 7236.

Effective Date: The effective date of this exemption is December 15, 1986.

For Further Information Contact: Mr. E.F. Williams of the Department, telephone (202) 523–8881. (This is not a toll-free number.)

Stolar Partnership Profit Sharing Plan (the Plan Located in St. Louis, MO)

[Prohibited Transaction Exemption 87–46; Exemption Application No. D–6851]

Exemption

The restriction of sections 406 (a)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to a loan (the Loan) by the Plan to the Stolar Partnership, the sponsor of the Plan, in the amount of the lesser of $600,000 or twenty five percent of the Plan's assets at the time of the Loan; provided that such Loan is on terms at least as favorable to the Plan as those which the Plan could obtain in an arm's-length transaction with an unrelated party.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on March 17, 1987 at 52 FR 8377.

For Further Information Contact: Ronald Willett of the Department, telephone (202) 523–8881. (This is not a toll-free number.)

Lear Petroleum Profit Sharing Plan (the Plan) Located in Dallas, TX

[Prohibition Transaction Exemption 87–47; Exemption Application No. D–6871]

Exemption

The restrictions of sections 406(a) and 407(a) of the Act shall not apply, effective May 15, 1985, to the acquisition and holding by the Plan of certain units representing limited partnership interests in Lear Petroleum Partners, L.P. which were distributed as dividends to the Plan as a shareholder of Lear Petroleum Corporation Common Stock on May 15, August 15, August 26 and November 13, 1985 and February 14, 1986.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on March 9, 1987 at 52 FR 7238.

Effective Date: The effective date of this exemption is May 15, 1985 and is applicable only to the Units acquired on the dates specified above.

For Further Information Contact: Mr. E.F. Williams of the Department, telephone (202) 523–8881. (This is not a toll-free number.)

Boulder Orthopedics, P.C. Pension Plan and Boulder Orthopedics, P.C. Profit Sharing Plan (the Plans) Located in Boulder, CO

[Prohibited Transaction Exemption 87–48; Exemption Application Nos. D–6872 and D–6873]

Exemption

The restrictions of sections 406(a) and 406(b) (1) and (2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the sale of a parcel of undeveloped real property from the individual accounts in the Plans of Rex C. Bosley, M.D. (Bosley) to Bosley, a party in interest with respect to the Plans, provided the Plans receive no less than fair market value for the property at the time of sale.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published on February 13, 1987 at 42 FR 4689.

For Further Information Contact: Paul Kelty of the Department, telephone (202) 523–8196. (This is not a toll-free number.)

Minnesota Mutual Fire & Casualty Co. Performance Share Program (the Plan) Located in Minnetonka, MN

[Prohibited Transaction Exemption 87–49; Exemption Application No. D–7040]

Exemption

The restrictions of sections 406(a), 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the sale of an annuity contract to the Plan by Minnesota Mutual Life Insurance Company (MML), provided the following conditions are met:

(a) MML—

(1) Is a party in interest with respect to the Plan by reason of its ownership of guaranty fund certificates of Minnesota Mutual Fire and Casualty Company (MMF&C),

(2) Is licensed to sell insurance in at least one State as defined in section 3(10) of the Act,

(3) Has obtained a Certificate of Compliance from the Insurance Commissioner of its domiciliary state, Minnesota, within the 18 months prior to the date when the transaction is entered into, or when such certificates were last made available by the domiciliary state, if earlier, and

(4)(A) Has undergone a financial examination (within the meaning of the law of its domiciliary state, Minnesota) by the Insurance Commissioner of Minnesota within 5 years prior to the end of the year preceding the year in which the subject transaction occurs; or

(B) Has undergone an examination by an independent certified public accountant for its last completed taxable year immediately prior to the taxable year of the subject transaction.

(b) The Plan pays no more than adequate consideration for the annuity contract;

(c) No commissions are paid with respect to the sale of the contract; and

(d) For each taxable year of MML, the gross premiums and annuity considerations received in that taxable

year by MML for life and health insurance or annuity contracts for the Plan, MMF&C, and all employee benefit plans (and their employers) with respect to which MML is a party in interest by reason of a relationship to such employer described in sections 3(14) (E) or (G) of the Act, or by reason of its ownership or guaranty fund certificates, does not exceed 50 percent of the gross premiums and annuity considerations received for all lines of insurance in that taxable year by MML. For purposes of this condition (d):

(1) The term "gross premiums and annuity considerations received" means that total of premiums and annuity considerations received, reduced (in both the numerator and denominator of the fraction) by experience refunds paid or credited in that taxable year by MML.

(2) All premiums and annuity considerations written by MML for plans which it alone maintains are to be excluded from both the numerator and the denominator of the fraction.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on March 17, 1987 at 52 FR 8378.

For Further Information Contact: Gary H. Lefkowitz of the Department, telephone (202) 523-8881. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) These exemptions are supplemental to and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction.

(3) The availability of these exemptions is subject to the express condition that the material facts and representations contained in each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 12th day of May, 1987.

Elliot I. Daniel,

Associate Director for Regulations and Interpretations, Pension and Welfare Benefits Administration, U.S. Department of Labor.

[FR Doc. 87-11431 Filed 5-18-87; 8:45 am]

BILLING CODE 4510-29-M

[Application No. D-6792 et al.]

Proposed Exemptions; Hochman, Salkin and DeRoy Money Purchase Pension Plan, et al.

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Notice of proposed exemptions.

SUMMARY: This document contains notices of pendancy before the Department of Labor (the Department) of proposed exemptions from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1954 (the Code).

Written Comments and Hearing Requests

All interested persons are invited to submit written comments or requests for a hearing on the pending exemptions, unless otherwise stated in the Notice of Pendency, within 45 days from the date of publication of this **Federal Register** Notice. Comments and requests for a hearing should state the reasons for the writer's interest in the pending exemption.

ADDRESS: All written comments and requests for a hearing (at least three copies) should be sent to the Pension and Welfare Benefits Administration, Office of Regulations and Interpretations, Room N-5669, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210. Attention: Application No. stated in each Notice of Pendency. The applications for exemption and the comments received will be available for public inspection in the Public Documents Room of Pension and Welfare Benefit Programs, U.S. Department of Labor, Room N-4677, 200 Constitution Avenue, NW., Washington, DC 20210.

Notice to Interested Persons

Notice of the proposed exemptions will be provided to all interested persons in the manner agreed upon by the applicant and the Department within 15 days of the date of publication in the **Federal Register**. Such notice shall include a copy of the notice of pendency of the exemption as published in the **Federal Register** and shall inform interested persons of their right to comment and to request a hearing (where appropriate).

SUPPLEMENTARY INFORMATION: The proposed exemptions were requested in applications filed pursuant to section 408(a) of the Act and/or section 4975(c)(2) of the Code, and in accordance with procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 CFR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, these notices of pendency are issued solely by the Department.

The applications contain representations with regard to the proposed exemptions which are summarized below. Interested persons are referred to the applications on file with the Department for a complete statement of the facts and representations.

Hochman, Salkin and DeRoy Money Purchase Pension Plan (the Plan) Located in Beverly Hills, CA

[Application No. D-6792]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). If the exemption is granted the restrictions of section 406(a) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (D) of the Code shall not apply to the proposed cash sale by the Plan of a single family residence in Los Angeles, California (the Property) to Richard Marmaro (Mr. Marmaro), a party in interest with respect to the Plan; provided that the cash received from the sale is not less than the fair market

value of the Property on the date of the sale.

Summary of Facts and Representations

1. The Plan is a defined contribution money purchase pension plan with an estimated thirty (30) individual accounts for the participants and total assets of approximately $6,253,541, as of February 28, 1986.

2. Hochman, Salkin & DeRoy, a profesional corporation engaged in the practice of law and located at 9100 Wilshire Boulevard, Beverly Hills, California, is the employer and sponsor of the Plan (the Employer). Bruce I. Hochman, Avram Salkin, and George DeRoy are the officers, directors, and shareholders of the Employer and the discretionary trustees (the Trustees) of the Plan. As of February 28, 1986, the Trustees held 89% of the assets of the Plan in their individual accounts.

3. On March 4, 1983, the Plan lent $450,000 (the Loan) at an interest rate of 21% per annum to Jin Ho Chang and Martha Sung Ja Chang (Mr. & Mrs. Chang), unrelated third parties. The Loan was secured by a second deed of trust on the Property located at 201 South Rimpau St., Los Angeles, California. Concurrent with the funding of the Loan, the Plan retained $47,250 as the first six month's interest. At the time the Loan was made, the Property also secured a first deed of trust (the 1st Mortgage) in favor of Great Western Savings & Loan Association in the amount of $166,000 at the interest rate of 11.5% per annum. On November 16, 1983, after payment of $7,875, Mr. & Mrs Chang defaulted on the Loan. Foreclosure procedures were completed in August 1985. Between the default and the foreclosure lengthy negotiations took place which resulted in payments of $40,000. The applicants represent that because California law effectively precludes deficiency judgments, the Plan took title to the Property subject to the 1st Mortgage. Subsequently, an unlawful detainer action was brought, which resulted in possession of the Property in January 1986, by the Plan. Since January 1986, the Property has been vacant. It is represented that the Property constitutes approximately 10% of the Plan's assets.

4. Since its acquisition of the Property, the Plan has had a total of $224,737 in expenditures, including principal and interest payments of $193,524 to pay the 1st Mortgage in full and $31,213 on foreclosure costs, legal fees, property taxes, repairs, maintenance, and utilities on the Property, including roof repair, clean-up, and the purchase of new draperies, carpets, and applicances.[1] The applicants represent that the roof repair, clean-up, and purchases of draperies, carpets, and appliances were necessary prior to listing the Property for sale with a realtor.

5. On August 18, 1986, Arthur B. Goode (Mr. Goode) of Arthur B. Goode Liquidators & Appraisers, 8532 Melrose Avenue, Los Angeles, California, appraised the Property. Mr. Goode has determined that the current fair market value of the Property is $565,000. Mr. Goode's qualifications include more than fifty (50) years experience in buying, selling, and appraising all types of property in Los Angeles. He is also a Senior Member of the International Society of Appraisers, a member of the American Society of Appraisers, and is a licensed auctioneer and real estate broker.

6. The Plan proposes to sell the Property to Mr. Marmaro, a full-time employee of the Employer and a party in interest with respect to the Plan. It is represented that Mr. Marmaro is not a shareholder, officer, director, or member of the management committee of the Employer, nor is he one of the Trustees of the plan who were responsible for the Plan's making the Loan or acquiring and holding the Property. Mr. Marmaro is seeking an exemption from the prohibited transaction provisions of the Act and Code to permit him to purchase the Property for cash in the amount of the higher of the fair market value of the Property on the date of sale or $565,000. It is represented that the plan will incur no fees, commissions, or other costs as a result of the sale.

7. The Trustees represent that the sale is in the best interest of the plan. During the four months that Coldwell Banker and company listed the Property for sale at a price of $665,000, the Plan received only one offer of $575,000. The Trustees responded with a price of $625,000 which was countered with an offer for $600,000 at 9% interest involving a cash downpayment of approximately $100,000 on a first mortgage of approximately $500,000. The Trustees represent that after the above round of negotiations, it did not appear that after the payment of brokerage commissions by the Plan, a third party purchase would realize net proceeds greater than that which the Plan will obtain from the sale of the Property to Mr. Marmaro. Upon sale of the Property the Plan will be relieved of costly maintenance and taxes of approximately $500 per month and will be able to earn a substantial income from investment of the proceeds from the sale.

8. In summary, Mr. Marmaro represents that the proposed transaction satisfies the criteria for exemption under section 408(a) of the Act and section 4975(c)(2) of the Code because: (a) The sale of the Property will be a one-time transaction for cash; (b) no fees, commissions, or other cost will be incurred by the Plan as a result of the sale; (c) the Plan will sell the Property at its fair market value as determined by a qualified, independent appraiser; (d) the Plan will use the proceeds from the sale to earn a substantial income, and (e) the Plan will be relieved of Property which is costly to maintain.

For Further Information Contact: Angelena C. Le Blanc of the Department, telephone (202) 523-8196. (This is not a toll-free number.)

Ralph Korte Enterprises Profit Sharing Plan (the Plan) Located in Highland, IL

[Application No. D-6938]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). If the exemption is granted the restrictions of sections 406(a) and 406(b) (1) and (2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code shall not apply to the sale of certain real property by the Plan to Ralph Korte, a party in interest with respect to the Plan provided all the terms of the transaction are as favorable to the Plan as those obtainable by the Plan in an arm's-length transaction with an unrelated party on the date the transaction was consummated.

Effective Date: April 30, 1987.

Summary of Facts and Representations

1. The Plan is a defined contribution profit-sharing plan with 77 participants. The Plan had net assets of $1,156,343 as of October 31, 1985. The trustees of the Plan are William D. Boudouris, Ralph Korte and Gerald E. Staley (the Trustees). The Trustees are stockholders of the Employer. The Employer is a construction company.

2. On February 23, 1978, the Plan purchased a parcel of real property, together with a building, garage and

[1] The Department is expressing no opinion herein as to whether the initial Loan by the Plan to Mr. & Mrs. Chang or the acquisition and holding of the Property by the Plan violates any of the fiduciary responsibility provisions of Part 4 Subtitle B of Title I of the Act.

shed thereon, located at 822 Broadway, Highland, Illinois (the Property) from Laurence A. and Anna Lou Heineman and Michael and Delores Kapilla (the Sellers) for $84,000 in cash. The Sellers are unrelated parties with respect to the Plan. A 7,800 square foot commercial building constitutes the primary improvement on the Property. A 20 foot by 30 foot garage, and a 10 foot by 20 foot concrete block shed (the Shed) are also located on the Property.

3. Since the Plan's purchase of the Property in 1978, it has leased space in the commercial building and garage to various tenants who are unrelated parties with respect to the Plan. The Plan presently leases commercial space to five such unrelated parties at competitive rental rates. During the calendar year 1985, the Plan received $16,794 in rental income, and incurred expenses respecting such building of $9,150, thereby realizing a net profit of $7,674 from operation of the commercial building and garage. In 1986, it is projected that the Plan will realize a net profit of $7,223 respecting the commercial building and garage.

4. Since the Plan's purchase of the property in 1978, it has rented the Shed to the Employer's wholly-owned subsidiary, Ralph Korte, Inc. (Korte Realty) at a rate of $50 per month. The applicant states that such rental rate represents the fair market rental value of the Shed. Korte Realty has timely remitted payment of the plan of its rental obligations.[2]

5. The applicant represents that over the past three to four years, the Plan has unsuccessfully attempted, through the use of several independent realtors, to sell the Property to unrelated parties. The Plan initially attempted to sell the Property for a sale price of $115,000, but reduced the sales price to $90,000. To date, the Plan has received no offers from unrelated parties to purchase the Property at a price of $90,000.

6. On February 4, 1986, Wilfred Holzinger, an independent professional appraiser, established the fair market value of the Property at $86,000. Over the eight year period since the Plan purchased the Property, its fair market value has risen only $2,000. Due to the Plan's lack of success in selling the Property to unrelated parties, the applicant proposes that the Property be sold to Ralph Korte (Mr. Korte), a Trustee and stockholder of the Employer for a purchase price of $90,000, which is in excess of the fair market value of the Property. The proposed sale would be an all cash sale. The Plan would incur no real estate commissions or fees in connection with the sale. The applicants have requested an effective date of April 30, 1987 so that the Plan can expeditiously invest the proceeds of the sale in various interest bearing accounts.

7. In summary, the applicant represents that the proposed transaction meets the statutory criteria of section 408(a) of the At because:

(a) This will be a one-time cash transaction;

(b) The Plan will receive an amount in excess of the fair market value of the Property as determined by an independent appraisal;

(c) The Plan will not be required to pay any real estate commissions in connection with the sale of the Property, and;

(d) The Trustees have determined that the proposed transaction is in the interests of and protective of the Plan and its participants and beneficiaries.

For Further Information Contact: Ms. Linda Hamilton of the Department, telephone (202) 523-8194. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) Before an exemption may be granted under section 408(a) of the Act and/or section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries and protective of the rights of participants and beneficiaries of the plan; and

(3) The proposed exemptions, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction.

(4) The proposed exemptions, if granted, will be subject to the express condition that the material facts and representations contained in each application are true and complete, and that each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 12th day of May, 1987.

Elliot I. Daniel,

Associate Director for Regulations and Interpretations, Pension and Welfare Benefits Administration, U.S. Department of Labor.

[FR Doc. 87-11429 Filed 5-18-87; 8:45 am]

BILLING CODE 4510-25-M

[2] The applicant represents that the trustees of the Plan and Korte Realty were unaware that such use and rental of the Shed constituted a prohibited transaction. Within 60 days after the date an exemption is granted, Korte Realty will pay all applicable excise taxes for its prior prohibited transaction.

LIBRARY OF CONGRESS

American Folklife Center Board of Trustees; Meeting

AGENCY: Library of Congress.

ACTION: Notice of meeting.

SUMMARY: This notice announces a meeting of the Board of Trustees of the American Folklife Center. This notice also describes the functions of the Center. Notice of this meeting is required in accordance with Pub. L. 94-463.

DATE: June 12, 1987, 9:30 a.m. to 4:30 p.m.

ADDRESS: Whittall Pavilion, Jefferson Building, Library of Congress, 10 First Street SE., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Raymond L. Dockstader, Deputy Director, American Folklife Center, Washington, DC 20540.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public. It is suggested that persons planning to attend this meeting as observers contact Raymond Dockstader (202) 287-6590.

The American Folklife Center was created by the U.S. Congress with passage of Pub. L. 94-201, the American Folklife Preservation Act, in 1976. The Center is directed to "preserve and present American folklife" through programs of research, documentation, archival preservation, live presentation, exhibition, publications, dissemination,

training, and other activities involving the many folk cultural traditions of the United States. The Center is under the general guidance of a Board of Trustees composed of members from Federal agencies and private life widely recognized for their interest in American folk traditions and arts.

The Center is structured with a small core group of versatile professionals who both carry out programs themselves and oversee projects done by contract by others. In the brief period of the Center's operation it has energetically carried out it mandate with programs that provide coordination, assistance, and model projects for the field of American folklife.

Dated: May 11, 1987.

Glen A. Zimmerman,

Associate Librarian for Management.

[FR Doc. 87–11333 Filed 5–18–87; 8:45 am]

BILLING CODE 1410–01–M

NATIONAL COMMISSION FOR EMPLOYMENT POLICY

Meeting

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 public meeting of the National Commission for Employment Policy at the Ramada Renaissance Hotel, 1143 New Hampshire Avenue, NW., Washington, DC 20037.

DATES: Thursday, June 11, 1987—9:00 a.m. to 5:00 p.m., Friday, June 12, 1987 9:00 a.m. to 3:00 p.m.

Status: The meeting is open to the public.

Matters To Be Discussed: Commission members will discuss the NCEP Budget, the research agenda for Program Year 1987, proposed new JTPA research, and the legislative update.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Mahaffey, Public Affairs Officer, National Commission for Employment Policy, 1522 K. St., NW., Suite 300, Washington, DC 20005, 202–724–1545.

SUPPLEMENTARY INFORMATION: The National Commision for Employment Policy is authorized by the Job Training Partnership Act (Pub. L. 97–300). The Act gives the Commission the broad responsibility of advising the President and the Congress. Handicapped individuals wishing to attend should contact the Commission so that appropriate accommodations can be made. Copies of the minutes and materials prepared for the meeting will be available for public inspection at the Commission's offices, 1522 K St., NW., Suite 300, Washington, DC 20005.

Signed this 11th day of May 1987.

Scott W. Gordon,

Director.

[FR Doc. 87–11382 Filed 5–18–87; 8:45 am]

BILLING CODE 4510–30–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–528]

Arizona Public Service Co., et al.; Notice of Consideration of Issuance of Amendment to Facility Operating License and Proposed no Significant Hazards Consideration Determination

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. NFP–41 issued to Arizona Public Service Company (the licensee), et al., for operation of the Palo Verde Nuclear Generating Station, Unit 1, located in Maricopa County, Arizona.

The amendment would change Technical Specification ¾.11.1, "Secondary System Liquid Waste Discharges to the Onsite Evaporation Pond," to allow the concentrations of Antimony-124 (Sb-24) discharged from the secondary system liquid waste to the onsite evaporation pond to exceed $5X10^{-7}$ μCi/ml for a period not to exceed 292 days. This discharge will be within the limits of 10 CFR part 20, Appendix B, Table II, Column 2, concentrations. These revisions to the technical specifications would be made in response to the licensee's application for amendment dated May 10, 1987.

On March 24, 1987, the Commission granted an emergency Technical Specification change (documented in Amendment 16 to Facility Operating License NPF–41) in response to the licensee's application or amendment dated March 23, 1987, to allow for a period of 60 days the release of secondary system liquid waste, to the onsite evaporation pond, while the concentration of principal gamma emitters with half-lives less than 75 days is in excess of $5XC10^{-7}$ μCi/ml, provided that 10 CFR part 20 limits are not exceeded. The required cleanup activities of the secondary system are due to the primary to secondary leakage which occurred in January 1987. In the present request, the licensee has determined that 60 days authorized in March 1987 would not afford adequate time for removal of the isotope Antimony-124 (Sb–124), with a half life of 60 days, and has requested an additional 292 days.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act), and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration.

The Commission has provided standards for determining whether a significant hazards consideration exists as stated in 10 CFR 50.92. A proposed amendment to an operating license for a facility involes no significant hazards consideration if operation of the facility in accordance with proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; (2) create the possibility of a new or different kind of accident from any accident previously evaluated; (3) involve a significant reduction in a margin of safety.

a discussion of these standards as they relate to the amendment request follows:

Standard 1—Involve a Significant Increase in the Probability or Consequences of an Accident Previously Evaluated

The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated, because the proposed change does not alter the current design of the facility. The proposed Technical Specifications change would allow continued operation of the unit while the concentration of Sb/124 discharged from secondary system liquid waste to the onsite evaporation ponds is above the lower limit of detectability but within the limits of 10 CFR Part 20, Appendix B, Table II, Column 2. This would allow for cleanup (decontamination) activities of radioactive liquids resulting from a previous primary to secondary leak, while maintaining the unit in an operational condition. Therefore, this change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

Standard 2—Create the Possibility of New or Differnt Kind of Accident From Any Accident Previously Evaluated

The proposed amendment will not create the possibility of a new or different kind of accident from any accident previously evaluated because

the proposed amendment does not vary, effect, or provide any physical changes to the facility. This proposed change allows for discharge of Sb-24 which has been generated during processing/regeneration of condensate demineralizer resins. The small amounts ($5X10^{-6}$ to $5X10^{-7}$ μCi/ml) of Sb-124 activity present in regeneration wastes, which will be discharged into the onsite evaporation ponds, are within the limits of 10 CFR part 20, Appendix B, Table II, Column 2. (the current inventory of Antimony in the secondary system is estimated to be less than one Curie.) For these reasons, the proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

Standard 3—Involve a Significant Reduction in a Margin of Safety

The requested amendment does not involve a significant reduction in a margin of safety, because the proposed change does not affect the design basis of the plant. The existing limits for concentrations of radioactive material discharged from secondary system liquid waste on the onsite evaporation ponds will remain at $5X10^{-7}$ μCi/ml for principal gamma emitters, except for Sb-124. Releases of Sb-124 may be allowed to exceed $5X10^{-7}$ μCi/ml for a period not to exceed 180 days, but will be limited to 10 CFR Part 20, Appendix B, Table II, Column 2 concentrations. Because of the short half life (60 days) and the limited time involved (292 days), the effect of the proposed action on the previous accident analysis, i.e., the dose to the public from accumulated particulates in the evaporation ponds after the three units have been operating for 40 years, is negligible. For these reasons, it has been determined that the change does not involve a significant reduction in the margin of safety.

The staff has reviewed the licensee's no significant hazards consideration determination and agree with the licensee's analysis. Accordingly, the Commission proposes to determine that the proposed amendment involves no significant hazards consideration.

The licensee states and the Commission has agreed that failure to act in a timely way would result in derating and subsequent loss of power generation commencing in late May 1987. Therefore, the Commission has insufficient time to issue its usual 30-day notice of the proposed action for public comment.

If the proposed determination becomes final, an opportunity for a hearing will be published in the **Federal Register** at a later date and any hearing request will not delay the effective date of the amendment.

If the Commission decides in its final determination that the amendment does invove a significant hazards consideration, a notice of opportunity for a prior hearing will be published in the **Federal Register** and, if a hearing is granted, it will be held before any amendment is issued.

The Commission is seeking public comments on this proposed determination of no significant hazards consideration. Comments on the proposed determination may be telephoned to George W. Kinghton, Director, Project Directorate V, by collect call to 301–492–7331 or submitted in writing to the Rules and Procedures Branch, Division of Rules and Records, Office of Administration and Resource Management, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and should cite the publication date and page number of this **Federal Register** Notice. Written comments may also be delivered to Room 4000, Maryland National Bank Building, 7735 Old Georgetown Road, Bethesda, Maryland, from 8:15 a.m. to 5:00 p.m. All comments received by June 3, 1987, will be considered in reaching a final determination. A copy of the application may be examined at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC and at the Phoenix Public Library, Business, Science and Technology Department, 12 East McDowell Road, Phoenix, Arizona 85007.

Dated at Bethesda, Maryland, this 14th day of May, 1987.

For the Nuclear Regulatory Commission.

E.A. Licitra,

Senior Project Manager, Project Directorate V, Division of Reactor Projects—III/IV/V and Special Projects.

[FR Doc. 87–11403 Filed 5–18–87; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 70–1113; License No. SNM 1097]

General Electric Co., Wilmington, NC Facility; Receipt of Petition for Director's Decision

Notice is hereby given that by Petition dated April 6, 1987, as corrected April 8, 1987, Anthony Z. Roisman and Mozart G. Ratner requested that the Director, Office of Inspection and Enforcement, take action with regfard to the General Electric Company (GE) for its alleged illegal discrimination against Ms. Vera English. The Petition requests that the NRC impose upon GE the maximum fine permitted by statute for its willful discrimination against Ms. English, and that it impose a license condition upon GE requiring GE to fully compensate Ms. English for her losses incurred as a result of her alleged illegal discharge. The Petition asserts as bases for this request that the reason given to justify deferral of action on this issue in an earlier Director's Decision (DD 86–11), i.e., awaiting action by the Secretary of Labor, is no longer valid; that a Department of Labor Administrative Law Judge found that GE had discriminated against Ms. English but GE has not paid any fine for its conduct, nor has Ms. English been compensated for the wrong done her; and that the effectiveness of the NRC's program to protect and encourage workers to report safety violations is severely hampered by any further delay in taking action. The request is being treated pursuant to 10 CFR 2.206 of the Commission's regulations. As provided by § 2.206, appropriate action will be taken on this request within a reasonable time.

A copy of the Petition is available for inspection in the Commission's Public Document Room, 1717 H Street, NW., Washington, DC 20555.

Dated at Silver Spring, Maryland, this 13th day of May 1987.

For the Nuclear Regulatory Commission.

Hugh L. Thompson, Jr.,

Director, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 87–11404 Filed 5–18–87; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–320]

Advisory Panel for the Decontamination of Three Mile Island, Unit 2; Meeting and States Report From GPU Nuclear Corp.

Notice is hereby given pursuant to the Federal Advisory Committee Act that the Advisory Panel for the Decontamination of Three Mile Island Unit 2 (TMI–2) will be meeting on June 10, 1987, from 7:00 pm to 10:00 pm at the Lancaster Council Chambers, Public Safety Building, 201 North Duke Street, Lancaster, PA 17603. The meeting will be open to the public.

The Panel will receive from General Public Utilities Nuclear Corporation, the licensee, a status report on the progress of the cleanup. The licensee will comment on the schedule for accomplishing the remaining tasks of the cleanup. At the direction of the Nuclear Regulatory Commission, the Panel will

discuss the timing for a final Commission decision on the disposal of the accident-generated water. A recommendation will be forwarded to the Commission. Members of the public will be given the opportunity to address the Panel.

Further information on the meeting may be obtained from Dr. Michael T. Masnik, Three Mile Island Cleanup Project Directorate, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone 301–492–9445.

Dated: May 14th, 1987.

For the Nuclear Regulatory Commission.

John C. Hoyle,

Advisory Committee Management Officer.

[FR Doc. 87–11388 Filed 5–18–87; 8:45 am]

BILLING CODE 7590–01–M

SECURITIES AND EXCHANGE COMMISSION

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Philadelphia Stock Exchange, Inc.

May 13, 1987.

The above named national securities exchange has filed applications with the Securities and Exchange Commission pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f–1 thereunder, for unlisted trading privileges in the following securities:

Astrotech International Corporation
Common Stock, $0.30 Par Value (File No. 7–9933)
B.A.T. Industries PLC
Ordinary Shares 25p Par Value (File No. 7–9934)
Cablevision Systems Corporation
Class A Common Stock, $0.01 Par Value (File No. 7–9935)
Computer Consoles, Incorporated
Common Stock, $0.10 Par Value (File No. 7–9936)
Conquest Exploration Company
Common Stock, $0.20 Par Value (File No. 7–9937)
Dillard Department Stores, Inc.
Class A Common Stock, No Par Value (File No. 7–9938)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before June 3, 1987, written data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 87–11400 Filed 5–18–87; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–24442; File No. SR–PHLX–87–14]

Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Creation of a Foreign Currency Options Committee

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)91), notice is hereby given that on April 27, 1987, the Philadelphia Stock Exchange, Inc. filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Philadelphia Stock Exchange, Inc. ("PHLX"), pursuant to Rule 19b–4 of the Securities Exchange Act of 1934 ("Act"), hereby proposes the following changes to the PHLX By-Laws: (Brackets indicate deletions; Italics indicates additions.)

Standing Committees

Section 10–1(a). The Standing Committees of the Corporation shall consist of: An Admissions Committee, an Allocation, Evaluation and Securities Committee, an Arbitration Committee, a Business Conduct Committee, a Disciplinary Review Committee, an Elections Committee, an Executive Committee, a Finance Committee, a Floor Procedure Committee, *a Foreign Currency Options Committee,* a Marketing Committee, a Nominating Committee, and an Options Committee. Each of such Committees, except as otherwise specifically provided in the by-laws or rules shall be composed of not less than nine members, exclusive of ex officio members, as may be determined by the Chairman of the Board with the approval of the Board of Governors, at least three of whom, exclusive of ex officio members, shall be members of the Board of Governors, and any additional number of whom may be members of this Corporation or general partners of officers or member organizations, or other persons who are considered to be qualified.

Sec. 10–1(b). No change.

Sec. 10–1(c). No change.

Sec. 10–2 through Sec. 10–14. No changes.

Foreign Currency Options Committee

Section 10–15. The Foreign Currency Options Committee shall have general supervision of the dealings of members of the foreign currency options trading floor, and of the premises of the exchange facility immediately adjacent thereto. It shall make or recommend for adoption, and administer such rules as it may deem necessary for the convenient and orderly transaction of business upon the foreign currency options trading floor.

The Committee shall have supervision of the activities on the foreign currency options trading floor of specialists, assistant specialists, registered option traders, floor brokers, or other types of market-makers and shall establish standards and procedures for the training and qualification of members active on the foreign currency options trading floor. It shall have supervision over all foreign currency options floor employees of members or participants of the Corporation, and shall make and enforce such rules with respect to such employees as it may deem necessary.

The Committee shall resolve trading disputes. It shall have supervision of all connections or means of communications with the foreign currency options trading floor and may require the discontinuance of any such connnection or means of communication when, in the opinion of the Committee, it is contrary to the welfare or interest of the Corporation. It shall also have supervision over the location of equipment and the assignment and use of space on the foreign currency options trading floor.

The Committee shall have supervision over relations with other options exchanges in the areas of foreign currency trading, market-making and related matters. It shall coordinate with and provide information and assistance to the Allocation, Evaluation and Securities and the Options Committees as appropriate.

The Committee shall make and enforce rules and regulations relating to order, decorum, health, safety and welfare on the foreign currency options trading floor and the immediately adjacent premises of the exchange facility and shall be empowered to impose penalties for violations thereof.

The Committee, in its discretion, may delegate to other Standing or Special Committees of the Exchange supervision over questions pertaining to foreign currency options trading and over administration of such Rules as it deems appropriate.

Marketing Committee

Sec. [10–15] *10–16*—[No change].

Options Committee

Sec. [10–16] *10–17.* The Options Committee shall have general supervision of the dealings of members on the *equity and index* options trading floor, and of the premises of the exchange facility immediately adjacent thereto. It shall make or recommend for adoption, and administer such rules as it may deem necessary for the convenient and orderly transaction of business upon the *equity and index* options trading floor.

The Committee shall have supervision of the activities on the *equity and index* options trading floor of specialists, assistant specialists, registered option traders, floor brokers, or other types of market-makers and shall establish standards and procedures for the training and qualification of members active on the *equity and index* options trading floor. It shall have supervision over all *equity and index* options floor employees of members of the Corporation, and shall make and enforce such rules with respect to such employees as it may deem necessary.

The Committee shall resolve trading disputes. It shall have supervision of all connections or means of communications with the *equity and index* options trading floor and may require the discontinuance of any such connection or means of communication when, in the opinion of the Committee, it is contrary to the welfare or interest of the Corporation. It shall also have supervision over the location of equipment and the assignment and use of space on the *equity and index* options trading floor.

The Committee shall have supervision over relations with other options exhcanges in the areas of trading, market-making and related matters. It shall coordinate with and provide information and assistance to the Allocation, Evaluation and Securities and *Foreign Currency Options Committees* as appropriate [and shall be empowered to make temporary appointments of specialists, assistant specialists, registered options traders or other types of options floor market-makers until permanent appointments are made by the latter Committee].

The Committee shall make and enforce rules and regulations relating to order, decorum, health, safety and welfare on the *equity and index* options trading floor and the immediately adjacent premises of the exchange facility and shall be empowered to impose penalties for violations thereof.

The Committee, in its discretion, may delegate to other Standing or Special Committees of the Exchange supervision over questions pertaining to *equity and index* options trading and over administration of such Rules as it deems appropriate.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statements of the Purpose of, and Statutory Basis for the Proposed Rule Change

The purpose of the proposed rule change is to designate a new Standing Committee of the Board of Governors, the Foreign Currency Options Committee.The Committee was created to handle the significant policy and structural decisions which will be made in the future regarding foreign currency options trading. Also, since foreign currency options trading is a separate and distinct market from the market for equity and index options, with its own participants, it is appropriate to designate a Foreign Currency Options Committee to oversee such trading.

This new Standing Committee would have a charter basically identical to that of the Options Committee with responsibility for interpreting the Exchange's rules as they apply to foreign currency options trading and to oversee the operations of the currency options floor. By-Law Section 10–16 respecting the Options Committee is redesignated as By-Law Section 10–17 with deletion of language respecting temporary appointment of specialists, assistant specialists, and registered options traders. Those responsibilities now reside in the Allocation, Evaluation and Securities Committee.

The proposed rule change is consistent with section 6(b)(5) of the Securities and Exchange Act of 1934 in that it will facilitate growth of foreign currency options trading while fostering the protection of investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The PHLX does not believe that the proposed rule change will impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or,

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit writen data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section,

450 Fifth Street NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying of at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by June 9, 1987.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Dated: May 11, 1987.

Jonathan G. Katz,

Secretary

[FR Doc. 87-11401 Filed 5-18-87; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-24441; File No. SR-PHLX-87-10]

Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Stop and Stop Limit Orders

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on April 20, 1987 the Philadelphia Stock Exchange, Inc. ("PHLX" or "Exchange") filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Philadelphia Stock Exchange, Inc., ("PHLX"), pursuant to Rule 19b-4 of the Securities Exchange Act of 1934 ("Act"), proposes to amend Exchange Rule 1066(c)(3) and Option Floor Procedure Advice A-5 ("Advice"), as follows (new material is italicized; deleted material is bracketed):

Rule 1066(c)(3). A stop order and a stop limit order in option contracts shall also be elected by a quotation, as follows. A stop order to buy shall become a market order when the bid price in the options series is at or above the stop price, after the order is represented in the trading crowd. A stop order to sell shall become a market order when the offer price in the option series is at or below the stop price, after the order is represented in the trading crowd.

A stop limit order to buy shall become a limit order executable at the limit price or a better price, if obtainable, when the bid price in the option series is at or above the stop price, after the order is represented in the trading crowd.

A stop limit order to sell shall become a limit order executable at the limit price or a better price, if obtainable, when the bid price in the option series is at or above the stop price, after the order is represented in the trading crowd.

[No stop or stop limit order elected by a quotation may be executed without prior approval of a Floor Official.] *Stop and stop limit orders elected by a quotation must be brought to the attention of a floor official (who may then refer questionable instances to market surveillance staff) by the respective specialist, or his representative, prior to, or promptly after, the execution. Specialists should ensure that stop and stop-limit orders are reported to the tape with a designation to that effect (i.e., "STPD").*

A-5

Execution of Stop and Stop-Limit Orders.

[Stop Order

A stop order to buy becomes a market order when the bid price in the option series is quoted at or above the stop price. Conversely, a stop order to sell becomes a market order when the offer price in the option series is quoted at or below the stop price.

Stop Limit Orders

A stop limit order to buy becomes a limit order executable at the limit price or at a better price, if obtainable, when the bid price in the option series is quoted at or above the stop price. Conversely, a stop limit order to sell becomes a limit order executable at the limit or at a better price, if obtainable, when the offer price in the option series is quoted at or below the stop price.

All stop and stop limit orders, prior to being executed on the established bid and offer, must be approved by a Floor Official.

See Rule 1018(a) or Rule 1066(2) and (1).

Fine Schedule

A-5

Fine not applicable]

Stop and stop-limit orders are contingency orders to buy or sell when the market for a particular option reaches a specified price.

Stop and stop-limit orders to buy become eligible for execution when the option trades at or above the stop price or when the bid price for the option is at or above the stop price. Stop and stop-limit orders to sell become eligible for execution when the option trades at or below the stop price or when the offer price for the option is at or below the stop price.

A stop or stop-limit order made eligible by an opening sale or quote should be executed during the opening of the respective series. An order made eligible by an opening sale should print as a separate trade immediately following the opening trade. An order made eligible by an opening quote should print immediately following dissemination of the quote.

Stop and stop-limit orders elected by a quotation must be brought to the attention of a floor official (who may then refer questionable instances to market surveillance staff) by the respective specialist, or his representative, prior to, or promptly after, the execution.

Specialists should ensure that stop and stop-limit orders are reported to the tape with a designation to that effect (i.e., "STPD").

Fine Schedule

A-5

Fine not applicable.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. the self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statements of the Purpose of, and Statutory Basis for the Proposed Rule Change

The purposes of the proposed rule and Advice change are: (i) To provide members with a description of the circumstances under which a stop and stop-limit order is elected; (ii) to adopt procedures for the handling of stop and stop-limit orders on the opening; and (iii) to address functional problems surrounding the requirement for floor official approval *prior to* execution of a stop or stop-limit order elected by a quotation. In order to monitor the effectiveness of the above stop and stop-limit execution procedures, the rule and Advice change would also require

the respective specialist to ensure that stop and stop-limit order executions be appropriately designated (i.e., "STPD") when reported to the tape.

Moreover, the Advice as currently written refers to stop and stop-limit orders made eligible by a quote change but does not contain language pertaining to stop and stop-limit orders made eligible by a trade. The proposed Advice change would enhance the Advice in this regard by describing how stop and stop-limit orders are made eligible by a trade.

Similarly, the Advice does not now provide direction for the handling of stop and stop-limit orders made eligible on the opening. This has resulted in inconsistencies in the handling of such Orders. The proposed Advice change would promote uniformity in this area by providing that orders elected by an opening trade or quotation would be assured of a prompt execution without having to wait until the end of rotation in the option.

Securing floor official approval prior to executing a stop or stop-limit order elected by a quotation can cause functional problems in instances where the market is active and a floor offical is not within the immediate area. Under such circumstances, the specialist faces a dilemma: Either to stay at his post and facilitate the execution of the numerous orders there (and thereby not seek out a floor official to approve execution of the stop order) or to leave his post to seek out a floor official and disrupt the activity at his post. To address this problem, the proposed Advice change would allow specialists to notify floor officials promptly after such executions rather than having to receive prior floor official approval. The Exchange does not believe that this alternative would impede its safeguarding against improper executions since all such trades will still be subjected to floor official review.

Furthermore, the requirement that the specialist designate the execution of such an order "STPD" enables Exchange Market Surveillance staff effectively to monitor the execution of stop orders. All "STPD" orders can be singled our for special surveillance to ensure they were appropriately handled. Additionally, the Exchange notes that its rules also provide that a member organization may reject a transaction taken or supplied by the specialist for his own account if the specialist is notified in accordance with Commentary .05 to Exchange Rule 1019.

The Exchange believes the proposed rule and Advice change are consistent with Section 6 of the Act, and, in particular, section 6(b)(5), in that the proposed changes are designed to promote fair and orderly markets and otherwise foster the protection of investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on competition

The PHLX does not believe that the proposed rule and advice change will impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or,

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC. 20549. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by June 9, 1987.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Dated: May 11, 1987.

Jonathan G. Katz,

Secretary.

[FR Doc. 87-11402 Filed 5-18-87; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement; U.S. Route 29, Montgomery County, MD; Notice of Intent To Prepare

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Correction of notice of intent.

SUMMARY: The FHWA is issuing this correction to the May 5, 1987, **Federal Register** (published on p. 16477) advising the public of our intent to prepare an environmental impact statement for highway improvements on U.S. Route 29 in Montgomery County.

FOR FURTHER INFORMATION CONTACT: Mr. Louis Ege, Jr., Deputy Director, Project Development Division, Maryland State Highway Administration, 707 North Calvert Street, Room 310, Baltimore, Maryland 21202, telephone 301/333-1130.

SUPPLEMENTARY INFORMATION: The project limits were incorrectly stated as being from the Patuxent River to Interstate 495 (Capital Beltway). The correct limits are from the Patuxent River to Sligo Creek.

(Catalog of Federal Domestic Assistance Program Number 20.025, Highway Research, Planning and Construction. The provisions of Executive Order 12372 regarding State and local review of Federal and Federally assisted programs and projects apply to this program)

Emil Elinsky,

Division Administrator, Baltimore, Maryland.

[FR Doc. 87-11334 Filed 5-18-87; 8:45 am]

BILLING CODE 4910-22-M

Uniform Relocation Act Amendments of 1987

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice.

SUMMARY: The Surface Transportation and Uniform Relocation Assistance Act of 1987, Pub. L. 100-17, 101 Stat. 132, was enacted April 2, 1987. Title IV of the Act (the 1987 Amendments) amends the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (Uniform Act), 42 U.S.C. sections 4601 through 4655 (1982). Among other things, the 1987 Amendments established the

Department of Transportation (DOT) as the lead agency for implementing the Uniform Act. The lead agency has a number of continuing responsibilities in the administration of the Uniform Act. DOT's function will largely be the responsibility of the Federal Highway Administration (FHWA). The FHWA is issuing this notice to inform all interested parties and agencies of the significant changes in the law and general plans to implement those changes.

FOR FURTHER INFORMATION CONTACT: Barbara Reichart, Chief, Relocation Division, HRW–20, (202) 366–0116; Gerald Saunders, Chief, Real Estate Division, HRW–10, (202) 366–2015; or Reid Alsop, Attorney Advisor, Office of the Chief Counsel, HCC–40, (202) 366–1371. The address is Federal Highway Administration, 400 Seventh Street SW., Washington, DC 20590.

SUPPLEMENTARY INFORMATION: The following are brief descriptions of the more significant amendments to the Uniform Act. The citations are to sections of the 1987 Amendments.

The 1987 Amendments enhance the benefits provided under the Uniform Act to individuals and businesses that are required to move as a result of a Federal or federally assisted project. The 1987 Amendments also, for the first time, address the treatment of utilities which must relocate as a result of such projects, unless another Federal law governs their relocation. Furthermore, State and local autonomy is enhanced by allowing certification of State and local programs which are carried out in accordance with State laws that are determined to have the same purpose and effect as the Uniform Act. Finally, greater uniformity of program implementation and administration at the Federal level is attained by designating a lead agency for the Federal government which has the responsibility of issuing government wide standards, and generally overseeing Federal activities under the Uniform Act. The Congress clearly envisioned that the lead agency would coordinate with other Federal agencies in carrying out its responsibilities.

Key changes provided by the 1987 Amendments include:

—*Lead Agency.* The Department of Transportation has been designated as lead agency. (Section 402(e)). By delegation from the Secretary of Transportation, FHWA will carry out these responsibilities. Lead agency duties include the development and issuance, with the active participation of the Secretary of Housing and Urban Development, and other Federal agencies, of such regulations as may be necessary to carry out the Uniform Act. (Section 412). The lead agency is specifically required to issue rules, establish procedures and make interpretations to implement the provisions of the Uniform Act.

—*Displaced person.* The definition is expanded to include displacement because of rehabilitation and demolition if such displacement is permanent. (Section 402(d)).

—*Federal and State agencies.* These definitions have been expanded to include any private entity that has the power of eminent domain under Federal or state law. (Sections 402 (a) and (b)).

—*Replacement housing payments.* The maximum payment to homeowners is increased to $22,500. (Section 406). The maximum payment for tenants and certain others is increased to $5,250. These payments to tenants are based on the increased rent required over a specified period of time which is reduced to 42 months. The requirement that a displaced tenant, who elects to receive a downpayment in lieu of a rent supplement, must match a portion of the amount provided has been eliminated. (Section 407).

—*Moving expenses.* Benefits are expanded to include a reestablishment payment not to exceed $10,000 for small businesses, farms, or non-profit organizations. Under certain conditions a payment is permitted to qualifying utility companies for certain extraordinary moving costs. The maximum payment to a business in lieu of moving costs is increased to $20,000 while the minimum payment has been reduced to $1,000. (Section 405).

—*Certification.* Regarding programs or projects carried out with Federal financial assistance, as an alternative to the assurances under sections 210 and 305 of the Uniform Act, the Federal agency providing the financial assistance may accept a certification from a State agency that it will carry out the responsibilities of the Federal agency under the Uniform Act. The lead agency must first determine if State law is sufficient to accomplish the purpose and effect of the Uniform Act (as amended). Before making this determination, the lead agency must provide an opportunity for public review and comment, and consult with local general purpose governments within the State. (Section 403).

—*Effective Date.* The provisions of section 412 with respect to lead agency authority to develop and issue regulations were effective upon enactment. The remaining provisions will be effective on the effective date specified in the regulations issued under such authority, but not later than two years from the date of enactment which was April 2, 1987. (Section 418).

FHWA intends to implement those provisions of the 1987 Amendments which are not amenable to notice and comment as soon as practical. Where the law is explicit and admits to little, if any, administrative discretion or significant agency interpretation we do not consider that a period for notice and comment would serve a useful purpose. In addition, such a comment period could, in certain cases, delay eligibility for benefits provided in the 1987 amendments. Thus, we expect to issue an interim final rule, primarily on specific payments, in the near future. To the maximum extent practicable, displaced persons should be considered eligible for the enhanced benefits contemplated by the Act if they are displaced after the date of enactment of the 1987 Amendments (April 2, 1987).

Federal and State agencies that consider themselves to now have statutory authority that is broad enough to allow the additional benefits set forth in the 1987 Amendments, are encouraged to preserve the eligibility of persons displaced after the effective date of the 1987 Amendments pending the issuance of the interim final rule by the lead agency. Such agencies would probably also need to make changes, as necessary, in their existing procedures after the interim rule is published. State agencies that do not currently consider themselves to have authority to comply should continue to operate under their existing procedures until such authority is obtained prior to April 2, 1989.

Where State enabling legislation must be changed to conform to the amended Federal law, State legislatures are encouraged to begin this process. The FHWA is drafting model legislation to provide assistance to such States, with an emphasis on a generic statute which could accommodate expected revision in Federal regulations. We recognize that not all States may wish to use such a model law.

To further carry out its responsibility, the FHWA will develop implementing procedures and/or regulations required by the 1987 Amendments as soon as possible. In addition to the interim final rule referred to above, we plan to issue a notice of proposed rulemaking concerning implementing the remaining provisions of the 1987 Amendments within the next several months. Comments will be sought and final regulations will be issued shortly thereafter.

Issued on: May 12, 1987.

Ray Barnhart,

Administrator.

[FR Doc. 87-11322 Filed 5-18-87; 8:45 am]

BILLING CODE 4910-22-M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

Dated: May 14, 1987.

The Department of Treasury has made revisions and resubmitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding these information collections should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Room 2224, Main Treasury Building, 15th and Pennsylvania Avenue NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: New.

Form Number: IRS Form 8610.

Type of Review: Resubmission.

Title: Annual Low-Income Housing Credit Agencies Report.

Description: Form 8610 is used as a transmittal form for Forms 8609, Low-Income Housing Credit allocation Certification. Form 8610 is completed by state and local housing credit agencies.

Respondents: State or local governments.

Estimated Burden: 60 hours.

Clearance Officer: Garrick Shear (202) 566-6150, Room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224.

OMB Reviewer: Milo Sunderhauf, (202) 395-6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, DC 20503.

Dale A. Morgan,

Departmental Reports Management Office.

[FR Doc. 87-11399 Filed 5-18-87; 8:45 am]

BILLING CODE 4810-25-M

VETERANS ADMINISTRATION

Advisory Committee on Readjustment Problems of Vietnam Veterans; Renewal

This gives notice under the Federal Advisory Committee Act (Pub. L. 92-463) of October 6, 1972, that the Advisory Committee on Readjustment Problems of Vietnam Veterans has been renewed by the Administrator of Veterans Affairs for a two year period beginning May 8, 1987 through May 7, 1989.

Dated: May 8, 1987.

By direction of the Administrator.

Rosa Maria Fontanez,

Committee Management Officer.

[FR Doc. 87-11325 Filed 5-18-87; 8:45 am]

BILLING CODE 8320-01-M

Agency Form Under OMB Review

AGENCY: Veterans Administration.

ACTION: Notice.

The Veterans Administration has submitted to OMB for review the following proposal for the collection of information under the provisons of the Paperwork Reduction Act (44 U.S.C. Chapter 35). This document contains an extension and lists the following information: (1) The department or staff office issuing the form, (2) the title of the form, (3) the agency form number, if applicable, (4) a description of the need and its use, (5) how often the form must be filled out, (6) who will be required or asked to report, (7) an estimate of the number of responses, (8) an estimate of the total number of hours needed to fill out the form, and (9) an indication of whether section 3504(h) of Pub. L. 96-511 applies.

ADDRESSES: Copies of the forms and supporting documents may be obtained from Patti Viers, Agency Clearance Officer (732), Veterans Administration, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 233-2146. Comments and questions about the items on the list should be directed to the VA's OMB Desk Officer, Elania Norden, Office of Management and Budget, 726 Jackson Place, NW., Washington, DC 20503, (202) 395-7316.

DATES: Comments on the information collection should be directed to the OMB Desk Officer by July 20, 1987.

Dated: May 13, 1987.

By direction of the Administrator.

Jack J. Sharkey,

Director, Office of Information Systems and Telecommunications.

Extension

1. Deparatment of Veterans Benefits.
2. Disability Benefits Questionnaire.
3. VA Form 29-8313.
4. The form is used to request medical and industrial data to determine the insured's continuous entitlement to disability insurance benefits.
5. On occasion.
6. Individuals or households.
7. 92,000 responses.
8. 23,000 hours.
9. Not applicable.

Extension

1. Department of Veterans Benefits.
2. Notice of Lapse.
3. VA Forms 29-389 & 29-389-1.
4. These forms are used to advise the insured of the lapsed status of their insurance policy and the requirements necessary for reinstatement. The information is needed to determine eligibility for reinstatement.
5. On occasion.
6. Individuals or households.
7. 23,352 responses.
8. 3,892.
9. Not applicable.

Extension

1. Department of Veterans Benefits.
2. Veteran's Application for Compensation or Pension.
3. VA Form 21-526.
4. This information is used to determine the eligibility for compensation or pension for a veteran, spouse, surviving spouse or dependent and the extent of intitlement.
5. On occasion.
6. Individuals or households.
7. 248,284 responses.
8. 330,218 hours.
9. Not applicable.

Extension

1. Department of Veterans Benefits.
2. VA Property Management Consolidated Invoice.
3. VA Form 26-8974.
4. This information is necessary to proper management of VA's properties and serves as proof of broker's expenses and claimed fees prior to authorizing payments.
5. On occasion.
6. Businesses or other for-profit; Small businesses or organizations.
7. 28,800 responses.
8. 19,200 hours.
9. Not applicable.

Extension

1. Department of Veterans Benefits.
2. Report of Income from Property or Business.
3. VA Form 21-4185.
4. This information is needed to determine basic eligibility for all benefits where income forms the basis for that determination.
5. On Occasion.
6. Individuals or households.
7. 59,500 responses.
8. 29,750 hours.
9. Not applicable.

[FR Doc. 87-11349 Filed 5-18-87; 8:45 am]

BILLING CODE 8320-01-M

Sunshine Act Meetings

Federal Register
Vol. 52, No. 96
Tuesday, May 19, 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).

NATIONAL COMMISSION ON LIBRARIES AND INFORMATION SCIENCE

COMMISSION MEETING

DATE AND TIME: May 27, 1987, 9:00 a.m.–9:15 p.m.

PLACE: Embassy Row Hotel, Continental Room, 2015 Massachusets Avenue, NW., Washington, DC 20036.

STATUS: Open.

MATTERS TO BE DISCUSSED:

Chairman's Report
Approval of Minutes
Executive Director's Report
—FY 1987 Progress Report
—FY 1989 Programs
—Administrative Matters
Report, Budget and Finance Committee
Guest Speaker: Joan Durrance "Local Governance"
Chief Officers of State Library Agencies Briefing, Nettie Taylor, Maryland State Librarian
NCLIS Committee Structure
Information Age Commission
Network Advisory Committee Statement
Reports:
—Bicentennial Committee
—International Committee
—1989 White House Conference Committee
Program Committee
OMB Clearance
Role of Commission in Advising the Executive and Legislative Branches
Commission Recognition Awards
Preservation Panel:
Jeffrey Heynen, ARL
Alan Calmes, NARA
George Farr, NEH
Carol Morrow Manns, RLG
Movie on Preservation: "Slow Fires"

CONTACT: Vivian J. Arterbery, NCLIS Executive Director.

Jane D. McDuffie,

Staff Assistant.

May 14, 1987.

[FR Doc. 87–11441 Filed 5–15–87; 10:56: am]
BILLING CODE 7527–01–M

Corrections

Federal Register
Vol. 52, No. 96
Tuesday, May 19, 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.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 182, 184, and 186

[Docket No. 79N-0269]

Iron and Iron Salts; Proposed Affirmation of GRAS Status as Direct and Indirect Human Food Ingredients

Correction

In proposed rule document 87-8850 beginning on page 13086 in the issue of Tuesday, April 21, 1987, make the following correction:

On page 13106, in the first complete paragraph, in the last line, "not" should read "now".

BILLING CODE 1505-01-D

DEPARTMENT OF LABOR

Mine Safety and Health Administration

30 CFR Parts 5, 15, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 31, 32, 33, 35, 36 and 74

Fees for Testing, Evaluation and Approval of Mining Products

Correction

In rule document 87-10389 beginning on page 17506 in the issue of Friday, May 8, 1987, make the following corrections:

1. On page 17510, in Table 1, under the heading "30 CFR part and agency tracking code", the second line should read "*12 Approval Evaluation" and the words "Permissibility Tests" should appear on a new line directly above "Physical Exam".

2. On page 17511, in Table 1, in the "Hourly rate" column, the seventh entry, now reading "28", should read "29" and in the "Flat rate" column the third entry, now reading "6", should be removed.

3. On page 17512, in the first column, in the 6th, 7th, 9th and 10th lines from the bottom, the tracking codes "*12" and "*14" should read "12" and "14".

BILLING CODE 1505-01-D

VETERANS ADMINISTRATION

38 CFR Part 3

Removal of Monetary Rates

Correction

In proposed rule document 87-10709 beginning on page 17773 in the issue of Tuesday, May 12, 1987, make the following corrections:

1. On page 17774, in the first column, under **SUPPLEMENTARY INFORMATION**, in the fifth line, "delivered" should read "derived".

§ 3.23 [Corrected]

2. On the same page, in the third column, in § 3.23(a), in the 10th line, "Notice" should read "Notices".

§ 3.27 [Corrected]

3. In § 3.27(b), on page 17776, in the first column, in the sixth line, "increases" was misspelled.

§ 3.28 [Corrected]

4. On the same page, in the first column, in the introductory text of § 3.28, in the second line, "improved" was misspelled; and in paragraph (b), in the fourth line, "pension" was misspelled.

§ 3.1600 [Corrected]

5. On the same page, in the second column, in § 3.1600(b), in the seventh line, "computed" was misspelled; and in the third column, in paragraph (f), in the eighth line, insert ")" after "§ 3.8(c)"

BILLING CODE 1505-01-D

federal register

Tuesday
May 19, 1987

Part II

General Services Administration

41 CFR Part 101-6
Federal Advisory Committee Management; Proposed Rule

GENERAL SERVICES ADMINISTRATION

41 CFR Part 101-6

Federal Advisory Committee Management; Administrative and Interpretive Guidelines and Management Controls

AGENCY: Office of Administration, General Services Administration.

ACTION: Proposed rule.

SUMMARY: This proposed rule provides administrative and interpretive guidelines and management controls for Federal agencies concerning the implementation of the Federal Advisory Committee Act, as amended (5 U.S.C., App.) (hereinafter "the Act"). In a previous issue of the **Federal Register**, GSA published an interim final rule on the management of Federal advisory committees and requested comments (48 FR 19324; April 28, 1983). Additional comments were requested through an advance notice of proposed rulemaking published in the **Federal Register** on February 13, 1987 (52 FR 4631). Comments received have been considered in formulating this proposed rule prior to its publication as a final rule. This revised rule is intended to improve the management and use of Federal advisory committees in the Executive Branch of the Federal government.

DATES: Comments must be received on or before: August 17, 1987.

ADDRESSES: Comments should be addressed to: General Services Administration, Committee Management Secretariat (CTM), Washington, DC 20405.

Copies of comments that have been received are available for public inspection in Room 7030 of the General Services Building, 18th and F Streets, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Charles F. Howton, Senior Committee Management Specialist, Committee Management Secretariat, Office of Management Services, Office of Administration, General Services Administration, Washington, DC 20405 (202-523-1343).

SUPPLEMENTARY INFORMATION:

Background

GSA's authority for administering the Act is contained in section 7 of the Act and Executive Order 12024 (42 FR 61445, 3 CFR, 1977 Comp., p. 158). Under Executive Order 12024, the President delegated to the Administrator of General Services all of the functions vested in the President by the Act, as amended, except that the Annual Report to the Congress required by section 6(c) shall be prepared by the Administrator for the President's consideration and transmittal to the Congress.

Prior Comments

As stated above, GSA issued an interim final rule on the management of Federal advisory committees in the **Federal Register** and invited comments. The substantive comments received are addressed as follows:

Rescind the No-Compensation Policy

It was the general opinion of the commenters responding that the policy of not paying advisory committee members should be withdrawn. The commenters felt that the decision to compensate or not to compensate members should be left to the discretion of the agency heads because needs of agencies vary, and agencies are in the best position to know when compensation is appropriate. GSA has agreed to withdraw the nocompensation requirement.

Eliminate Quarterly Reports of Membership

A change that many commenters recommended was elimination of the requirement to update committee membership lists on a quarterly basis. The commenters stated that these reports placed an unnecessary paperwork burden on agencies having advisory committees.

The annual report of membership that the Federal Advisory Committee Act requires was considered sufficient. GSA has eliminated this requirement from the proposed rule.

Withdraw the Limits on Committee Size

The interim final rule included a provision recommending that the size of committees be limited. Commenters noted that the Federal Advisory Committee Act does not establish a limit on the size of membership. Some agency heads find that larger committees can be an efficient device, saving the cost of setting up separate committees and staffs.

GSA never intended this limitation to be mandatory. To avoid misinterpretation, however, GSA has changed this provision to say that the number of members should be limited to the fewest necessary to accomplish committee objectives.

Clarify the Requirements Applicable to Subcommittees

The commenters recommended that subcommittees that provide advice and recommendations to the parent committee should be considered part of the parent committee and exempt from separate chartering and consultation provisions of the Federal Advisory Committee Act, although they would still be subject to the other provisions of the Act. GSA has accepted this recommendation and has reflected it in this proposed rule.

Exempt One-Time Meetings

Several commenters recommended that a final rule provide an exclusion for one-time meetings. GSA is of the opinion that such an exclusion is not appropriate in view of the limited litigation history available for consideration. Accordingly, GSA has not accepted the recommendation to exclude meetings or groups from the Act's coverage solely because they take place or meet only once. In the absence of any additional judicial precedent to the contrary, GSA believes a one-time meeting exclusion in this rule would be inconsistent with the Act.

Streamline the Consultation Process

One commenter suggested that the final rule allow an agency head to proceed to establish an advisory committee, for which consultation with the Administrator is required, if that agency head had not received GSA's views within 15 days of receipt. GSA does not believe that the lack of a final response within 15 days has been a widespread problem. For those consultations which require additional time, GSA normally provides the agency with a reason for the delay and makes every effort to expedite the review process and respond to the agency. Since the need for additional time to review a consultation often indicates a need to resolve problems or respond to additional information, GSA does not believe an agency should proceed to charter a committee until all relevant issues have been resolved.

However, GSA recognizes that an agency head retains final authority for establishing a particular advisory committee and this concept has been incorporated into the proposed rule. To expedite the consultation process generally, the proposed rule also provides for agencies to submit consultations directly to the Secretariat to streamline administrative processing.

Miscellaneous Comments

Other sections have been amended or revised for purposes of clarity or to better explain GSA's intent.

Additional Instructions

Pursuant to section 7(d) of the Act, the Administrator after study and consultation with the Director, Office of Personnel Management (OPM), is to establish guidelines with respect to uniform fair rates of pay for comparable services for members, staffs and consultants of advisory committees. The consultation process with OPM has taken place.

Executive Order 12291

GSA has determined that this proposed rule is not a major rule for purposes of Executive Order 12291 of February 17, 1981, because it will not result in an annual effect on the economy of $100 million or more, will not cause a major increase in costs to consumers or others, and will not have significant adverse effects. GSA has based all administrative decisions on this proposed rule on adequate information concerning the need for and consequences of this proposed rule. GSA has also determined that the potential benefits to society from this proposed rule far outweigh the potential costs, has maximized the net benefits, and has chosen the alternative involving the least net cost to society.

Regulatory Flexibility Act

These regulations are not subject to the regulatory flexibility analysis or other requirements of 5 U.S.C. 603 and 604.

List of Subjects in 41 CFR Part 101–6

Civil rights, Government property management, Grant programs, Intergovernmental relations, Surplus Government property, Relocation assistance, Real property acquisition, Federal advisory committees.

Accordingly, it is proposed to amend 41 CFR Part 101–6 as follows:

PART 101–6—MISCELLANEOUS REGULATIONS

1. Subpart 101–6.10 is revised to read as follows:

Subpart 101–6.10—Federal Advisory Committee Management

Sec.

Authority: Sec. 205(c), 63 Stat. 390; 40 U.S.C. 486(c); sec. 7, 5 U.S.C. App. 1; and E.O. 12024, 3 CFR 1977 Comp. p. 158.

Subpart 101–6.10—Federal Advisory Committee Management

§ 101–6.1001 Scope.

(a) The following regulations define the policies, establish minimum requirements, and provide guidance to agency management for the establishment, operation, administration, and duration of advisory committees subject to the Federal Advisory Committee Act, as amended. Reporting requirements which keep the Congress and the public informed of the number, purpose, membership, activities, and cost of these advisory committees are also included.

(b) The Act and these regulations do not apply to advisory meetings or groups listed in § 101–6.1004.

§ 101–6.1002 Policy.

The policy to be followed by Federal departments, agencies, and commissions, consistent with the Federal Advisory Committee Act, as amended, is as follows:

(a) An advisory committee shall be established only when it is essential to the conduct of agency business. Decision criteria include whether committee deliverations will result in the creation, elimination of, or change in, regulations, guidelines, or rules affecting agency business; whether the information to be obtained is already available through another advisory committee or source within the Federal Government; whether the committee will make recommendations resulting in significant improvements in service or reductions in cost; or whether the committee's recommendations will provide an important additional perspective or viewpoint impacting agency operations;

(b) An advisory committee shall be terminated whenever the stated objectives of the committee have been accomplished; the subject matter or work of the committee has become obsolete by the passing of time or the assumption of the committee's main functions by another entity within the Federal Government; or the agency determines that the cost of operation is excessive in relation to the benefits accuring to the Federal Government;

(c) An advisory committee shall be balanced in its membership in terms of the points of view represented and the functions to be performed; and

(d) An advisory committee shall be open to the public in its meetings except in those circumstances where a closed meeting shall be determined proper and consistent with the Act.

§ 101–6.1003 Definitions.

"Act" means the Federal Advisory Committee Act, as amended, 5 U.S.C. App. I.

"Administrator" means the Administrator of General Services.

"Advisory Committee" subject to the Act means any committee, board, commission, council, conference, panel, task force, or other similar group established by statute, or established or utilized by the President or any agency official for the purpose of obtaining advice or recommendations on issues or policies which are within the scope of his or her responsibilities. The term "advisory committee" includes any subcommittee or subgroup of an advisory committee, except such a group that reports to the parent group and meets as described in paragraph (k) of § 101–6.1004.

"Agency" has the same meaning as in section 551(1) of Title 5 of the United States Code.

"Committee Management Secretariat" ("Secretariat"), established pursuant to the Act is responsible for all matters relating to advisory committees, and carries out the Administrator's responsibilities under the Act and Executive Order 12024.

"Committee member" means an individual who serves by appointment on an advisory committee and has the full right and obligation to participate in the activities of the committee, including voting on committee recommendations.

"Presidential advisory committee" means any advisory committee which advises the President. It may be established by the President or by the Congress, or used by the President in the interest of obtaining advice or recommendations for the President. "Independent Presidential advisory committee" means any Presidential advisory committee not assigned by the President, or the President's delegate, or by the Congress in law, to an agency for administrative and other support and for which the Administrator of General Services may provide administrative and other support on a reimbursable basis.

"Staff member" means any individual who serves in a support capacity to an advisory committee.

"Utilized" (or "used"), as referenced in the definition of "Advisory Committee" in this section, means a committee or other group composed in whole or in part of other than full-time officers or employees of the Federal Government with an established existence outside the agency seeking its advice which the President or agency official(s) adopts, such as through institutional arrangements, as a preferred source from which to obtain advice or recommendations on a specific issue or policy within the scope of his or her responsibilities in the same manner as that individual would obtain advice or recommendations from an established advisory committee.

§ 101–6.1004 Examples of advisory meetings or groups not covered by the Act or this regulation.

The following are examples of advisory meetings or groups not covered by the Act or this regulation:

(a) Any committee composed wholly of full-time officers or employees of the Federal Government;

(b) Any advisory committee specifically exempted by an Act of Congress;

(c) Any advisory committee established or utilized by the Central Intelligence Agency;

(d) Any advisory committee established or utilized by the Federal Reserve System;

(e) The Advisory Committee on Intergovernmental Relations;

(f) Any local civic group whose primary function is that of rendering a public service with respect to a Federal program, or any State or local committee, council, board, commission, or similar group established to advise or make recommendations to State or local officials or agencies;

(g) Any committee which is established to perform primarily operational as opposed to advisory functions, except that such committee may be covered by the Act if it becomes primarily advisory in nature. It is the responsibility of the administering agency to determine whether such a committee is primarily operational. If so, it would not fall under the requirements of the Act and this regulation, but would continue to be regulated under relevant laws, subject to the direction of the President and the review of the appropriate legislative committees;

(h) Any meeting initiated by the President or one or more Federal official(s) for the purpose of obtaining advice or recommendations from one individual;

(i) Any meeting initiated by a Federal official(s) with more than one individual for the purpose of obtaining the advice of individual attendees and not for the purpose of utilizing the group to obtain consensus advice or recommendations. However, agencies should be aware that such a group may be covered by the Act if an agency begins to accept the group's deliberations as a source of consensus advice or recommendations;

(j) Any meeting initiated by a group with the President or one or more Federal official(s) for the purpose of expressing the group's view, provided that the President or Federal official(s) does not use the group as a preferred source of advice or recommendations;

(k) Meetings of two or more advisory committee members convened to gather information or conduct research for the committee to analyze relevant issues and facts, or to draft proposed position papers for consideration by the advisory committee or a subgroup of the advisory committee; or

(l) Any meeting with a group initiated by the President or one or more Federal official(s) for the purpose of exchanging facts or information.

§ 101–6.1005 Authorities for establishment of advisory committees.

An advisory committee may be established in one of four ways:

(a) By the President by Executive Order;

(b) By law where the Congress specifically directs the President or an agency to establish it;

(c) By law where the Congress authorizes but does not direct the President or an agency to establish it. In this instance, an agency head shall follow the procedures provided in § 101–6.1007; or

(d) By an agency under general agency authority in Title 5 of the United States Code or under other general agency-authorizing law. In this instance, an agency head shall follow the procedures provided in § 101–6.1007.

§ 101–6.1006 [Reserved]

§ 101–6.1007 Agency procedures for establishing advisory committees.

(a) When an agency head decides that it is necessary to establish a committee, the agency must consider similar committees in the same or other agencies before submitting a consultation to GSA to ensure that no duplication of effort will occur.

(b) In establishing or utilizing an advisory committee, the head of an agency or designee shall comply with the Act and this subpart, and shall:

(1) Prepare a proposed charter for the committee which includes the information listed in section 9(c) of the Act; and

(2) Submit a letter to the Secretariat proposing to establish or use, reestablish, or renew an advisory committee. The letter shall include the following information:

(i) An explanation of why the committee is essential to the conduct of agency business and in the public interest;

(ii) An explanation of why the committee's functions cannot be performed by the agency, another existing advisory committee, or other means such as a public hearing; and

(iii) A description of the agency's plan to attain balanced membership. For purposes of obtaining balance, agencies shall consider for membership interested persons and groups with professional or personal qualifications or experience to contribute to the functions and tasks to be performed. This shall not be construed to limit the participation of any individual where such participation is necessary to obtain divergent points of view that are

relevant to the business of the advisory committee.

(3) Subcommittees that do not function independently of the parent committee need not follow the requirements of paragraphs (b)(1) and (b)(2) of this section. However, except for the subgroups that meet solely as described in paragraph (k) of § 101–6.1004, they are subject to all other requirements of the Act.

(4) The requirements of paragraphs (b)(1) and (b)(2) of this section shall apply for any subcommittee of a chartered advisory committee, whether its members are drawn in whole or in part from the parent advisory committee, which functions independently of the parent advisory committee such as by making recommendations directly to the agency rather than for consideration by the chartered advisory committee.

(c) The Secretariat will review the proposal and notify the agency of GSA's views within 15 calendar days of receipt, if possible. The agency head retains final authority for establishing a particular advisory committee.

(d) The agency shall notify the Secretariat in writing that either:

(1) The advisory committee is being established. The filing of the advisory committee charter as specified in § 101–6.1013 shall be considered appropriate written notification in this instance. The agency head shall then comply with the provisions of § 101–6.1009 for an established advisory committee; or

(2) The advisory committee is not being established. In this instance, the agency shall also advise the Secretariat if the agency head intends to take any further action with respect to the proposed advisory committee.

§ 101–6.1008 The role of GSA.

(a) The functions under section 7 of the Act will be performed for the Administrator by the Secretariat. The Secretariat assists the Administrator in prescribing administrative guidelines and management controls for advisory committees, and assists other agencies in implementing and interpreting these guidelines. In exercising internal controls over the management and supervision of the operations and procedures vested in each agency by section 8(b) of the Act and by §§ 101–6.1009 and 101–6.1017 of this rule, agencies shall conform to the guidelines prescribed by GSA.

(b) The Secretariat may request comments from agencies on management guidelines and policy issues of broad interagency interest or application to the Federal advisory committee program.

(c) In advance of issuing informal guidelines, nonstatutory reporting requirements, and administrative procedures such as report formats or automation, the Secretariat shall request formal or informal comments from agency Committee Management Officers.

§ 101–6.1009 Responsibilities of an agency head for an advisory committee established under general agency authority.

The head of each agency that uses one or more advisory committees shall ensure:

(a) Compliance with the Act and this regulation;

(b) Issuance of administrative guidelines and management controls which apply to all advisory committees established or used by the agency;

(c) Designation of a Committee Management Officer who shall carry out the functions specified in section 8(b) of the Act;

(d) Provision of a written determination stating the reasons for closing any advisory committee meeting to the public;

(e) A review, at least annually, of the need to continue each existing advisory committee, consisent with the public interest and the purpose and functions of each committee;

(f) Rates of pay are justified and levels of agency support are adequate;

(g) The appointment of a Designated Federal Officer for each advisory committee;

(h) The opportunity for reasonable public participation in advisory committee activities; and

(i) That the number of committee members is limited to the fewest necessary to accomplish committee objectives.

§ 101–6.1010 [Reserved]

§ 101–6.1011 Responsibilities of the chairperson of an independent Presidential advisory committee.

The chairperson of an independent Presidential advisory committee shall comply with the Act and this regulation and shall:

(a) Consult with the Administrator concerning the role of the Designated Federal Officer and Committee Management Officer; and

(b) Fulfill the responsibilities of an agency head as specified in paragraphs (d) and (h) of § 101–6.1009.

§ 101–6.1012 [Reserved]

§ 101–6.1013 Charter filing requirements.

No advisory committee may operate, meet, or take any action until its charter has been filed as follows:

(a) *Advisory committee established, used, reestablished, or renewed by an agency.* The agency head shall file—(1) The charter with the standing committees of the Senate and the House of Representatives having legislative jurisdiction of the agency;

(2) A copy of the charter with the Library of Congress, Exchange and Gift Division, Federal Documents Section, Federal Advisory Committee Desk, Washington, DC 20540; and

(3) A copy of the charter, along with copies of the transmittal letters to the Senate and the House and the Library of Congress, with the Secretariat.

(b) *Advisory committee specifically directed by law.* Procedures are the same as in paragraph (a) of this section.

(c) *Presidential advisory committee.* When either the President or the Congress establishes an advisory committee that advises the President, the responsible agency head or, in the case of an independent Presidential advisory committee, the President's designee, shall file—

(1) The charter with the Secretariat;

(2) A copy with the Library of Congress; and

(3) If specifically directed by law, a copy with the standing committees of the Senate and the House of Representatives having legislative jurisdiction of the agency or the independent Presidential advisory committee.

§ 101–6.1014 [Reserved]

§ 101–6.1015 Advisory committee information which must be published in the Federal Register.

(a) *Committee establishment, reestablishment, or renewal.* (1) A notice in the Federal Register is required when an advisory committee, except a committee directed by law or established by the President, is established, used, reestablished, or renewed. Upon receiving notification of the completed review from the Secretariat, the agency shall publish a notice in the Federal Register that the committee is being established, used, reestablished, or renewed. For a new committee, such notice shall also include statements describing the nature and purpose of the committee and that the committee is necessary and in the public interest.

(2) Establishment and reestablishment notices shall appear at least 15 days before the committee charter is filed, except that the Secretariat may approve less than 15 days when requested for good cause by the agency. The 15-day advance notice requirement does not apply to committee renewals, notices of

which may be published concurrently with the filing of the charter.

(b) *Committee meetings.* (1) The agency or an independent Presidential advisory committee shall publish at least 15 days prior to an advisory committee meeting a notice in the **Federal Register**, which includes:

(i) The exact name of the advisory committee as chartered;

(ii) The time, date, place, and purpose of the meeting;

(iii) A summary of the agenda; and

(iv) A statement whether all or part of the meeting is open to the public or closed, and if closed, the reasons why, citing the specific exemptions of the Government in the Sunshine Act (5 U.S.C. 552b) as the basis for closure.

(2) In exceptional circumstances, the agency or independent Presidential advisory committee may give less than 15 days notice, provided that the reasons for doing so are included in the committee meeting notice published in the **Federal Register.**

§ 101-6.1016 [Reserved]

§ 101-6.1017 Responsibilities of the agency Committee Management Officer.

In addition to implementing the provisions of section 8(b) of the Act, the Committee Management Officer will carry out all responsibilities delegated by the agency head. The Committee Management Officer should also ensure that sections 10(b), 12(a) and 13 of the Act are implemented by the agency to provide for the appropriate recordkeeping. Agency files will constitute the official advisory committee records. Records include, but are not limited to:

(a) A set of approved charters of each advisory committee.

(b) Copies of the agency's portion of the Annual Review of Federal Advisory Committees, as required in section 6(c) of the Federal Advisory Committee Act; and

(c) Agency guidelines on committee management operations and procedures as maintained and updated.

§ 101-6.1018 [Reserved]

§ 101-6.1019 Duties of the Designated Federal Officer.

The agency head, or in the case of an independent Presidential advisory committee, the Administrator, shall designate a full-time Federal employee to be the Designated Federal Officer for the advisory committee, who:

(a) Must approve or call the meeting of the advisory committee;

(b) Must approve the agenda;

(c) Must attend the meetings;

(d) Shall adjourn the meetings when such adjournment is in the public interest; and

(e) Chairs the meeting when so directed by the agency head.

(f) The requirement in paragraph (b) of this section does not apply to a Presidential advisory committee.

§ 101-6.1020 [Reserved]

§ 101-6.1021 Public participation in advisory committee meetings.

The agency head, or the chairperson of an independent Presidential advisory committee, shall ensure that—

(a) Each advisory committee meeting is held at a reasonable time and in a place reasonably accessible to the public;

(b) The meeting room size is sufficient to accommodate advisory committee members, committee or agency staff, and interested members of the public;

(c) Any member of the public is permitted to file a written statement with the advisory committee; and

(d) Any member of the public may speak at the advisory committee meeting if the agency's guidelines so permit.

§ 101-6.1022 [Reserved]

§ 101-6.1023 Procedures for closing an advisory committee meeting.

(a) To close all or part of a meeting, the committee shall submit a request to the agency head, or, in the case of an independent Presidential advisory committee, the Administrator, citing the specific provisions of the Government in the Sunshine Act (5 U.S.C. 552b) which justify the closure. The request shall provide the agency head or the Administrator sufficient time to review the matter in order to make a determination prior to publication of the meeting notice required by § 101-6.1015(b).

(b) The general counsel of the agency, or in the case of an independent Presidential advisory committee, the General Services Administration' general counsel, should review all requests to close meetings.

(c) If the agency head, or in the case of an independent Presidential advisory committee, the Administrator, agrees that the request is consistent with the Government in the Sunshine Act and Federal Advisory Committee Act, he or she shall issue a determination that all or part of the meeting be closed.

(d) The agency head, or the chairperson of an independent Presidential advisory committee, shall:

(1) Make a copy of the determination available to the public upon request; and

(2) State the reasons why all or part of the meeting is closed, citing the specified exemptions used from the Government in the Sunshine Act in the meeting notice published in the **Federal Register.**

§ 101-6.1024 [Reserved]

§ 101-6.1025 Requirement for maintaining minutes of advisory committee meetings.

The agency head, or, in the case of an independent Presidential advisory committee, the chairperson, shall ensure that detailed minutes of each advisory committee meeting are kept. The minutes must include:

(a) Time, date, and place;

(b) A list of the following persons who were present:

(1) Advisory committee members and staff;

(2) Agency employees; and

(3) Members of the public who presented oral or written statements;

(c) An estimated number of other members of the public present;

(d) An accurate description of each matter discussed and the resolution, if any, made by the committee of such matter; and

(e) Copies of each report or other document received or issued by the committee.

§ 101-6.1026 [Reserved]

§ 101-6-6.1027 Termination of advisory committees.

Any advisory committee shall automatically terminate not later than 2 years after it is established, reestablished, or renewed, unless:

(a) Its duration is otherwise provided for by law;

(b) The President or agency head renews it prior to the end of such period; or

(c) The President or agency head terminates it before that time.

§ 101-6.1028 [Reserved]

§ 101-6.1029 Renewal of advisory committees.

(a) Advisory committees specifically directed by law:

(1) Whose duration extends beyond 2 years shall require a new charter to be filed every 2 years after the date of enactment of the law establishing the committee. If a new charter is not filed, the committee is not terminated, but may not meet or take any action.

(2) Which would terminate under the provisions of section 14 of the Act, and for which renewal would require reauthorization by law, may be reestablished by an agency provided that the agency complies under general

agency authority with the provisions of § 101–6.1007.

(b) Advisory committees established by the President may be renewed by appropriate action of the President and the filing of a new charter.

(c) Advisory committees authorized by law or established or used by an agency may be renewed, provided that at least 30 but not more than 60 days before the committee terminates, an agency head who intends to renew a committee complies with the provisons of § 101–6.1007.

§ 101–6.1030 [Reserved]

§ 101–6.1031 Amendments to advisory committee charters.

(a) *Committees specifically directed by law or established by the President.* When the Congress by law, or the President by Exective Order, changes the authorizing language which has been the basis for establishing an advisory committee, the agency head or chairperson of an independent Presidental advisory committee shall:

(1) Amend those sections of the current charter affected by the new law or Executive Order; and

(2) File the amended charter as specified in § 101–6.1013.

(b) *Committees established or used by an agency.* The charter of an advisory committee established under general agency authority may be amended when an agency head determines that the existing charter no longer accurately reflects the objectives or functions of the committee. Changes may be minor, such as revising the name of the advisory committee, or modifying the estimated number of frequency of meetings. Changes may also be major such as those dealing with the objectives or composition of the committee. Amending any existing advisory committee charter does not constitute renewal of the committee under § 101–6.1029.

(1) To make a minor amendment to a committee charter, an agency shall:

(i) Amend the charter language as necessary, and

(ii) File the amended charter as specified in § 101–6.1013.

(2) To make a major amendment to a committee charter, and agency shall:

(i) Amend the charter language as necessary,

(ii) Submit the proposed amended charter with a letter to the Secretariat requesting GSA's views on the amended language, along with an explanation of the purpose of the changes and why they are necessary. The Secretariat will review the proposed changes and notify the agency of GSA's views within 15 calendar days of the request, if possible; and

(iii) File the amended charter as specified in § 101–6.1013.

§ 101–6.1032 [Reserved]

§ 101–6.1033 Compensation and expense reimbursement of advisory committee members and staff.

(a) *Uniform pay guidelines for members of an advisory committee.* Nothing in this rule shall require agency heads to provide compensation, unless otherwise provided by law, to members of advisory committees. However, when compensation is deemed appropriate by an agency, it shall fix the pay of the members of an advisory committee to the daily equivalent of a rate of the General Schedule in 5 U.S.C. 5332 unless the members are appointed as consultants and compensated under 5 U.S.C. 3109. In determining an appropriate rate of pay for the members, an agency shall give consideration to the significance, scope, the technical complexity of the matters with which the advisory committee is concerned and the qualifications required of the members of the advisory committee. An agency may not fix the pay of the members of an advisory committee at a rate higher than the daily equivalent of the maximum rate for a GS–15 under the General Schedule, unless a higher rate is mandated by statute, or the head of the agency has personally determined that a higher rate of pay under the General Schedule is justified and necessary. Such a determination must be reviewed by the head of the agency annually. Under this rule, an agency may not fix the pay of an advisory committee member at a rate of pay higher than the daily equivalent of a rate for a GS–18, as provided in 5 U.S.C. 5332.

(b) *Pay for consultants to an advisory committee.* An agency shall fix the pay of a consultant to an advisory committee after giving consideration to the qualifications required of the consultant and the significance, scope, and technical complexity of the work. The compensation may not exceed the maximum rate of pay authorized by 5 U.S.C. 3109, and shall be in accordance with any applicable statutes, regulations, Executive Orders and administrative guidelines

(c) *Pay for staff members of advisory committee.* An agency may fix the pay of each advisory committee staff member at a rate of the General Schedule in which the Staff member's position would appropriately be placed (5 U.S.C. Chapter 51). An agency may not fix the pay of a staff member at the rate higher than the daily equivalent of the maximum rate for GS–15, unless the agency head has determined that under the General Schedule the staff member's position would appropriately be placed at a grade higher than GS–15. This determination must be reviewed annually by the agency head.

(1) In establishing rates of compensation, the agency head shall comply with any applicable statutes, regulations, Executive Orders, and administrative guidelines.

(2) A staff member who is a Federal employee shall serve with the knowledge of the Designated Federal Officer and the approval of the employee's direct supervisor. If a non-Federal employee, the staff members shall be appointed in accordance with applicable agency procedures, following consultation with the advisory committee.

(d) *Gratuitous services.* In the absence of any special limitations applicable to a specific agency, nothing in this regulation shall prevent an agency from accepting the gratuitous services of a committee member, consultant or a staff member who agrees in advance to serve without compensation.

(e) *Travel expenses.* Advisory committee members and staff members, while engaged in the performance of their duties away from their homes or regular places of business, may be allowed travel expenses, including per diem in lieu of subsistence, as authorized by section 5703 of Title 5, United State Code, for persons employed intermittently in the Government service.

(f) *Services for handicapped members.* While performing advisory committee duties, an advisory committee member who is blind or deaf or who qualifies as a handicapped individual may be provided services by a personal assistant for handicapped employees if the member:

(1) Qualifies as a handicapped individual as defined by section 501 of the Rehabilitation Act of 1973 (29 U.S.C. 794); and

(2) Does not otherwise qualify for assistance under 5 U.S.C. 3102 by reason of being an employee of an agency.

(g) *Exclusions.* (1) Nothing is this section prevents any person who (without regard to his or her service with an advisory committee) is a full-time Federal employee from receiving compensation at a rate at which he or she otherwise would be compensated as a full-time Federal employee.

(2) Nothing in this section prevents any person who immediately before his or her service with an advisory committee was a full-time Federal

employee from receiving compensation at the rate at which he or she was compensated as a full-time Federal employee.

(3) Nothing in this section affects a rate of pay or a limitation on a rate of pay that is specifically established by law or a rate of pay established under the General Schedule classification and pay system in Chapter 51 and Chapter 53 of Title 5, United States Code.

§ 101-6.1034 [Reserved]

§ 101-6.1035 Reports required for advisory committees.

(a) Within one year after a Presidential advisory committee has submitted a public report to the President, the President or his delegate will prepare a follow-up report to the Congress detailing the disposition of the committee's recommendations in accordance with section 6(d) of the Act;

(b) The President's annual report to the Congress shall be prepared by GSA based on reports filed on a fiscal year basis by each agency consistent with the information specified in section 6(c) of the Act. Reports from agencies shall be consistent with instructions provided annually by the Secretariat.

(c) In accordance with section 10(d) of the Act, advisory committees holding closed meetings shall issue reports at least annually, setting forth a summary of activities consistent with the policy of section 552(b) of Title 5, United States Code.

(d) Subject to the section 552 of Title 5, United States Code, eight copies of each report made by advisory committees and, where appropriate, background papers prepared by consultants, shall be filed with the Library of Congress for public inspection and use.

Dated: May 13, 1987.

Paul T. Weiss,

Associate Administrator for Administration.

[FR Doc. 87-11344 Filed 5-18-87; 8:45 am]

BILLING CODE 6820-34-M

Federal Register

Tuesday
May 19, 1987

Part III

Department of Education

Experimental and Innovative Training Program, Fiscal Year 1987; Proposed Funding Priorities and Invitation to Apply for New Awards; Notices

DEPARTMENT OF EDUCATION

Office of Special Education and Rehabilitative Services

Experimental and Innovative Training Program; Proposed Funding Priorities

AGENCY: Department of Education.

ACTION: Notice of proposed funding priorities for fiscal year 1987.

SUMMARY: The Secretary proposes annual funding priorities for training grants under the Experimental and Innovative Training Program in order to ensure effective use of program funds and to direct funds to areas of identified personnel need during fiscal year 1987. The Secretary will give an absolute preference to applications that meet terms of the proposed priorities.

DATE: Comments must be received on or before June 18, 1987.

ADDRESS: All written comments and suggestions should be sent to Ed Sontag, Office of Developmental Programs, Rehabilitation Services Administration, Department of Education, 400 Maryland Avenue, SW., (Switzer Building, Room 3042—M/S 2312), Washington, DC 20202.

FOR FURTHER INFORMATION CONTACT: Toby Lawrence, Office of Developmental Programs, Rehabilitation Services Administration. Telephone: (202) 732–1351.

SUPPLEMENTARY INFORMATION: Grants for the Experimental and Innovative Training Program are authorized by Title III, section 304 of the Rehabilitation Act of 1973, as amended. Program regulations for the Experimental and Innovative Training Program are established at 34 CFR Part 387. The purpose of the Experimental and Innovative Training Program is to support projects designed to develop new types of rehabilitation personnel and to demonstrate the effectiveness of these new types of personnel in providing rehabilitation services to severely disabled persons and to develop new and improved methods of training rehabilitation personnel to achieve more effective delivery of rehabilitation services by State and other rehabilitation agencies.

Eligible Applicants

Awards are made under this program to State vocational rehabilitation agencies and other public or nonprofit agencies and organizations, including institutions of higher education.

Funds Available

The Congress appropriated $29,550,000 for the Rehabilitation Training Program in fiscal year 1987. Of this amount, approximately $800,000 to $1,200,000 will be available for the support of new experimental and innovative training projects announced under this notice. An estimated eight to twelve projects will be funded at an average project award of $100,000, with four to six project awards in the area of learning-disabilities, and four to six project awards in the area of traumatic brain-injury.

Proposed Priorities

In accordance with the Education Department General Administrative Regulations (EDGAR) at 34 CFR 75.105(c)(3), the Secretary proposes to give an absolute preference to applications submitted under the Experimental and Innovative Training Program that address the priorities described below. An absolute preference is one which permits the Secretary to select only those applications that meet the described priorities.

Priority 1

The training under this priority must address the training of rehabilitation counselors and supervisors of rehabilitation counselors in State vocational rehabilitation agencies. The training must upgrade their knowledge and improve their skills: (1) To use diagnostic and evaluative techniques in identifying learning-disabled adults and determining the severity of their disabilities; (2) to interpret diagnostic, psychological, and educational background information and relate such information to the functional capacities of, and any proposed vocational planning for, learning-disabled adults; (3) to determine and substantiate the eligibilty of learning-disabled adults to receive services; and (4) to plan effective rehabilitation programs for, and deliver rehabilitation services to, learning-disabled adults. The training must emphasize improving the capacity of these personnel to develop linkages between providers of special education and vocational rehabilitation services and enhance coordination and transition among service providers. The training must include technical assistance to Rehabilitation Continuing Education Programs to increase their capacity to train employed personnel to provide improved rehabilitation services to learning-disabled individuals. Program regulations for the Rehabilitation Continuing Education Programs are established at 34 CFR Part 389. Such technical assistance is intended to ensure the integration and replication of training supported under this priority by Rehabilitation Countinuing Education Programs. In addition, written training materials and visual aids must be developed and made available to Rehabilitation Continuing Education Programs for their use in training rehabilitation personnel to provide effective services to learning-disabled adults.

Priority 2

The training under this priority must address the training of rehabilitation counselors and supervisors of rehabilitation counselors in State vocational rehabilitation agencies to provide effective rehabilitation services to traumatically brain-injured adults. The training must improve their skills: (1) To determine and substantiate the eligibility of traumatically brain-injured adults to receive rehabilitation services; (2) to evaluate the functional capacities of traumatically brain-injured adults; (3) to plan effective vocational and independent living rehabilitation programs for, and deliver vocational and independent living rehabilitation programs to, traumatically brain-injured adults; (4) to coordinate community resources in the rehabilitation plan to address their needs; and (5) to develop jobs for and place traumatically brain-injured adults in employment. The training must include technical assistance to Rehabilitation Continuing Education Programs in providing rehabilitation services to traumatically brain-injured adults. Such technical assistance is intended to ensure the integration and replication of training supported under this priority by Rehabilitation Continuing Education Programs. In addition, written training materials and visual aids must be developed and made available to Rehabilitation Continuing Education Programs for their use in training rehabilitation personnel to provide effective rehabilitation services to traumatically brain-injured adults.

A separate competition will be conducted for the two priorities described above. Each application must respond to only one of the priorities.

Invitation to Comment

Interested persons are invited to submit comments and recommendations regarding the proposed priorities. Written comments and recommendations may be sent to the address given at the beginning of this document. All comments received on or before the 30th day after publication of this document will be considered before the Secretary issues the final priorities. All comments submitted in response to

these proposed priorities will be available for public inspection, during and after the comment period, in Room 3042, Mary E. Switzer Building, 330 C Street, SW., Washington, DC, between the hours of 8:30 a.m. and 4:00 p.m. (Washington, DC time) Monday through Friday of each week except Federal holidays.

(29 U.S.C. 774)

(Catalog of Federal Domestic Assistance No. 84.129, Rehabilitation Training Program)

Dated: April 13, 1987.

William J. Bennett,

Secretary of Education.

[FR Doc. 87-11417 Filed 5-18-87; 8:45 am]

BILLING CODE 4000-01-M

[CFDA No.: 84.129]

Invitation for Applications for New Awards Under the Experimental and Innovative Training Program for Fiscal Year 1987

Purpose: To provide grants to State vocational rehabilitation agencies and other public and private agencies and organizations, including institutions of higher education, for the purpose of: (1) Developing new types of rehabilitation personnel and demonstrating the effectiveness of these new types of rehabilitation personnel; and (2) developing new and improved methods of training rehabilitation personnel to achieve more effective delivery of rehabilitation services by State and other rehabilitation agencies.

Deadline for Transmittal of Applications: June 30, 1987.

Applications Available: May 19, 1987.

Project Period: Not to exceed 36 months.

Applicable Regulations: (a) Education Department General Administrative Regulations (EDGAR) (34 CFR Parts 74, 75, 77 and 78); (b) regulations governing the Experimental and Innovative Training Program (34 CFR Parts 385 and 387); and (c) when adopted in final form, the Notice of Proposed Priorities published in this issue of the **Federal Register.** Applicants should prepare their applications based on the proposed priorities. If there are any changes made when the final priorities are published, applicants will be given an opportunity to amend or resubmit their applications.

Priorities: As described in the Notice of Proposed Priorities, the Secretary proposes to establish the following priorities for fiscal year 1987. The Secretary intends to give an absolute preference to applications that meet these priorities. Each application must respond to only one of the priorities.

Priority	Estimated available funds	Estimated number of awards
Learning-Disabled	$400,000 to $600,000	4 to 6.
Traumatically Brain-Injured.	$400,000 to $600,000	4 to 6.

For Applications or Information Contact: Mary Vest, Office of Developmental Programs, Rehabilitation Services Administration, U.S. Department of Education, 400 Maryland Avenue, SW. (Switzer Building, Room 3332-M/S 2312), Washington, DC 20202, Telephone: (202) 732-1343.

Program Authority: 29 U.S.C. 774.

Dated: May 13, 1987.

Madeleine Will,

Assistant Secretary, Office of Special Education and Rehabilitative Services.

[FR Doc. 87-11418 Filed 5-18-87; 8:45 am]

BILLING CODE 4000-01-M

Federal Register

Tuesday
May 19, 1987

Part IV

Department of Education

Extension of Closing Dates; Transmittal of Applications for New Awards Under the Program of Special Projects and Demonstrations for Providing Supported Employment Services to Severely Disabled Individuals and Providing Transitional Planning Services; Youths With Severe Handicaps for Fiscal Year 1987; Notices

DEPARTMENT OF EDUCATION

[CFDA No. 84.128A]

Extending the Closing Date for Transmittal of Applications for New Awards Under the Program of Special Projects and Demonstrations for Providing Transitional Planning Services to Youths with Severe Handicaps for Fiscal Year 1987

Deadline for Transmittal of Applications: The closing date for applications is extended from June 10, 1987 to June 24, 1987.

On April 10, 1987, three different Notices were published that established the closing dates for transmittal of applications for fiscal year 1987 competitions under the Program of Special Projects and Demonstrations for Providing Transmittal Planning Services to Youths with Severe Handicaps (52 FR 11729). Detailed information concerning this program is included in those Notices. The purpose of this Notice is to extend the closing date for transmittal of applications due to a delay in the availability of the application packages.

For Applications of Further Information Contact: Mary Vest, Office of Developmental Programs, Rehabilitation Services Administration, U.S. Department of Education, 400 Maryland Avenue, SW., Room 3332, (Switzer Building, M/S–2312), Washington, DC 20202. Telephone: 732–1343.

Program Authority: 29 U.S.C. 777a(e).

Dated: May 13, 1987.

Madeleine Will,

Assistant Secretary, Office of Special Education and Rehabilitative Services.

[FR Doc. 87–11421 Filed 5–8–87; 8:45 am]

BILLING CODE 4000–01–M

[CFDA 84.128A]

Extension of Closing Date for Transmittal of Applications for a New Award Under the Program of Special Projects and Demonstrations for Providing Supported Employment Services to Severely Disabled Individuals for Fiscal Year 1987

Deadline for Transmittal of Applications: The closing date for applications is extended from June 10, 1987 to June 24, 1987.

On April 10, 1987, a Notice was published that established the closing date for transmittal of applications for the fiscal year 1987 competition under the Program of Special Projects and Demonstrations for Providing Supported Employment Services to Severely Disabled Individuals (52 FR 11729). Detailed information concerning this program is included in that Notice. The purpose of this Notice is to extend the closing date for transmittal of applications due to a delay in the availability of application packages.

For Applications or Further Information Contact: Mary Vest, Office of Developmental Programs, Rehabilitation Services Administration, U.S. Department of Education, 400 Maryland Avenue, SW., Room 3332, (Switzer Building, M/S—2312), Washington, DC 20202. Telephone: 732–1343.

Program Authority: 29 U.S.C. 777a(d)(1).

Dated: May 13, 1987.

Madeleine Will,

Assistant Secretary, Office of Special Education and Rehabilitative Services.

[FR Doc. 87–11422 Filed 5–18–87; 8:45 am]

BILLING CODE 4000–01–M

Federal Register

Tuesday
May 19, 1987

Part V

Department of Education

Invitation for Application for Fiscal Year 1987 and Establishment of Closing Date for Transmittal for New Awards Under the Educational Media Research, Production, Distribution, and Training Program; Proposed Annual Funding Priority Notices

DEPARTMENT OF EDUCATION

Office of Special Education and Rehabilitative Services; Educational Media Research, Production, Distribution, and Training Program

AGENCY: Department of Education.

ACTION: Notice of proposed annual funding priority.

SUMMARY: The Secretary proposes an annual funding priority under the Educational Media Research, Production, Distribution, and Training Program. This priority supports a single project to design and manufacture a Line 21 decoder which will be less expensive than the present decoder. The Line 21 decoder permits captions of television programs to be displayed on television sets equipped with these decoders. The project should result in reduced equipment costs for persons purchasing decoders. In addition, the present stock of decoders will eventually be depleted and new decoders will be needed to ensure a continuing supply.

DATE: Comments must be received on or before June 18, 1987.

ADDRESS: Comments should be addressed to Dr. Malcolm J. Norwood, Division of Educational Services, Office of Special Education Programs, Department of Education, 400 Maryland Avenue, SW. (Switzer Building, Room 4088–M/S 2313), Washington, DC 20202.

FOR FURTHER INFORMATION CONTACT: Dr. Malcolm J. Norwood. Telephone: (202) 732–1177.

SUPPLEMENTARY INFORMATION: The Educational Media Research, Production, Distribution, and Training Program, authorized by sections 651 and 652 of Part F of the Education of the Handicapped Act (EHA), supports the educational advancement of persons with handicaps by providing assistance for: (a) Conducting research in the use of educational media and technology for persons with handicaps; (b) production and distribution of educational media for the use of persons with handicaps, their parents, their actual or potential employers, and other persons directly involved in work for the advancement of person with handicaps; and (c) training person in the use of educational media for the instruction of persons with handicaps.

In 1972 the Federal Government, through the former Office of Education, initiated the development of the closed-captioned television Line 21 system whch allows the broadcast signal to transmit captions (subtitles) visible only on television sets equipped with decoders. This system makes television accessible to the nation's population with hearing impairments.

The system was implemented in March, 1980, and has resulted in cooperative efforts between the public and private sectors to provide closed-captioned television to Americans with hearing impairments. All major networks are making closed-captioned programs available. Federal funding supports approximately 40% of the current level of captioning programming, the networks support approximately 30%, and corporate advertisers, foundations, and individual contributions account for the remaining 30%.

The Congress has appropriated funds annually which have been used to provide support for closed-captioning. Federal funds have been used also to assist in the design and manufacture of Line 21 decoders in order to reduce the cost of decoders to persons with hearing impairments. The Secretary now proposes a priority to design a Line 21 decoder which is lower in cost than the existing unit and which will be effective in overcoming problems that have resulted from recent changes in broadcast and video technology. The Federal government will subsidize the manufacture of at least 50,000 of the new decoders.

Proposed Priority

In accordance with Education Department General Administrative Regulations (EDGAR) as 34 CFR 75.105(c)(3), the Secretary propose to give an absolute preference to applications submitted under this priority of the Educational Media Research, Production, Distribution, and Training Program in 1987 that respond to the priority described below.

The Design and Manufacture of a Less Expensive Line 21 Decoder

This proposed priority will support a cooperative agreement with an organization that has the technical expertise and knowledge to design, produce, and distribute a decoder that is less expensive than existing decoders. The applicant must submit a plan for the design of a new decoder and subsequent production and distribution of at least 50,000 Line 21 decoders as part of the application. The plan must provide evidence of commitment from one or more manufacturers and retailers to assure production and sale of the units. The plan must contain a timeline for testing the new decoder for function and effectiveness in overcoming problems that have resulted from recent changes in broadcast and video technology, a timeline for production, and an estimated retail price for the assembled units to be marketed to consumers with hearing impairments. The estimated retail price must be lower than the retail price for existing units. The plan shall also provide assurances that at least 50,000 Line 21 decoders will be marketed to consumers. Existing decoders have been sold at prices ranging from $179.99 to $199.99.

Intergovernmental Review

This program is subject to the requirements of Executive Order 12372 and the regulations in 34 CFR Part 79. The objective of the Executive Order is to foster an intergovernmental partnership and a strengthened Federalism by relying on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

In accordance with the Order, this document provides early notification of the Department's specific plans and actions for this program.

Invitation to Comment

Interested persons are invited to submit comments and recommendations regarding this proposed priority. All comments submitted in response to this priority will be available for public inspection, during and after the comment period in Room 4088, Switzer Building, 330 C Street, SW., Washington, DC, between the hours of 8:30 a.m. and 4:00 p.m., Monday through Friday of each week except Federal holidays.

(20 U.S.C. 1451, 1452)

(Catalog of Federal Domestic Assistance No. 84.026; Media Services and Captioned Films)

Dated: April 27, 1987.

William J. Bennett,

Secretary of Education.

[FR Doc. 87–11419 Filed 5–18–87; 8:45 am]

BILLING CODE 4000–01–M

[CFDA 84.026]

Inviting Applications for New Awards Under the Educational Media Research, Production, Distribution, and Training Program for Fiscal Year 1987

Purpose: To support a single project to design and manufacture and distribute a Line 21 decoder which will be effective in overcoming problems that have resulted from recent changes in broadcast and video technology and is lower in cost than the existing unit. The project will ensure a continuing supply of these devices to the Nation's

population of persons with hearing impairments.

Deadline for Transmittal of Applications: July 7, 1987.

Deadline for Intergovernmental Review: September 7, 1987.

Applications Available: May 27, 1987.

Estimated Size of Awards: $2,000,000.

Estimated Number of Awards: 1.

Project Period: 3 years.

Application Regulations: (a) The Educational Media Research, Production, and Training Regulations, 34 CFR Part 332; (b) the Education Department General Administrative Regulations, 34 CFR Parts 74, 75, 77, 78, and 79; and (c) when adopted in final form, the Annual Funding Priority for this program. A notice of proposed annual funding priority is published in this issue of the **Federal Register.** Applicants should prepare their applications based on the proposed priority. If there are any changes when the final annual funding priority is published, applicants will be given the opportunity to amend or resubmit their applications.

For Applications or Information Contact: Dr. Malcolm J. Norwood, Telephone: (202) 732-1177, Office of Special Education Programs, Department of Education, 400 Maryland Avenue, SW. (Switzer Building, Room 3094-M/S 2313), Washington, DC 20202.

Program Authority: 20 U.S.C. 1451(a)(2), 1452(b)(5).

Dated: May 14, 1987.

Madeleine Will,

Assistant Secretary, Office of Special Education and Rehabilitative Service.

[FR Doc. 87-11420 Filed 5-18-87; 8:45 am]

BILLING CODE 4000-01-M

federal register

Tuesday
May 19, 1987

Part VI

Department of the Interior

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 762

Surface Coal Mining and Reclamation Operations; Permanent Regulatory Program; Areas Unsuitable for Mining; Definitions of Fragile Lands and Historic Lands; Final Rule

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 762

Surface Coal Mining and Reclamation Operations; Permanent Regulatory Program; Areas Unsuitable for Mining; Definitions of Fragile Lands and Historic Lands

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 permanent program rule that defines "fragile lands" and "historic lands," two types of lands that may be found unsuitable for certain types of surface coal mining operations. Both of these definitions, which apply throughout the lands unsuitable petition process, are being changed to eliminate the requirement of a finding of irreparable damage. These changes are being made in response to a settlement agreement resulting from litigation. In addition, the definition of fragile lands is being changed to remove buffer zones adjacent to areas where mining is prohibited, as an example of fragile lands, in response to comments on the proposed rule.

EFFECTIVE DATE: June 18, 1987.

ADDRESS: Office of Surface Mining Reclamation and Enforcement, U.S. Department of the Interior, 1951 Constitution Avenue, NW., Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Annetta Cheek, 202–343–7951 (commercial or FTS).

SUPPLEMENTARY INFORMATION:

I. Background

The Surface Mining Control and Reclamation Act of 1977 (SMCRA), 30 U.S.C. 1201 *et seq.*, sets forth the general regulatory requirements governing surface coal mining and reclamation operations and the surface impacts of underground coal mining. Section 522 of SMCRA, 30 U.S.C. 1272, establishes a process through which surface coal mining operations may be prohibited or limited under certain circumstances. Section 522(a)(3) establishes four categories of surface areas that may be determined unsuitable for certain types of surface coal mining operations, and specifies the criteria for making that determination for each category. Fragile or historic lands are included in one of these categories.

In 1979, OSMRE established performance standards under 30 CFR Chapter VII of its permanent regulatory program in order to implement SMCRA. The rules at 30 CFR 762.5 defined fragile and historic lands; 30 CFR 762.11 established criteria under which lands could be designated unsuitable for surface coal mining operations.

On September 14, 1983 (48 FR 41312), the Secretary of the Interior promulgated rules amending OSMRE's permanent regulatory program. Among other things, those rules revised the definitions of "fragile lands" and "historic lands" in § 762.5 by incorporating an irreparable damage standard. The effect of the change was to require a petitioner to show that lands would suffer irreparable damage or be destroyed before they would be considered fragile or historic.

The September 14, 1983, rules were challenged in Round III of *In re: Permanent Surface Mining Regulation Litigation II*, No. 79–1144 (D.D.C. 1984). On December 3, 1984, the district court issued an order approving an agreement between the Plaintiff Citizen and Environmental Organizations and the Defendant Secretary of the Interior. The order withdrew from the litigation an issue concerning the definitions of "fragile lands" and "historic lands."

Under the terms of the agreement, the Secretary suspended portions of the definitions of "fragile lands" and "historic lands" in §762.5 by a **Federal Register** notice published on January 3, 1985 (50 FR 257). The notice also stated that to implement the agreement OSMRE would propose a rule to amend the fragile lands and historic lands definitions to require only a finding of significant damage, in contrast to the 1983 rule which required a finding of irreparable damage or destruction.

On July 25, 1985, (50 FR 30408), OSMRE proposed rulemaking to further implement the settlement agreement. In that notice, OSMRE solicited public comments and made provision to hold public hearings upon request. Comments were received from industry, government agencies, and environmental groups during the 70-day comment period. No public hearings were requested, and none were held.

On December 10, 1986 (51 FR 44484), OSMRE reopened the comment period in order to analyze more fully the request of commenters on the proposed rule that the phrase "buffer zones adjacent to the boundaries of areas where surface coal mining operations are prohibited under section 552(e) of SMCRA and Part 761 of this chapter, if those areas have characteristics requiring additional areal protection or if the buffer zone itself contains fragile resources" be removed from the list of examples in the definition of fragile lands. Comments were received from industry and one government agency during the 60-day comment period. No public hearings were requested, and none were held.

II. Public Comments on Proposed Rule and Response to Comments

This rule defines "fragile lands" and "historic lands," two types of lands that may be found unsuitable for certain types of surface coal mining operations. Both of these definitions, which apply throughout the lands unsuitable petition process, are being changed to eliminate the requirement of a finding of irreparable damage. In addition, the definition of fragile lands is being changed to remove buffer zones adjacent to areas where mining is prohibited under section 522(e) of SMCRA and Part 761 of this chapter as an example of fragile lands.

Fragile lands are defined by this rule to include such areas as valuable habitats for fish or wildlife, critical habitats for endangered or threatened species of animals or plants, uncommon geologic formations, paleontological sites, National Natural Landmarks, areas where mining may result in flooding, environmental corridors containing a concentration of ecologic and esthetic features, and areas of recreational value due to high environmental quality.

Historic lands are defined by this rule to mean areas containing historic, cultural, or scientific resources. Examples of historic lands include archeological sites, properties listed on or eligible for listing on a State or National Register of Historic Places, National Historic Landmarks, properties having religious or cultural significance to Native Americans or religious groups, and properties for which historic designation is pending.

OSMRE is also moving the example of paleontological lands, previously included as a type of historic land, to the definition of fragile lands. Additionally, a minor wording change, from historic "sites" to historic "property" is being made. Finally, OSMRE is removing the concept of "significant damage" from the definition of historic lands.

Twenty-two comments were received on the proposed rule. Of these, 13 came from industry or from groups representing industry, 6 came from Federal agencies, 1 came from an

environmental organization, and 2 came from a State historic preservation officer.

The comments raised several major issues and a number of minor ones. A discussion of these comments and OSMRE's responses follow:

1. Inclusion of the Concept of "Important" Resources in the Definition

A number of commenters suggested that the proposed definitions of "fragile lands" and "historic lands" were vague, and that OSMRE erred in not including in them the concept of "important" resources. As OSMRE has noted previously in responding to comments on earlier versions of this rule (44 FR 14996, March 13, 1979), qualifiers addressing the importance of fragile and historic lands are included in the *criteria* for finding such lands to be unsuitable for surface coal mining operations, i.e. in 30 CFR 762.11. The definitions provide guidance on what types of resources are fragile or historic, not the criteria for designating lands as unsuitable. Section 522(a)(3)(B) of SMCRA authorizes the protection of fragile or historic lands in which surface coal mining operations could result in significant damage to important resources. Thus, it is more consistent with SMCRA to address the issue of importance in the rules specifying the criteria for determining lands unsuitable than in these definitions. For these reasons, OSMRE has not included the concept of importance in the final rule defining fragile and historic lands.

2. Inclusion of the Concept of Damage to the Resources as Part of the Definition of Fragile and Historic Lands

A number of commenters noted that it was illogical to include a concept of damage as part of the *definition* of fragile and historic lands. The suggestion was made that it was more appropriate to reserve such considerations for the section of the rules dealing with the criteria for finding lands unsuitable for mining.

The regulations promulgated in 1979 (44 FR 15344, March 13, 1979) included the concept of damage from surface coal mining operations in the definition of fragile lands, but not in the definition of historic lands. Revisions in 1983 (48 FR 41351, September 14, 1983) introduced the concept that both fragile and historic lands were those which could be damaged beyond an operator's ability to repair or restore, or be destroyed by surface coal mining operations. This language was suspended under the terms of the settlement agreement resulting from *In Re: Permanent Surface Mining Regulation Litigation II*, discussed above. The proposed rule included the concept of significant damage in the definitions of both fragile and historic lands.

OSMRE agrees in part that it is confusing to include the issue of degree of damage in both of the definitions. On the one hand, the status of historic lands does not depend on their potential for incurring significant damage. Therefore, this final rule does not include the criterion of significant damage in the definition of historic lands.

On the other hand, however, OSMRE believes that the concept of damage is critical to the definitions of fragile lands; the term "fragile" itself implies that the lands in question are delicate and subject to damage from surface coal mining activities. Therefore, OSMRE has retained the language concerning significant damage in the definition of fragile lands.

3. Inclusion of Terms "Important Resources" and "Significant Damage"

A number of commenters noted that the terms "important resources" and "significant damage" were not defined in the rules, either in the definitions at § 762.5 or in the discussion of unsuitability criteria at 30 CFR 762.11. They proposed that these terms be further defined in one or the other section of the rules.

OSMRE does not believe that it is appropriate to include such guidance in a rule that will apply to all State programs. Rather, it is a matter for the individual regulatory authorities to determine what specific resources are important and what degree of damage is significant. Adoption of specific definitions for these terms is likely to generate needless controversy in an already settled process. The concepts of significant damage and important resources have been used in the unsuitability petition process since 1979 without regulatory definitions for these terms. The process has worked reasonably well and no need has been demonstrated for national definitions of these concepts.

4. Buffer Zones

Buffer zones that provide additional protection to areas where surface coal mining operations are prohibited under section 522(e) of SMCRA and 30 CFR Part 761, and buffer zones that themselves contain fragile resources, were cited as examples of fragile lands in the proposed definition of "fragile lands." Several commenters questioned the legitimacy of such buffer zones, claiming that they were not authorized if not specifically required under section 522(e). Contrary to what these commenters claim, however, the buffer zone concept is authorized by SMCRA. It was upheld by court decision in *In Re: Permanent Surface Mining Regulation Litigation II*, No 79-1144 (D.D.C., July 15, 1985). This concept is based on section 522(a)(3) of SMCRA, which states that an area may be designated unsuitable for surface coal mining operations which "will * * * affect fragile lands" that contain specified "important" resources that could be significantly damaged by such operations. Thus, operations may be prohibited in a buffer zone to protect important resources that could be damaged on adjacent fragile lands. Areas on which mining is prohibited under section 522(e) also can be fragile lands which may require such protection.

Other commenters stated that buffer zones were unnecessary and inappropriate examples of "fragile lands." OSMRE agrees. Although buffer zones may be found unsuitable for mining to protect important resources of fragile lands, including those in section 522(e) prohibited areas, buffer zones which do not themselves contain important resources are inappropriate examples of "fragile lands" because they do not meet the terms of the definition. Furthermore, where a buffer zone itself contains important fragile resources, its status are "fragile lands" is independent of its status as a buffer zone. Thus, an example which singles out such buffer zones for protection is unnecessary. Accordingly, all reference to buffer zones has been deleted from the rule.

Other commenters wondered why the proposed rule provided buffer zones around fragile lands, but not around historic lands. As explained previously, the final rule does not include buffer zones as examples of either fragile lands or historic lands. Nevertheless, buffer zones around historic lands may be appropriate for the same reasons as given in the previous discussion of fragile lands.

5. Paleontological Sites

Several commenters suggested that it is more appropriate to include paleontological sites under the definition of fragile lands, rather than historic lands. OSMRE agrees, and has moved this language accordingly. This change will have no effect on the protection afforded such lands under these rules.

6. Historic Property Terminology

Several commenters noted that the use of the term "historic sites" was inconsistent with common usage and

with other Department of the Interior regulations. OSMRE agrees, and has changed the term historic "sites" too historic "properties."

7. Inclusiveness of the Term "Historic Lands"

Several commenters questioned inclusion of properties "for which historic designation is pending" and "properties eligible for, but not listed on, the National Register of Historic Places" as historic lands. This issue was addressed by the district court in *In Re: Permanent Surface Mining Regulation Litigation II,* No. 79–1144 (D.D.C., July 15, 1985). The court agreed that the Secretary acted within his authority in including such properties under the definition of historic lands. The court noted that it is not unreasonable to protect lands which are in the process of possibly being declared historic. To do otherwise would run the risk of damaging lands before such a determination could be made. Therefore, OSMRE intends to retain these examples within the definition of historic lands. This does not mean that such properties *must* be considered unsuitable for mining under section 522(a)(3) of SMCRA. Rather, it gives regulatory authorities the discretion to do so.

8. Inclusion of Scientific Resources as Both Fragile and Historic Lands

One commenter questioned why scientific resources were included under both definitions. Such resources are included since both types of lands may contain properties important for the scientific information they can provide, such as geologic formations and archeological sites.

9. Probability of Historic Properties

One commenter suggested that the definition of historic lands be expanded to include areas *likely* to contain historic properties, even though the occurrence of such properties cannot be demonstrated. OSMRE believes that it would be confusing to introduce such a concept into the definition of historic lands. The discretion to consider such areas as historic is best left to the individual regulatory authoritites, to be considered on a case-by-case basis.

10. Scenic Values

Two commenters suggested that scenic values be addressed specifically in the definition of fragile lands. This change is not necessary because scenic values could be protected as esthetic resources under one of the examples in the final definition of fragile lands. For this reason, OSMRE is retaining the proposed language.

11. Inclusion of Flooding in the Definition of Fragile Lands

One commenter suggested that the inclusion of "areas where mining may result in flooding" in the definition of fragile lands exceeded OSMRE's mandate. The commenter suggested that if the phrase were not deleted it should at least be modified to clarify that not all flooded lands would be protected, but only those which were fragile. OSMRE believes it is reasonable to include areas susceptible to flooding within the definition of fragile lands. Furthermore, it would be confusing to use the term "fragile lands" within one of the examples of the fragile lands definition. Therefore, OSMRE has retained the proposed language in the final rule. However, it should be clear that all lands which may be flooded are not automatically fragile. Rather, a regulatory authority would have to consider the nature of the resources within an area which might be flooded and whether they could be significantly damaged as a result of surface coal mining operations. Finally, a regulatory authority would have to apply the criteria in §§ 762.11 and 762.12 before determining that an area was unsuitable for mining.

12. Scope of Definitions

Several commenters suggested that the list of examples of fragile and/or historic lands was too broad or included redundant items. Language suggested by the commenters focused on adding qualifiers to the definitions that would limit their scope. OSMRE believes that these commenters have failed to differentiate between these definitions and the criteria by which the regulatory authority determines whether an area such be designated unsuitable, as found in 30 CFR 762.11. OSMRE believes that the examples in the definitions provided useful guidance for regulatory authorities who must apply them to specific situations. The examples are meant to provide guidance on what general types of resources can be considered fragile or historic lands, not a list of areas which can or should automatically be designated unsuitable. The district court in *In Re: Permanent Surface Mining Regulation Litigation II,* No. 79–1144 (D.D.C., July 15, 1985), found that the Secretary is not restricted to words used in SMCRA or the legislative history because to do so would mean that the definitions could only mirror the statute. The court found that the examples were helpful to users of the regulations, and were not all-inclusive, but were intended to assist States, petitioners and operators in interpreting SMCRA.

13. Promulgation of Rules in Response to Court Decision

One commenter objected to OSMRE promulgating rules based on a court decision, without giving industry an opportunity to participate in the process. The availability of the proposed rule for public comment and the opportunity to request a public hearing has provided ample opportunity for any interested individual or group to participate in the regulatory process.

14. Coverage of Privately Owned Lands

One commenter objected to the fact that privately owned, as well as publicly owned, lands were covered by the proposed rule.

SMCRA clearly was intended to regulate surface coal mining operations on private lands, and therefore OSMRE is obliged to cover privately owned lands in this rule.

15. Deletion of Terms "Irreparable or Permanent Damage"

One commenter objected to the change from the terms "irreparable or permanent damage" to "significant" damage. This change is consistent with section 522(a)(3) of SMCRA which uses the concept of significant damage. Damage does not have to be permanent or irreparable in every instance to be significant. Finally, the rule is consistent with the order of the district court in *In Re: Permanent Surface Mining Regulation Litigation II,* (D.D.C., December 3, 1984).

16. Regulation of Other Industries

One commenter noted that other industries are not required to consider historic or fragile lands. OSMRE is required to implement SMCRA, which includes provisions for the protection of such lands.

III. Procedural Matters

Federal Paperwork Reduction Act

This rule contains no information collection requirements requiring approval by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.*

Executive Order 12291 and Regulatory Flexibility Act

The Department of the Interior has determined that this document is not a major rule under E.O. 12291 and certifies that it 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.*). The

rule does not distinguish between small and large entities, and will make no change in the threshold for determining whether to grant a petition designating an area as unsuitable for surface coal mining operations because the lands are fragile or historic in nature. No incremental economic effects are anticipated as a result of the rule.

National Environmental Policy Act

OSMRE has prepared an environmental assessment (EA) on this final rule and has made a finding that it would not have a significant impact on the quality of the human environmental under section 102(2)(C) of the National Environmental Policy Act of 1969, 42 U.S.C. 4332(2)(C). The EA and the finding of no significant impact are on file in the OSMRE Administrative Record at the Office of Surface Mining Reclamation and Enforcement, U.S. Department of the Interior, 1100 L St. NW., Room 5131, Washington, DC 20240.

Author

The author of this final rule is Annetta L. Cheek, Division of Permit and Environmental Analysis, Office of Surface Mining Reclamation and Enforcement, U.S. Department of the Interior, 1951 Constitution Avenue NW., Washington, DC 20240. Telephone: 202–343–7951.

List of Subjects in 30 CFR Part 762

Historic preservation, Surface mining, Underground mining, Wildlife refuges.

For the reasons set out in this preamble, 30 CFR Part 762 is amended as set forth below.

Dated: April 28, 1987.

J. Steven Griles,

Assistant Secretary for Land and Minerals Management.

PART 762—CRITERIA FOR DESIGNATING AREAS AS UNSUITABLE FOR SURFACE COAL MINING OPERATIONS

1. The authority citation for Part 762 is required to read as follows:

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

2. In § 762.5, the definitions of "fragile lands" and "historic lands" are revised to read as follows:

§ 762.5 Definitions.

For purposes of this part:

Fragile lands means areas containing natural, ecologic, scientific, or esthetic resources that could be significantly damaged by surface coal mining operations. Examples of fragile lands include valuable habitats for fish or wildlife, critical habitats for endangered or threatened species of animals or plants, uncommon geologic formations, paleontological sites, National Natural Landmarks, areas where mining may result in flooding, environmental corridors containing a concentration of ecologic and esthetic features, and areas of recreational value due to high environmental quality.

Historic lands means areas containing historic, cultural, or scientific resources. Examples of historic lands include archeological sites, properties listed on or eligible for listing on a State or National Register of Historic Places, National Historic Landmarks, properties having religious or cultural significance to Native Americans or religious groups, and properties for which historic designation is pending.

* * * * *

[FR Doc. 87–11377 Filed 5–18–87; 8:45 am]

BILLING CODE 4310–05–M

federal register

Tuesday
May 19, 1987

Part VII

Department of Defense

Department of the Army

Privacy Act of 1974; Amendments to Systems of Records; Notice

DEPARTMENT OF DEFENSE

Department of the Army

Privacy Act of 1974; Amendments to Systems of Records Notice

AGENCY: Department of the Army, DOD.

ACTION: Notice of amendments to systems of records.

SUMMARY: The Army proposes to amend forty eight notices for systems of records subject to the Privacy Act of 1974. The specific changes to the notices being amended are set forth below followed by the system notices, as amended, published in their entirety.

DATE: This proposed action will be effective without further notice on June 18, 1987, unless comments are received which would result in a contrary determination.

ADDRESS: Send comments to the system manager identified in the system notice.

FOR FURTHER INFORMATION CONTACT: Mr. Cliff Jones, AS–OPS–RI, Room 1138, Hoffman Building I, Alexandria, VA 22331–0301. Telephone: (202) 325–6044, Autovon 221–6044.

SUPPLEMENTARY INFORMATION: The Army's systems of records notices inventory to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published to date in the **Federal Register** as follows:

FR Doc. 85–10237 (50 FR 22090) May 29, 1985 (Compilation)
FR Doc. 86–14667 (51 FR 23576) June 30, 1986
FR Doc. 86–19534 (51 FR 30900) August 29, 1986
FR Doc. 86–25274 (51 FR 40479) November 7, 1986
FR Doc. 87–8140 (52 FR 11847) April 13, 1987

The proposed amendment is not within the purview of the provisions of 5 U.S.C. 552(o) which requires the submission of an altered system report.

Linda M. Lawson,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

May 14, 1987.

AMENDMENTS

A0102.03DAAG

System Name:

Personnel Locator/Organizational Roster/Telephone Directory, 50 FR 22111, May 29, 1985.

Changes:

Line 1 change "A0102.03DAAG" to "A0102.03DAIM".

System Location:

Lines 9, 10, and 11 change "Official mailing addresses are in the organizational directory in the appendix to Army system notices (48 FR 25773, June 1983)" to "Official mailing addresses are contained in the compilation of the Army's system notices".

Authority for Maintenance of the System:

Line 25 add "E.O. 9397".

Routine Uses of Records Maintained in the System, Including Categories of Users and the Purpose of Such Uses:

Lines 32 and 33 change "See blanket routine uses at 48 FR 25503, June 6, 1983" to "See 'Blanket Routine Uses' set forth at the beginning of the Army's listing of record system notices".

Storage:

Line 39 add "or other computer media".

Retrievability:

Lines 40 and 41 change "By individual's surname" to "By individual's surname and SSN".

Lines 74 and 75 change "*Systems exempted from certain provisions of the Act*" to "*Exemptions claimed for the system*".

A0305.05aDACA

System Name:

Travel Payment System, 50 FR 22119, May 29, 1985.

Changes:

Authority for Maintenance of the System:

Line 21 add "E.O. 9397".

Retrievability:

Lines 44 and 45 change "By individual's surname and/or SSN." to "By individual's SSN".

Line 63 and 75 change to read "Records of travel payments are retained for 3 years following settlement at installation making current payments. Military member's record of outstanding advance payments is transferred to new servicing finance office upon permanent change of station or to the U.S. Army Finance and Accounting Center upon death or separation from active duty. Civilian employee's record of outstanding advance payments is transferred to new servicing finance office upon reassignment. Military and civilian records of travel payments for settled travel claims are destroyed by the old duty station 3 years following separation or transfer. Records for individuals performing invitational travel are destroyed 1 year from date of final payment.

System Manager(s) and Address:

Lines 77 and 78 change "Comptroller of the Army, The Pentagon, Washington, DC 20310." to "Comptroller of the Army, Headquarters, Department of the Army, The Pentagon, Washington, DC 20310."

Notification Procedure:

Lines 86 and 87 change "ATTN: FINCR, Indianapolis, IN 46249." to "ATTN: DACA–FAZ–S, Indianapolis, IN 46249–0526.

Lines 106 and 107 change "*Systems exempted from certain provisions of the Act*" to "*Exemptions claimed for the system*".

A0305.10bDACA

System Name:

Joint Uniform Military Pay System-Reserve Components-Army, 50 FR 22121 May 29, 1985.

Changes:

Authority for Maintenance of the System:

Line 19 change "et seq." to "*et. seq*" and add "E.O. 9397".

Routine Uses of Records Maintained in the System, Including Categories of Users and the Purpose of Such Uses:

Lines 51 and 52 "(7) Disclosure to consumer reporting agencies."

Notification Procedure:

Line 102 change "of San Francisco, CA." to "of San Francisco, CA; Ft. McCoy, WI; Ft. Douglas, UT."

Lines 127 an 128 change "*Systems exempted from certain provisions of the Act*" to "*Exemptions claimed for the system*".

A0305.10dDACA

System Name:

Health Professions Scholarship Program, 50 FR 22123, May 29, 1985.

Changes:

System Location:

Line 5 change "Denver, CO 80240." to "Aurora, CO 80045–5001."

Authority for Maintenance of the System:

Line 31 add "E.O. 9397".

Notification Procedure:

Line 80 change "Denver, CO 80240" to "Aurora, CO 80045–5001".

Lines 101 an 102 change "*Systems exempted from certain provisions of the Act*" to "*Exemptions claimed for the system*".

A0305.11DAPE

System Name:

USMA Cadet Account System, 50 FR 22124, May 29, 1985.

Changes:

System Name:

Lines 1 and 2 change "USMA Cadet Pay and Accounts System" to "USMA Cadet Account System".

System Location:

Line 4 change "10996" to "10996–1783".

Categories of Records in the System:

Lines 9 through 14 change to read: Monthly deposit listings of Corps of Cadet members showing entitlements and activity pertaining to funds held in trust by the USMA Treasurer.

Authority for Maintenance of the System:

Line 19 add "E.O. 9397".

Purpose(s):

Lines 20 through 28 change to read: To compute deposits and charges to cadet account to include: Barber, laundry/dry cleaning charges; advance pay, and funds deposited with Treasurer, USMA to be held in trust to pay for required uniforms, books, and equipment.

Routine Uses of Records Maintained in the System, Including Categories of Users and the Purposes of Such Uses:

Lines 32 through 56 change to read: (1) Treasurer, USMA: To record and provide taxable interest data to individual cadet and Internal Revenue Service. To control and monitor charges/credits to the cadet account. To record deposits to the cadet account and to maintain records of financial institutions for direct deposit purposes.

(2) Disclosure to consumer reporting agencies: Disclosure pursuant to 5 U.S.C. 552a(b) may be made from this system to consumer reporting agencies as defined in the Fair Credit Reporting Act (15 U.S.C. 1681a(f)) or the Federal Claims Collection Act of 1966 (31 U.S.C. 3701(a)(3)).

Retrievability:

Line 62 change "By Cadet number" to "By Cadet account number".

Retention and Disposal:

Lines 70 through 80 change to read: Duplicate account statements are retained locally for one year after cadets graduation and then destroyed by shredding. Informaion in automated media is retained for one thru three months, except that annual interest tapes are retained for one year before being erased.

System Manager(s) and Address:

Line 83 Change "10996" to "10996–1738".

Notification Procedure:

Lines 84 through 91 change to read: Requests from individuals may be submitted to the U.S. Military Academy, Treasurer, West Point, NY 10996–1783; telephone 914/938–3516. Individual should provide full name, Cadet account number, SSN, graduating class year, current address and telephone number, and signature.

Record Access Procedures:

Lines 96 and 97 change "Finance and Accounting Officer," to "Treasurer,".

Lines 111 and 112 change *"Systems exempted from certain provisions of the Act"* to *"Exemptions claimed for the system"*.

A0306.01DACA

System Name:

Civilian Employee Pay System, 50 FR 22124, May 29, 1985.

Changes:

Authority for Maintenance of the System:

Line 33 add "E.O. 9397".

Routine Uses of Records Maintained in the System, Including Categories of Users and the Purposes of Such Uses:

Line 62 change "Consumer reporting agencies" to " 'consumer reporting agencies' ".

Retention and Disposal:

Line 86 change "pay" to "retirement".

Notification Procedure:

Line 124 change "Accounting Offices," to "Accounting Offices worldwide,"

Lines 145 and 146 change *"System exempted from certain provisions of the Act"* to *"Exemptions claimed for the system"*.

A0306.20DACA

System Name:

Military and Civilian Waiver Files, 50 FR 22126, May 29, 1985.

Changes:

Categories of Individuals covered by the system:

Line 10 change "of pay and allowances." to "of pay and allowances, travel, transportation, and relocation allowances."

Authority for Maintenance of the System:

Line 19 add "E.O. 0397".

Retention and Disposal:

Lines 38 and 39 change "Records are retained until waiver is approved/denied." to "Records are retained for 6 years after waiver is approved/denied."

Lines 62 and 63 change *"Systems exempted from certain provisions of the Act"* to *"Exemptions claimed for the system"*.

A0314.09DACA

System Name:

Nonappropriated Fund Accounts Receivable System, 50 FR 22128, May 29, 1985.

Changes:

Routine Uses of Records Maintained in the System, Including Categories of Users and the Purposes of Such Uses:

Lines 54 and 55 change "at 48 FR 25503, June 6, 1983" to "set forth at the beginning of the Army's listing of record system notices".

Line 56 and 57 delete "(2) Disclosure to consumer reporting agencies."

Line 58 change "(3)" to "(2)".

System Manager(s) and Address:

Lines 79, 80, and 81 change "Commander, US Army Finance and Accounting Center, Indianapolis, IN 46249" to "Assistant Comptroller of the Army for Finance and Accounting, ATTN: DACA–FAP–N, STOP 66, Indianapolis, IN 46249–1056".

Lines 101 and 102 change *"Systems exempted from certain provisions of the Act"* to *"Exemptions claimed for the system"*.

A0403.01DAJA

System Name:

U.S. Army Claims Service Management Information System, 50 FR 22136, May 29, 1985.

Changes:

System Location:

Lines 4, 5, and 6 change "US Army Claims Service, Office of The Judge Advocate General, Ft Meade, MD 20755–5360" to "JACS–Z, Ft Meade, MD 20755–5360".

Authority for Maintenance of the System:

Line 30 add "E.O. 9397".

Lines 130 and 131 change *"Systems exempted from certain provisions of the Act"* to *"Exemptions claimed for the system"*.

A0403.06DAJA

System Name:

Tort Claim Files, 50 FR 22137, May 29, 1985.

Changes:

System Location:

Lines 3, 4, 5, and 6 change "Office of The Judge Advocate General, Headquarters, Department of the Army, The Pentagon, Washington, DC 20310–2210" to "HQDA(DAJA–LT), The Pentagon, Washington DC 20310–2210".

Lines 78 and 79 change *"Systems exempted from certain provisions of the Act"* to *"Exemptions claimed for the system"*.

A0403.16DAJA

System Name:

Army Property Claim Files, 50 FR 22138, May 29, 1985.

Changes:

System Location:

Lines 3, 4, 5, and 6 change "The Judge Advocate General, Headquarters, Department of the Army, The Pentagon, Washington, DC 20310–2210" to "HQDA(DAJA–LT), The Pentagon, Washington, DC 20310–2210".

Lines 81 and 82 change *"Systems exempted from certain provisions of the Act"* to *"Exemptions claimed for the system"*.

A0403.17DAJA

System Name:

Medical Expense Claim Files, 50 FR 22138, May 29, 1985.

Changes:

System Location:

Lines 6, 7, and 8 change "The Judge Advocate General's Office, HQDA, Washington, DC 20310–2210" to HQDA(DAJA–LT), The Pentagon, Washington, DC 20310–2210".

Lines 89 and 90 change *"Systems exempted from certain provisions of the Act"* to *"Exemptions claimed for the system"*.

A0406.08DAJA

System Name:

Patent, Copyright, Trademark, and Proprietary Data Files, 50 FR 22141, May 29, 1985.

Changes:

System Location:

Lines 5, 6, 7, and 8 change "(1) Primary: Headquarters, Department of the Army, Office of The Judge Advocate General, The Pentagon, Washington, DC 20310" to "(1) Primary: JALS–PC, Nassif Building, Falls Church, VA 22041–5013".

Lines 13 and 14 delete "(See 48 FR 25773, June 6, 1983.)"

Notification Procedure:

Lines 99 and 100 change "write to the System Manager, ATTN: DAJA–IP," to "write to system location,"

Lines 120 and 121 change *"Systems exempted from certain provisions of the Act"* to *"Exemptions claimed for the system"*.

A0501.10DAMI

System Name:

Counterintelligence Research File System (CIRFS), 50 FR 22147, May 29, 1985.

Changes:

System Location:

Lines 4, 5, 6, 7, 8, and 9 change to read: Counterintelligence and Security Division, Assistant Chief of Staff for Intelligence, Department of the Army, the Pentagon, Washington, DC 20310.

Notification Procedure:

Line 64 delete "Deputy".

Record Access Procedures:

Line 70 delete "Deputy".

Lines 90 and 91 change *"Systems exempted from certain provisions of the Act"* to *"Exemptions claimed for the system"*.

A0502.03aDAMI

System Name:

Intelligence Collection Files, 50 FR 22148, May 29, 1985.

Changes:

Notification Procedure:

Line 74 delete "Deputy".

Record Access Procedures:

Line 80 delete "Deputy".

Lines 101 and 102 change *"System exempted from certain provisions of the Act"* to *"Exemptions claimed for the system"*.

A0502.03bDAMI

System Name:

Technical Surveillance Index, 50 FR 22148, May 29, 1985.

Changes:

Notification Procedure:

Line 61 change "202/695–4474" to "(202) 697–7993"

Lines 74 and 75 change *"Systems exempted from certain provisions of the Act"* to *"Exemptions claimed for the system"*.

A0502.08DAMI

System Name:

Badge and Credential Files, 50 FR 22149, May 29, 1985.

Changes:

Notification Procedure:

Line 66 delete "Deputy"

Record Access Procedures:

Line 71 delete "Deputy"

Lines 89 and 90 change *"System exempted from certain provisions of the Act"* to *"Exemptions claimed for the system"*.

A0502.10aDAMI

System Name:

USAINSCOM Investigative Files System, 50 FR 22150, May 29, 1985.

Changes:

Notification Procedure:

Line 370 delete "Deputy"

Authority for Maintenance of the System:

Line 180 add "Executive Order 9397"

Record Access Procedures:

Line 375 delete "Deputy"

Lines 425 and 426 change *"System exempted from certain provisions of the Act"* to *"Exemptions claimed for the system"*.

A0503.03aDAMI

System Name:

Department of the Army Operational Support Activities Files, 50 FR 22152, May 29, 1985.

Changes:

Notification Procedure:

Line 64 delete "Deputy".

Record Access Procedures:

Line 70 delete "Deputy".

Lines 90 and 91 change *"Systems exempted from certain provisions of the Act"* to *"Exemptions claimed for the system"*.

A0503.06aDAMI

System Name:

Counterintelligence Operations Files, 50 FR 22153, May 29, 1985.

Changes:

Authority for Maintenance of the System:

Line 71 add "E.O. 9397"

Notification Procedure:

Lines 151, 152, and 513 change "Assistant Chief of Staff for Intelligence, Department of the Army, Washington, DC 20310" to "Commander, U.S. Army Intelligence and Security Command, ATTN: IACSF-FI, Ft Meade, MD 20755; telephone: (301) 677-4742/3".

Record Access Procedures:

Lines 155, 156, and 157 change "Assistant Chief of Staff for Intelligence, Department of the Army, Washington, DC 20310" to "Commander, U.S. Army Intelligence and Security Command, ATTN: IACSF-FI, Ft Meade, MD 20755".

Lines 172 and 173 change *"Systems exempted from certain provisions of the Act"* to *"Exemptions claimed for the system"*.

A0609.02DAAG

System Name:

Army Nuclear Test Personnel Review Program (ANTPR), 50 FR 22167, May 29, 1985.

Changes:

System Location:

Lines 9 and 10 change "205 S. Whiting Street, Alexandria, VA 22304" to "1608 Spring Hill Road, Vienna, VA 22180-2270".

Authority for Maintenance of the System:

Line 33 add "E.O. 9397", Lines 107 and 108 change *"Systems exempted from certain provisions of the Act"* to *"Exemptions claimed for the system"*.

A0614.01NGB

System Name:

Equal Opportunity Investigative Files, 50 FR 22168, May 29, 1985.

Changes:

System Location:

Lines 3, 4, and 5 change "National Guard Bureau, Office of Minority Affairs, 5611 Columbia Pike, Falls Church, VA 22041" to "Office of Human Resources (Field Operating Activity) HRA-FOA, 5600 Columbia Pike, Falls Church, VA 22041-5125'.'

System Manager(s) and Address:

Lines 48, 49, and 50 change "Chief, National Guard Bureau, The Pentagon, Washington, DC 20310" to "Office of Human Resources (Field Operating Activity) HRA-FOA, 5600 Columbia Pike, Falls Church, VA 22041-5125".

Notification Procedure:

Lines 55, 56, and 57 change "ATTN: Office of Minority Affairs, Nassif Building, 5611 Columbia Pike, Falls Church, VA 22041" to "Office of Human Resources (Field Operating Activity) HRA-FOA, 5600 Columbia Pike, Falls Church, VA 22041-5125".

A0704.10bUSMEPCOM

System Name:

ASVAB Student Test Scoring and Reporting System, 50 FR 22176, May 29, 1985.

Changes:

Line 1 change "A0704.10bMEPCOM" to "A0704.10bUSMEPCOM".

Lines 2 and 3 change "ASVAB Institutional Test Scoring and Reporting System" to "ASVAB Student Test Scoring and Reporting System".

System Location:

Lines 5, 6, 7, and 8 change "Military Enlistment Processing Command, Ft Sheridan, IL 60037. Segments exist at Military Entrance Processing Stations," to "U.S. Military Entrance Processing Command, 2500 Green Bay Road, North Chicago, IL 60064-3094. Segments exist at Military Entrance Processing Stations (MEPS),".

Categories of Individuals Covered by the System:

Line 18 change "institutional" to "student".

Categories of Records in the System:

Line 27 change "12 ASVAB tests" to "10 ASVAB subtests".

Authority for Maintenance of the System:

Line 30 add "E.O. 9397".

Policies and Practices for Storing, Retrieving, Accessing, retaining, and Disposing of Records in the System:

Storage:

Lines 47 and 48 change "Microfiche, optical mark, sense cards, computer magnetic tapes." to "Microfiche, optical mark sense answer sheets, computer magnetic tapes."

Retrievability:

Line 49 change "By individual's name." to "By individual's name and Social Security Number (SSN)."

Retention and Disposal:

Lines 57, 58, and 59 change "Records are maintained for two years from the date the ASVAB is administered." to "Records are maintained 2 years from the date the Armed Services Vocational Aptitude Battery (ASVAB) is administered."

System Manager(s) and Address:

Lines 67, 68, and 69 change "Commander, U.S. Military Enlistment Processing Command, Ft. Sheridan, IL 60037." to "Commander, U.S. Military Entrance Processing Command, 2500 Green Bay Road, North Chicago, IL 60064-3094."

Notification Procedure:

Lines 70 and 71 change "Information may be obtained from the System Manager." to "Information may be obtained from the Military Entrance Processing Stations (MEPS)."

Record Access Procedures:

Lines 77 and 78 change "System Manager" to "MEPS" Lines 87 and 88 change *"System exempted from certain provisions of the Act"* to *"Exemptions claimed for the system"*.

A0708.02cDAPC

System Name:

Officer Personnel Management Information System (OPMIS), 50 FR 22185, May 29, 1985.

Changes:

Categories of Records in the System:

Change lines 16 through 96 to read:

(1) Officer Master File (OMF) contains name, SSN, grade and date to rank, appointment and service agreement, service data and date, promotion, assignment, qualifications, specialties, efficiency, education and training, occupation, language, career pattern, awards and badges, physical location, separation, retirement, date and place of birth, race, religion, ethnic group dependents, sex, citizenship, marital status, and mailing address.

(2) Management Accession Information System (AMIS) contains selected information for the OMF, date of entry on active duty, personal demographic date, and assignment information.

(3) Assignments and Training Selection for ROTC graduates contains selected information from the OMF, the cadet's preference statement for specialty (branch), duty and initial training; Reserve Forces duty or delay selection, Regular Army selection, and branch selection.

(4) Officer Evaluation Reporting System (OERS) contains selected information from the OMF; selection board status; OER suspense indicator for action being taken to obtain missing or erroneous OER; selected information for each of the last ten OERs; and the name, SSN, and rating history of each individual, military and civilian, who

has served as the senior rating official for an active duty Army officer.

(5) Officer Distribution and Assignment System (ODAS) contains selected information from the OMF, projected assignment information for officers and warrant officers who are being reassigned.

(6) Reserve Officer Training Corps (ROTC) Instructor File contains selected information from the OMF and the following information pertaining to ROTC instructors: ROTC detachment, duty station, date assigned to ROTC detachment, date projected to be reassigned.

(7) Officer Civil Schools Management Information System (CSMIS) contains the following selected information from the OMF and the following information concerning officer and warrant officer personnel participating or who have participated in the Army sponsored degree completion program: school attended, start and completion dates, degree level and discipline, and Army Education Requirements Board (AERB) positions.

(8) Army Education Requirements Board (AERB) File contains selected information from the OMF for officer and warrant officer personnel who are serving or are projected to serve in an AERB approved position requiring graduate level education.

(9) USMA Potential Instructor File contains selected information from the OMF and the following information pertaining to previous, current, and potential instructors for the United States Military Academy (USMA) teaching staff: academic department and projected availability for USMA instructor duty.

Authority for Maintenance of the System:

Line 99 add "E.O. 9397".

Policies and Practices for Storing, Retrieving, Accessing, Retaining, and Disposing of Records in the System:

Retention and Disposal:

Line 146 change "OASIS" to "AMIS".

Lines 187 and 188 change "*Systems exempted from certain provisions of the Act*" to "*Exemptions claimed for the system*".

A0708.05DAPC

System Name:

Emergency Data Files, 50 FR 22187, May 29, 1985.

Changes:

System Location:

Line 6 change "DA Form 41" to "DD Form 93".

Categories of Records in the System:

Line 12 change "DA Form 41" to "DD Form 93".

Authority for Maintenance of the System:

Line 22 add "E.O. 9397".

Notification Procedure:

Line 63 change "(DAPC–PEZ–A)" to "(DAPC–PE–SI)".

Contesting Record Procedures:

Lines 66 through 70 to read: "The Army's rules for access to records and for contesting contents and appealing initial determinations are contained in Army Regulation 340–21 (32 CFR Part 505)".

Lines 80 and 81 change "*Systems exempted from certain provisions of the Act*" to "*Exemptions claimed for the system*".

A0708.18DAPC

System Name:

Line of Duty Investigations, 50 FR 22190, May 29, 1985.

Changes:

Categories of Individuals Covered by the System:

Lines 5, 6, and 7 change to read: "Service members who have been injured, are diseased, or deceased".

Categories of Records in the System:

Line 16 change period to comma after "instruments" and add "and action on appeals".

Authority for Maintenance of the System:

Line 19 add "E.O. 9397".

Purpose(s):

Lines 20 through 23 change to read: "To review facts and circumstances of service member's injury and render decision having the effect of approving/denying certain military benefits, pay and allowances".

System Manager(s) and Address:

Line 52 change "22332" to "22332–0400".

Notification Procedure:

Line 59 change "DAPC–PAR–R" to "DAPC–MSR–R".

Lines 61 through 65 change "c. Commander, U.S. Army Reserve Components Personnel and Administration Center, 9700 Page Boulevard, St. Louis, MO 63132 (for Army reserve personnel);" to "c. Commander, Army Personnel Center, 9700 Page Boulevard, St. Louis, MO 63132 (for Army reserve personnel);"

Line 69 add "e. National Guard Bureau, 5611 Columbia Pike, Falls Church, VA 22041 (for full-time National Guard Duty under Title 32, U.S.C., those in federalized status, or those attending active Army service school)."

Contesting Record Procedures:

Line 81 add "Appeals of determinations by authority of the Secretary of the Army are governed by AR 600–8–1; collateral review of decided cases is limited to questions of completeness of the records of such determinations."

Record Source Categories:

Lines 82 through 85 change to read: "From the applicant, medical records, DA Form 2173, service member's commander, official Army records and reports, witness statements."

Lines 86 and 87 change "*Systems exempted from certain provisions of the Act*" to "*Exemptions claimed for the system*".

A0708.20DARC

System Name:

Philippine Army Files, 50 FR 22191, May 29, 1985.

Changes:

System Location:

Lines 3, 4, and 5 change "US Army Reserve Components Personnel and Administration Center" to "U.S. Army Reserve Personnel Center".

System Manager(s) and Address:

Lines 68, 69, and 70 change "Commander, US Army Reserve Components Personnel and Administration Center" to "Commander, U.S. Army Reserve Personnel Center".

Notification Procedure:

Line 76 change "ATTN: DARC–PSE–AP" to "ATTN: DARP–PAS–EAP".

Lines 97 and 98 change "*Systems exempted from certain provisions of the Act*" to "*Exemptions claimed for the system*".

A0709.03DPE

System Name:

U.S. Military Academy Personnel Cadet Records, 50 FR 22193, May 29, 1985.

Changes:

System Location:

Line 5 change "10996" to "10996–5000".

Authority for Maintenance of the System:

Line 25 add "E.O. 9397".

Safeguards:

Lines 45 and 46 change "cabinets in locked rooms" to "cabinets and/or in locked rooms".

Rentention and Disposal:

Line 51 add "Microfilmed records maintained by USMA are Permanent; hardcopy files are destroyed after being microfilmed".

System Manager(s) and Address:

Line 54 change "10996" to "10996–5000".

Record Access Procedures:

Line 62 delete "or Cadet number".

Line 77 and 78 change *"Systems exempted from certain provisions of the act"* to *"Exemptions claimed for the system"*.

A0710.02DAJA

System Name:

JAGC Reserve Components Personnel Records, 50 FR 22194, May 29, 1985.

Changes:

System Location:

Lines 4, 5, 6, and 7 change "The Judge Advocate General's School, US Army, Charlottesville, VA 22901; Computer Center, University of Virginia 22901" to JAFS–ZA, 600 Massey Street, Charlottesville, VA 22903–1781".

Authority for Maintenance of the System:

Line 30 add "E.O. 9397".

Lines 93 and 94 change *"Systems exempted from certain provisions of the Act"* to *"Exemptions claimed for the system"*.

A0710.08DAAR

System Name:

Career Management Files of Dual Component Personnel, 50 FR 22194, May 29, 1985.

Changes:

System Location:

Lines 4, 5, and 6 change "US Army, Reserve Components Personnel and Administration Center" to "U.S. Army Reserve Personnel Center".

Authority for Maintenance of the System:

Line 23 add "E.O. 9397".

Purpose(s):

Lines 26 and 27 change "military education that needs for completed to be eligibility" to "military education that needs to be completed for eligibility".

Policies and Practices for Storing, Retrieving, Accessing, Retaining, and Disposing of Records in the System:

Rentention and Disposal:

Lines 51, 52, and 53 change "US Army Reserve Components Personnel and Administration Center" to "U.S. Army Reserve Personnel Center".

System Manager(s) and Address:

Lines 57 and 58 change "US Army Reserve Components Personnel and Administration Center" to "U.S. Army Reserve Personnel Center".

Notification procedure:

Lines 62 and 63 change "ATTN: Personnel Management and Training Division" to "ATTN: DARP–MOB–SD".

Lines 78 and 79 change *"Systems exempted from certain provisions of the Act"* to *"Exemptions claimed for the system"*.

A0710.09DAAG

System Name:

Personnel Management/Action Officer Files, 50 FR 22195, May 29, 1985.

Changes:

System Location:

Lines 4, 5, 6, and 7 change "US Army Reserve Components Personnel and Administration Center, 9700 Page Boulevard, St. Louis, MO 63132" to "U.S. Army Reserve Personnel Center, 9700 Page Boulevard, St. Louis, MO 63132–5200".

Categories of Records in the System:

Lines 20 and 21 delete "application for active duty". Lines 25 and 26 delete "selection/nonselection for promotion".

System Manager(s) and Address:

Lines 73, 74, and 75 change "Commander, US Army Reserve Components Personnel and Administration Center, 9700 Page Boulevard, St. Louis, MO 63132" to "Commander, U.S. Army Reserve Personnel Center, 9700 Page Boulevard, St. Louis, MO 63132–5200".

Notification Procedure:

Line 80 change "ATTN: AGUZ–RCPD" to "ATTN: DARP–IMG–F".

Lines 95 and 96 change *"Systems exempted from certain provisions of the Act"* to *"Exemptions claimed for the system"*.

A0722.02DACH

System Name:

Baptism, Marriage, and Funeral Files, 50 FR 22202, May 29, 1985.

Changes:

System Location:

Line 5 change "General Services Administration" to "National Archives and Records Administration".

Routine Uses of Records Maintained in the System, Including Categories of Users and the Purpose of Such Uses:

Lines 28 and 29 change "See 'Blanket Routine Uses' at 48 FR 25503, June 6, 1983" to "See 'Blanket Routine Uses' set forth at the beginning of the Army's listing of record system notices".

System, Manager(s) and Address:

Lines 50 and 51 change "The Pentagon, Washington, DC 20310" to "Washington, DC 20310–2700".

Notification Procedure:

Lines 53, 54, and 55 change "System Manager, ATTN: DACH–AMW, Room 1E–417, The Pentagon, Washington, DC 20310" to "Office, Chief of Chaplains, Headquarters, Department of the Army, ATTN: DACH–IMW, Washington, DC 20310–2700".

Lines 78 and 79 change *"Systems exempted from certain provisions of the Act"* to *"Exemptions claimed for the system"*.

A0722.05DACH

System Name:

Chaplain Counseling/Interview Files, 50 FR 22203, May 29, 1985.

Changes:

System Location:

Lines 4, 5, and 6 change "official addresses are contained in the directory at the end of the Army inventory of record system notices."

Systems Manager(s) and Address:

Lines 39 and 40 change "The Pentagon, Washington, DC 20310" to "Washington, DC 20310–2700".

Lines 60 and 61 change *"System exempted from certain provisions of the Act"* to *"Exemptions claimed for the system"*.

A0722.06DACH

System Name:

Religious Census, Education, and Registration Files, 50 FR 22203, May 29, 1985.

Changes:

System Location:

Lines 5, 6, and 7 change "official addresses are contained in the directory following the Army inventory of System Notices at 48 FR 25773, June 6, 1983" to "official addresses are contained in the directory at the end of the Army inventory of record system notices."

Routine Uses of Records Maintained in the System, Including Categories of Users and the Purpose of Such Uses:

Lines 29 and 30 change "See 'Blank Routine Uses' at 48 FR 25503, June 6, 1983" to "See 'Blanket Routine Uses' set forth at the beginning of the Army's listing of record system notices".

System Manager(s) and Address:

Lines 48 and 49 change "The Pentagon, Washington, DC 20310" to "Washington, DC 20310–2700".

Lines 63 and 64 change *"Systems exempted from certain provisions of the Act"* to *"Exemptions claimed for the system".*

A0726.06DAPC

System Name:

Casualty Information System (CIS), 50 FR 22207, May 29, 1985.

Changes:

System Location:

Lines 5 through 10 eliminate the sentence: "A manual segment of this system pertaining to Army reserve members not on active duty exists at the US Army Reserve Components Personnel and Administration Center, St. Louis, MO 63132".

Categories of Records in the System:

Lines 22 and 23 change "death, and documents pertaining to Serviceman's Group Life Insurance". to "death". Eliminate the words: "and documents pertaining to Serviceman's Group Life Insurance".

Authority for Maintenance of the System:

Line 26 add "E.O. 9397".

Purpose(s):

Lines 27 through 30 change to read: "To respond to inquiries; to provide statistical data comprising type, number, place and cause of casualty/death of Army members".

Policies and Practices for Storing, Retrieving, Accessing, Retaining, and Disposing of Records in the System:

Line 40 eliminate the word "Punch cards". Should read as follows:

Storage:

Magnetic tapes, computer printouts, paper records in file cabinets.

Lines 42 and 43 change to read:

Retrievability:

By individual's name and/or SSN or any other data element.

Notification Procedure:

Line 58 change "the System Manager". to "HQDA (DAPC–E–SI), 200 Stovall Street, Alexandria, VA 22332, telephone: 202-325–0719".

Lines 73 and 74 change *"Systems exempted from certain provisions of the Act"* to *"Exemptions claimed for the system".*

A0727.09DAAG

System Name:

Army Civilian/Military Service Review Board, 50 FR 22210, May 29, 1985.

Changes:

System Location:

Lines 3, 4, 5, and 6 change "U.S. Army Reserve Components Personnel and Administration Center, 9700 Page Boulevard, St. Louis, MO 63132" to "U.S. Army Reserve Personnel Center, 9700 Page Boulevard, St Louis, MO 63132–5200".

System Manager(s) and Address:

Lines 61, 62, 63, and 64 change "Commander, U.S. Army Reserve Components Personnel and Administration Center, 9700 Page Boulevard, St. Louis Mo 63132" to "Commander, U.S. Army Reserve Personnel Center, 9700 Page Boulevard, St. Louis, MO 63132–5200".

Notification Procedure:

Line 68 add "ATTN: DARP–PAS–ENC".

Lines 84 and 85 change *"Systems exempted from certain provisions of the Act"* to *"Exemption claimed for the system".*

A1012.03bAMC

System Name:

Student/Faculty Records: AMC Schools System, 50 FR 22229, May 29, 1985.

Changes:

System Location:

Lines 7, 8, and 9 delete "Joint Military Packaging Training Center, Aberdeen Proving Grounds, MD". Lines 9 and 10 change "USAMC Ammunition Center/School, Savanna, IL" to "U.S. Army Defense Ammunition Center and School, Savanna, IL".

Authority for Maintenance of the System:

Line 25 add "E.O. 9397".

Lines 86 and 87 change *"Systems exempted from certain provisions of the Act"* to *"Exemptions claimed for the system".*

A1012.03gHSC

System Name:

Academy of Health Sciences; Academic and Supporting Records, 50 FR 22230, May 29, 1985.

Changes:

System Location:

Line 5 add "and Fitzsimons Army Medical Center, Aurora, CO 80045–5001".

Authority for Maintenance of the System:

Line 20 add "E.O. 9397".

System Manager(s) and Address:

Lines 51, 52, and 53 change "Commander, Health Services Command, Ft Sam Houston, TX 78234." to "Superintendent, Academy of Health Sciences, Ft Sam Houston, TX 78234."

Lines 75 and 76 change *"Systems exempted from certain provisions of the Act"* to *"Exemptions claimed for the system".*

A1012.03jHSC

System Name:

Practical Nurse Course Files, 50 FR 22231, May 29, 1985.

Changes:

System Name:

Lines 1 and 2 change "Clinical Specialist School Student Files" to "Practical Nurse Course Files."

System Location:

Lines 3, 4, and 5 change "Health Services Command Clinical Specialist School, Fitzsimons Army Medical Center, Denver, CO 80240." to "Practical Nurse Course, Fitzsimons Army Medical Center, Aurora, CO 80045–5001."

Notification Procedure:

Lines 55, 56, and 57 change "Commander, Fitzsimons Army Medical Center, ATTN: HAF–N, Denver, CO 80240." to "Practical Nurse Course, Fitzsimons Army Medical Center, Aurora, CO 80045–5001."

Lines 75 and 76 change *"Systems exempted from certain provisions of the*

Act" to *"Exemptions claimed for the system"*.

A1106.04USAISC

System Name:

Military Affiliate Radio System, 50 FR 22237, May 29, 1985.

Changes:

Authority for Maintenance of the System:

Line 23 add "E.O. 9397".

Routine Uses of Records in the System, Including Categories of Users and the Purposes of Such Uses:

Lines 32, 33, and 34 change "Information may be disclosed to the Federal Communications Commission." to "Information may be disclosed to Department of Army and Department of Defense communication agencies and their authorized contractors in connection with individual's participation in the Army Military Affiliate Radio System (MARS) Program and to Federal supply agencies in connection with individual's participation in the Army MARS Equipment Program."

Lines 74 and 75 change *"Systems exempted from certain provisions of the Act"* to *"Exemptions claimed for the system"*.

A1108.16DAAG

System Name:

Postal and Mail Service System, 50 FR 22238, May 29, 1985.

Changes:

Line 1 change "A1108.16DAAG" to "A1108.16DAIM".

Authority for Maintenance of the System:

Line 24 add "E.O. 9397".

Retention and Disposal:

Line 51 change "3 years" to "1 year"—Line 53 change "1 year" to "6 months".

System Manager(s) and Address:

Line 55 and 56 change "The Adjutant General" to "ACSIM"—Line 58 change "22331" to "22331-0301".

Lines 78 and 79 change *"Systems exempted from certain provisions of the Act"* to *"Exemptions claimed for the system"*.

A1111.01DAMO

System Name:

Individual Flight Records Folder, 50 FR 22238, May 29, 1985.

Changes:

Line 1 change "A1111.01DAMO" to "A1111.01TRADOC".

System Location:

Lines 3 through 20 change to read: Decentralized to Flight Operations Section of Army/Army Reserve/National Guard units for all personnel on whom flight records are maintained. Copies of individual flight records (DA Form 759) are maintained at the Directorate of Evaluation and Standardization, ATTN: ATZQ-ESO, U.S. Army Aviation Center, Ft. Rucker, AL, for active Army and Reserve Component personnel who are instructor pilots, standardization instructor pilots, or instrument flight examiners; USAMILPERCEN, HQDA (DAPC-OPE-V), for active Army officers; USAMILPERCEN, HQDA (DAPC-OPW-AV), for active Army warrant officers; and HQDA (DASG-HCO-A for active Army MSC officers. Records of Army reservists not on extended active duty are maintained at the U.S. Army Reserve Personnel Center, St. Louis, MO; those of National Guardsmen are maintained at the National Guard Bureau, Aberdeen Proving Ground, MD.

Authority for Maintenance of the System:

Line 46 add E.O. 9397.

System Manager(s) and Address:

Lines 73, 74, 75, and 76 change "Deputy Chief of Staff for Operations and Plans (ATTN: DAMO-RQD), Headquarters, Department of the Army, Washington, DC 20310." to "Commander, U.S. Army Training and Doctrine Command, Fort Monroe, VA 23651."

Lines 99 and 100 change *"Systems exempted from certain provisions of the Act"* to *"Exemptions claimed for the system"*.

A1201.02MTMC

System Name:

Personnel Property Movement and Storage Records, 50 FR 22239, May 29, 1985.

Changes:

Categories of Records in the System:

Line 24 change "Standard Form 1103" to "Standard Form 1203".

Authority for Maintenance of the System:

Lines 28 "E.O. 9397".

System Manager(s) and Address:

Lines 70 and 71 change "Washington, DC 20315" to "Falls Church, VA 22041-5050".

Lines 92 and 93 change *"Systems exempted from certain provisions of the Act"* to *"Exemptions claimed for the system"*.

1301.07AMC

System Name:

Food Taste Test Panel Files, 50 FR 22242, May 29, 1985.

Changes:

System Location:

Lines 6, 7, and 8 change "US Army Natick Research and Development Center, Natick, MA 01760" to "U.S. Army Natick Research, Development and Engineering Center, Natick, MA 01760".

Routine Uses of Records Maintained in the System:

Lines 31 and 32 change "See 'Blanket Routine Uses' at 48 FR 25503, June 6, 1983" to "See 'Blanket Routine Uses' set forth at the beginning of the Army's listing of record system notices".

System Manager(s) and Address:

Lines 49, 50, and 51 change "Commander, US Army Natick Research and Development Center, Natick, MA 01760" to "Commander, U.S. Army Natick Research, Development and Engineering Center, Natick, MA 01760".

Notification Procedure:

Lines 54 and 55 change "ATTN: Science and Advanced Technology Laboratory" to "ATTN: Science and Advanced Technology Directorate".

Record Access Procedures:

Lines 59, 60, 61, and 62 change "Sensory Analysis Branch, Science and Advanced Technology Laboratory, US Army Natick Research and Development Center, Natick, MA 01760" to "Sensory Analysis Branch, Science and Advanced Technology Directorate, U.S. Army Natick Research, Development and Engineering Center, Natick, MA 01760".

Lines 71 and 72 change *"Systems exempted from certain provisons of the Act"* to *"Exemptions claimed for the system"*.

A1401.07bDAAG

System Name:

Library Borrowers'/Users' Profile Files, 50 FR 22244, May 29, 1985.

Changes:

Line 1 change "A1401.07bDAAG" to "A1401.07bDAIM".

Authority for Maintenance of the System:

Line 12 add "E.O. 9397".

System Manager(s) and Address:

Lines 37 through 40 change "The Adjutant General, Headquarters, Department of the Army, 2461 Eisenhower Avenue, Alexandria, VA 22331" to "Office of Assistant Chief of Staff for Information Management, Department of the Army, Washington, DC."

Lines 59 and 60 change "*Systems exempted from certain provisions of the Act*" to "*Exemptions claimed for the system*".

A1402.18DAJA

System Name:

Procurement Misconduct Files, 50 FR 22245, May 29, 1985.

Changes:

System Location:

Lines 3, 4, 5, and 6 change "Office of The Judge Advocate General, Headquarters, Department of the Army, The Pentagon, Washington, DC 20310" to "HQDA(DAJA–LT), The Pentagon, Washington, DC 20310–2210".

Categories of Records in the System:

Line 14 change "of fraudulent or other criminal conduct" to "of fraudulent, criminal or other misconduct".

Lines 17, 18, and 19 change "and the Joint Consolidated List of Debarred, Ineligible, and Suspended Contractors" to "and Consolidated List of Debarred, Suspended, and Ineligible Contractors".

Lines 74 and 75 change "*Systems exempted from certain provisions of the Act*" to "*Exemptions claimed for the system*".

A1506.03aDAEN

System Name:

Resettlement Files, 50 FR 22250, May 29, 1985.

Changes:

System Name:

Change from "Resettlement Files" to "Relocation Assistance Files".

Routine Uses of Records Maintained in the System, Including Categories of Users and the Purposes of Such Uses:

Lines 25 and 26 change "See 'Blanket Routine Uses' at 48 FR 25503, June 6, 1983" to "See 'blanket routine uses' set forth at the beginning of the Army's listing."

Retention and Disposal:

Lines 38, 39, 40 and 41 change "Records are retained 12 years after final action or determination on appeals, following which they are destroyed by shredding" to "Records are destroyed 10 years after final action or determination on appeals, as applicable, at offices having Army-wide responsibility. Other offices destroy records 10 years after payment in full satisfaction of claim or final payment, as applicable. Records are destroyed by shredding".

Lines 66 and 67 change "*Systems exempted from certain provisions of the Act* to "*Exemptions claimed for the system*".

A1511.02DAEN

System Name:

Army Housing Information Management System, 50 FR 22251, May 29, 1985.

Changes:

System Name:

Change "Army Housing Information Management System" to "Army Housing Operations Management System".

Authority for Maintenace of the System:

Line 33 add "E.O. 9397".

Retention and Disposal:

Lines 69, 70, 71, 72, 73, 74, 75, 78, and 79 change "Installation housing and tenancy files and destroyed after 3 years; cost control files are destroyed 11 years after last entry; leasing/rental rate files are destroyed after 10 years; housing referral service files are destroyed after 5 years; off-post rental housing reports/and/or complaints/ investigations are destroyed 5 years after completion at office having Army wide responsibility (other office: 3 years)" to "Installation troop housing files are destroyed after 3 years; installation housing project tenancy files are destroyed 3 years after termination of quarters occupancy; family housing cost controls are destroyed 11 years after last entry; family housing leasing files are destroyed 3 years after lease terminates, is cancelled, lapses, or after any litigation is concluded; family housing rental rates are destroyed after 10 years; housing referral services are destroyed after 5 years; off-post rental housing reports are destroyed after 2 years; off-post housing complaints and investigations are destroyed 5 years after completion at office having Army wide responsibility, and at other offices complaint and investigation records are destroyed 2 years after completion".

Lines 105 and 106 change "*Systems exempted from certain provisions of the Act* to "*Exemptions claimed for the system*".

A0102.03DAIM

SYSTEM NAME:

Personnel Locator/Organizational Roster/Telephone Directory.

SYSTEM LOCATION:

Segments are maintained by offices and/or Army telephone switchboards at Headquarters, Department of the Army, Staff and field operating agencies, commands, installations and activities. Official mailing addresses are contained in the compilation of the Army's system notices.

CATEOGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Military personnel, civilian employees, and in some instances their dependents.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records include cards or listings/ compilations of individual's name, Social Security Number, unit of assignment and/or home address, unit and/or home telephone number, and related information. Military alert rosters, organizational telephone directories, and listings of office personnel are included in this system.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C., section 3012; E.O. 9397.

PURPOSE(S):

To provide commanders and supervisors with emergency notification data, and operators and other users with locator data.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

See 'Blanket Routine Uses' set forth at the beginning of the Army's listing of records system notices.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders, card files, loose-leaf and bound notebooks; magnetic tape/discs or other computer media.

RETRIEVABILITY:

By individual's surname and SSN.

SAFEGUARDS:

Records are maintained in file cabinets, locked desk, or rooms accessible only to authorized personnel having official need therefor.

RETENTION AND DISPOSAL:

Individual records are destroyed upon transfer or separation of individual; rosters are destroyed upon update.

SYSTEM MANAGER(S) AND ADDRESS:

Commander or supervisor of organization maintaining locator or directory.

NOTIFICATION PROCEDURE:

Information may be obtained from commander or supervisor of organization to which individual is/was assigned or employed.

RECORD ACCESS PROCEDURES:

Requests should be made as indicated under 'Notification procedure'. Individual should provide full name, and some detail such as organization of assignment, that can be verified, except that, in cases where individual has provided written consent to release of home address/telephone number to the general public no identification is required.

CONTESTING RECORD PROCEDURES:

The Army's rules of access to records and for contesting contents and appealing initial determinations are contained in Army Regulation 340–21 (32 CFR Part 505).

RECORD SOURCE CATEGORIES:

From the individual; official Army records.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

A0305.05aDACA

SYSTEM NAME:

Travel Payment System.

SYSTEM LOCATION:

Decentralized to Finance and Accounting Offices world-wide; addresses may be obtained from the System Manager.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Miliary and civilian personnel of the Department of Defense, U.S. Army, U.S. Navy, and U.S. Air Force, and other individuals who perform invitational travel for the Army.

CATEGORIES OF RECORDS IN THE SYSTEM:

Individual travel vouchers and documents used to effect travel allowance payments.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Department of Defense Annual Appropriations Act; 5 U.S.C., sections 5701–5742; 10 U.S.C., sections 828, 832, 946, 3012; 28 U.S.C., section 1821; 37 U.S.C., sections 404–427; E.O. 9397.

PURPOSE(S):

To provide basis for reimbursing military and civilian personnel for expenses incident to travel for official Government business purposes and to account for such payments.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

See 'Blanket Routine Uses' set forth at the beginning of the Army's listing of record system notices. Disclosure pursuant to 5 U.S.C. 552a(b)(12) may be made from this system to 'consumer reporting agencies' as defined in the Fair Credit Reporting Act (15 U.S.C. 1681a(f)) or the Federal Claims Collection Act of 1966 (31 U.S.C. 3701(a)(3)).

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

File folders, cards, magnetic tape/disks, cassettes, computer printouts.

RETRIEVABILITY:

By individual's SSN.

SAFEGUARDS:

Records are accessible only to authorized persons who are properly screened, cleared and trained. Buildings employ security guards and/or military police patrols. Access to automated files is controlled by assigned passwords.

RETENTION AND DISPOSAL:

Individual vouchers and documents used for payment are retained at the installation making payment until end of month, following which they are sent to U.S. Army Finance and Accounting Center.

Signature cards used for approval of certain vouchers are retained at installation where payments are made until 3 years after date of revocation of authority, following which they are destroyed.

Records of travel payments are retained for 3 years following settlement at installation making current payments. Military member's record of outstanding advance payments is transferred to new servicing finance office upon permanent change of station or to the U.S. Army Finance and Accounting Center upon death or separation form active duty. Civilian employee's record of outstanding advance payments is transferred to new servicing finance office upon reassignment. Military and civilian records of travel payments for settled travel claims are destroyed by the old duty station 3 years following separation or transfer. Records for individuals performing invitational travel are destroyed 1 year from date of final payment.

SYSTEM MANAGER(S) AND ADDRESS:

Comptroller of the Army, Headquarters, Department of the Army, The Pentagon, Washington, DC 20310.

NOTIFICATION PROCEDURE:

Individuals desiring information on them from this system should inquire of the Finance and Accounting Office who currently pays them. For periods of Army service prior to current assignment, request should be addressed to the Commander, U.S. Army Finance and Accounting Center, ATTN: DACA–FAZ–S, Indianapolis, IN 46249–0526. Individual must provide full name and Social Security Number as well as current address.

RECORD ACCESS PROCEDURE:

Individuals desiring access to records pertaining to them should write either to the appropriate Finance and Accounting Officer where record is believed to exist or to the Commander, U.S. Army Finance and Accounting Center providing information required by 'Notification procedure'.

CONTESTING RECORD PROCEDURES:

The Army's rules for access to records and for contesting contents and appealing initial determinations are contained in Army Regulation 340–21 (32 CFR Part 505).

RECORD SOURCE CATEGORIES:

From the individual, Department of Defenses staff agencies and field commands/installations.

EXEMPTIONS CLAIMED FOR THE SYSTEM

None

A0305.10bDACA

SYSTEM NAME:

Joint Uniform Military Pay System-Reserve Components—Army.

SYSTEM LOCATION:

Centralized at U.S. Army Finance and Accounting Center, Indianapolis, IN 46249. Decentralized segments exist at Army Finance and Accounting Offices worldwide.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All members of the U.S. Army National Guard and U.S. Army Reserve who are drawing inactive duty training pay.

CATEGORIES OF RECORDS IN THE SYSTEM:

Individual military pay records, substantiating documents, transmittal letters, index cards, financial data record folders, miscellaneous military pay vouchers, personal financial history records.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

37 U.S.C., section 101 *et. seq;* E.O. 9397.

PURPOSE(S):

To maintain a record of member's drill attendance, entitlements and deductions in order to compute and disburse his/her pay while keeping a record of taxes and disbursements other than those to the member.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Information from this system may be disclosed to:

(1) Treasury Department: To record check issue data, taxable earnings and taxes withheld.

(2) Individual States of the U.S.: To furnish wages earned for the calendar year; these data are furnished to the state of home record.

(3) Army National Guard Bureau: To furnish budget data to account for every expenditure within categories established.

(4) Individual National Guard States Associations: To furnish a report and an associated check regarding state sponsored life insurance premium withheld.

(5) American Red Cross: To assist military personnel and their dependents in determining the status of monthly pay, dependents allotments, loans, and related financial transactions.

(6) Disclosures pursuant to 5 U.S.C. 552a(b)(12) may be made from this system to 'consumer reporting agencies' as defined in the Fair Credit Reporting Act (15 U.S.C. 1681a(f)) or the Federal Claims Collection Act of 1966 (31 U.S.C. 3701(a)(3)).

(7) See 'Blanket Routine Uses' set forth at the beginning of the Army's listing of record system notices.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders and bulk storage; cards, computer magnetic tape and paper printouts, microfiche.

RETRIEVABILITY:

By SSN, name of the member, and document number.

SAFEGUARDS:

The U.S. Army Finance and Accounting Center employs security guards. An employee badge and visitor registration system is in use. Records are maintained in areas accessible only to authorized personnel who are properly screened, cleared, and trained. Access to computer magnetic tape files is restricted to the members' servicing finance and accounting officer. Computer equipment and files are located in a separate secure area. Within finance and accounting offices Army-wide, access is limited to designated personnel having official need for the information in the performance of their duties.

RETENTION AND DISPOSAL:

Individual military pay records are converted to microfiche which are retained for 56 years. Other records are retained for varying periods but total retention does not exceed 56 years; disposition is to Federal records centers; destruction thereafter is by burning or shredding.

SYSTEM MANAGER(S) AND ADDRESS:

Commander, U.S. Army Finance and Accounting Center, Indianapolis, IN 46249.

NOTIFICATION PROCEDURE:

Information may be obtained from the System Manager. Individuals may also contact U.S. Property and Fiscal Officer, Army National Guard of each state and/or the District of Columbia, Puerto Rico, and the Virgin Islands. Individual may also contact the Finance and Accounting Officer at Ft Indiantown Gap, PA; Ft McPherson, GA; Ft Riley, KS; Presidio of San Francisco, CA; Ft McCoy, WI; Ft Douglas, UT. These Finance and Accounting Officers are responsible for U.S. Army Reserve pay accounts only. Individuals must provide full name, SSN, and military status.

RECORD ACCESS PROCEDURES:

Requests should be addressed to the Commander, U.S. Army Finance and Accounting Center, ATTN: FINCP, Indianapolis, IN 46249 or telephoned to 317/542-2891 and should contain the information indicated in 'Notification procedure'.

CONTESTING RECORD PROCEDURES:

The Army's rules for access to records and for contesting contents and appealing initial determinations are contained in Army Regulation 340-21 (32 CFR Part 505).

RECORD SOURCE CATEGORIES:

The source of all data to establish and maintain JUMPS-RC-Army originates at unit level; i.e., all units of U.S. Army National Guard and U.S. Army Reserve which perform inactive duty training and whose members receive drill pay as a result of this training furnish the data to support the system.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

A0305.10dDACA

SYSTEM NAME:

Health Professions Scholarship Program.

SYSTEM LOCATION:

Fitzsimons Army Medical Center, Aurora, CO 80045-5001. A segment of this system exists at the Army Medical Department Personnel Support Agency, 1900 Half Street SW., Washington, DC 20324.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Members of the U.S. Army Reserve who are enrolled in the Army-Health Professions Scholarship Program.

CATEGORIES OF RECORDS IN THE SYSTEM:

Contract between the Army and the University participating in the Health Professions Scholarship Program: tuition payments; individual's military pay records, cost data worksheets, active duty military pay vouchers, personal financial history records, monthly payroll listings of current members showing entitlements and deductions, bank identification data for deposit of pay, member's permanent home address, current mailing address and telephone number, orders to active duty, student's elective to defer entry on active duty, and similar relevant documents.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C., Chapter 104, *et seq.:* Pub. L. 94-426; E.O. 9397.

PURPOSE(S):

To establish the pay account of students accepted into the Health Professions Scholarship Program; to

determine appropriate pay, deductions, reimbursable expense, taxes and disbursements.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Information may be discussed to:

(1) Department of the Treasury: to record check issue data, taxable earnings and taxes withheld.

(2) States and cities/counties which have an agreement with the Department of the Army: to verify tax liability against member's state and city/county tax returns.

(3) Social Security Administration: to record earned wages by member under the Federal Insurance Contributions Act.

(4) See 'Blanket Routine Uses' set forth at the beginning of the Army's listing of record system notices.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders: Magnetic tapes; computer printouts; microfilm; ledger cards.

RETRIEVABILITY:

By member's name, SSN. Conventional indexing is used to retrieve data.

SAFEGUARDS:

Information is accessible only to authorized personnel having official need therefor. Records are stored in secured buildings protected by Military Police/security guards.

RETENTION AND DISPOSAL:

Individual pay records are retained at the Finance and Accounts Office, Fitzsimons Army Medical Center while reservist is enrolled in the Health Professions Scholarship Program. Upon completion of program, member's records are forwarded to U.S. Army Finance and Accounting Center, Indianapolis, IN 46249 for recoupment determination.

SYSTEM MANAGER(S) AND ADDRESS:

The Surgeon General, Headquarters, Department of the Army, Washington, DC 20310.

NOTIFICATION PROCEDURE:

Information may be obtained from the Finance and Accounting Officer, Fitzsimons Army Medical Center, Aurora, CO 80045–5001 so long as reservist is enrolled in the Scholarship Program. Thereafter, information may be obtained from the Commander, Army Medical Department Personnel Support Agency, Washington, DC 20324.

RECORD ACCESS PROCEDURES:

Individuals desiring access to records concerning themselves in this system of records may write as indicated under 'Notification procedure', providing his/her full name, present address and telephone number, and sufficient detail to locate the record.

CONTESTING RECORD PROCEDURES:

The Army's rules for access to records and for contesting contents and appealing initial determinations are contained in Army Regulation 340–21 (32 CFR Part 505).

RECORD SOURCE CATEGORIES:

From the individual; university/college in which student is enrolled; Army records and reports.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

A0305.11DAPE

SYSTEM NAME:

USMA Cadet Account System.

SYSTEM LOCATION:

U.S. Military Academy, West Point, NY 10996–1783.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Members of the U.S. Corps of Cadets, U.S. Military Academy.

CATEGORIES OF RECORDS IN THE SYSTEM:

Monthly deposit lisitngs of Corps of Cadets members showing entitlements and activity pertaining to funds held in trust by the USMA Treasurer.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C., Sections 205, 4340 and 4350; Title 6, General Accounting Office Policy and Procedures Manual for Guidance of Federal Agencies; E.O. 9397.

PURPOSE(S):

To compute deposits and charges to cadet account to include: Barber, laundry/dry cleaning charges; advance pay, and funds deposited with Treasurer, USMA to be held in trust to pay for required uniforms, books, and equipment.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

(1) Treasurer, USMA: To record and provide taxable interest data to individual cadet and Internal Revenue Service. To control and monitor charges/credits to the cadet account. To record deposits to the cadet account and to maintain records of financial institutions for direct deposit purposes.

(2) Disclosure to consumer reporting agencies: Disclosure pursuant to 5 U.S.C. 552a(b)(12) may be made from this system to conumer reporting agencies as defined in the Fair Credit Reporting Act (15 U.S.C. 1681a(f)) or the Federal Claims Collection Act of 1966 (31 U.S.C. 3701(a)(3)).

(3) See "Blanket Routine Uses" set forth at the beginning of the Army's listing of record system notices.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Magnetic tape and computer printout; paper records in file folders.

RETRIEVABILITY:

By Cadet account number.

SAFEGUARDS:

Records are maintained in buildings which are secured and patrolled and are accessible only to personnel who have need therefor in the performance of official duties. Automated master data and back-up files are further protected by assignment of passwords.

RETENTION AND DISPOSAL:

Duplicate account statements are retained locally for one year after cadets graduation and then destroyed by shredding. Information in automated media is retained for one thru three months, except that annual interest tapes are retained for one year before being erased.

SYSTEM MANAGER(S) AND ADDRESS:

Superintendent, U.S. Military Academy, West Point, NY 10996–1738.

NOTIFICATION PROCEDURE:

Requests from individuals may be submitted to the U.S. Military Academy, Treasurer, West Point, NY 10996–1783; telephone 914/938–3516. Individual should provide full name, Cadet account number, SSN, graduating class year, current address and telephone number, and signature.

RECORD ACCESS PROCEDURES:

Individual may request access by writing to the System Manager, furnishing information indicated in "Notification procedure". Personal visits may be made to the Treasurer, U.S. Military Academy; individual must provide acceptable identification such as valid driver's license and information that can be verified with his/her payroll.

CONTESTING RECORD PROCEDURES:

The Army's rules for access to records and for contesting contents and

appealing initial determinations are contained in Army Regulation 340–21 (32 CFR Part 505).

RECORD SOURCE CATEGORIES:

From the individual, Department of Army, Department of the Treasury, financial institutions and insurance companies.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

A0306.01DACA

SYSTEM NAME:

Civilian Employee Pay System.

SYSTEM LOCATION:

U.S. Army Finance and Accounting Offices worldwide and U.S. Property and Fiscal Offices in the United States, Puerto Rico, Virgin, Islands, and the District of Columbia having civilian payroll responsibilities.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Civilian employees and contract teachers employed by the Department of the Army; Office, Secretary of Defense; and specified elements of the Navy and Air Force.

CATEGORIES OF RECORDS IN THE SYSTEM:

Employees' pay, leave, and retirement records; individual withholding/deduction authorization for dependents, allotments, health benefits, savings bonds, etc.; tax exemption certificates; personal exception and indebtedness papers; statements of charges, claims, repatriated payment files; roster of authorized timekeepers and signature cards; payroll and retirement control and working paper files; unemployment compensation data requests; reports of retirement fund deductions; management narrative and statistical reports relating to pay, leave, and retirement.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Title 6, General Accounting Office Policy and Procedures Manual for Guidance of Federal Agencies; E.O. 9397.

PURPOSE(S):

To provide basis for computing civilian pay entitlements; to record history of pay transactions; to record leave accrued and taken, bonds due and issued, taxes paid; to answer inquiries and process claims.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Information may be disclosed to:

(1) Treasury Department: To record checks and bonds issued.

(2) Social Security Administration: to report earned wages by employees under the Federal Insurance Contributions Act.

(3) Internal Revenue Service: To record taxable earnings and taxes withheld.

(4) Office of Personnel Management: To record monies paid into Federal Retirement Fund and to provide information pertaining to health benefits.

(5) States and Cities. To provide taxable earnings of employees to those states and cities which have entered into an agreement with the Department of the Army and the Treasury Department.

(6) Disclosures pursuant to 5 U.S.C. 552a(b0(12) may be made from this system to "consumer reporting agencies" as defined in the Fair Credit Reporting Act (15 U.S.C. 1681a(f)) or the Federal Claims Collection Act of 1966 (31 U.S.C. 3701(a)(3)).

(7) See "Blanket Routine Uses' set forth at the beginning of the Army's listing of record system notices.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders and bulk storage; card files, computer magnetic tapes, disks, and printouts, and microfilm.

RETRIEVABILITY:

Automated records are retrieved by SSN within payroll block; manual records are retrieved by surname within payroll block.

SAFEGUARDS:

Records are restricted to personnel who are properly cleared and trained, and have an official need therefor. In addition, integrity of automated data is ensured by internal audit procedures, data base access accounting reports, and controls to preclude unauthorized disclosure.

RETENTION AND DISPOSAL:

Individual retirement record files are permanent; they are retained at installation while member is actively employed. They are forwarded to new installation when member is transferred to another Army activity. When employee transfers to another agency under the Department of Defense not serviced by Army or separates from Federal Service, record is forwarded to the Office of Personnel Management. Microfilm of manually maintained individual retirement records is sent to the National Personnel Records Center after 3 years.

Personnel exceptions and indebtedness files are permanent. These documents are filed in individual's Official Personnel Folder (OPF). Upon separation or transfer, if OPF is not on file locally, records are forwarded to National Personnel Records Center, General Services Administration, St. Louis, MO 63118.

Repatriated personnel payment files are permanent; forwarded to National Personnel Records Center after 3 years.

Subsistence and quarters rate deviation files are permanent; they are retired on discontinuance of the installation.

Retention periods vary for other records according to category of record. The minimum retention period is 2 years and the maximum period is 12 years, after which records are destroyed.

SYSTEM MANAGER(S) AND ADDRESS:

Comptroller of the Army, Headquarters, Department of the Army, Washington, DC 20310.

NOTIFICATION PROCEDURE:

Information may be obtained from the System Manager, U.S. Army Finance and Accounting Offices worldwide or, if National Guard Technician, from the National Guard Bureau, 5600 Columbia Pike, Falls Church, VA 22041, or from U.S. Property and Fiscal Offices.

RECORD ACCESS PROCEDURES:

Requests for access should be addressed as indicated in "Notification procedure", and should include individual's full name, SSN, current address, and signature.

CONTESTING RECORD PROCEDURES:

The Army's rules for access to records and for contesting contents and appealing initial determinations are contained in Army Regulation 340–21 (32 CFR Part 505).

RECORD SOURCE CATEGORIES:

From the individual, former employers, DOD Staff agencies and field commands, Social Security Administration, Treasury Department, financial organizations, and automated systems interface.

EXCEPTIONS CLAIMED FOR THE SYSTEM:

None.

A0306.20DACA

SYSTEM NAME:

Military and Civilian Waiver Files.

SYSTEM LOCATION:

U.S. Army Finance and Accounting Center, Indianapolis, IN 46249.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Present and former Army members or civilian employees who apply for waiver of claims arising out of erroneous payments of pay and allowances, travel, transportation, and relocation allowances.

CATEGORIES OF RECORDS IN THE SYSTEM:

File contains application, employment history, reports of investigation, copies of vouchers, certificates, record of disposition, and correspondence with the U.S. General Accounting Office, Army staff offices, and other government agencies.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C., section 3012; E.O. 9397.

PURPOSE(S):

To determine the validity of waivers or to make referrals to the U.S. General Accounting Office.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

See "Blanket Routine Uses" set forth at the beginning of the Army's listing of record system notices.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders.

RETRIEVABILITY:

By individual's surname.

SAFEGUARDS:

Records are maintained in areas accessible only to authorized personnel having official need therefor, within buildings which employ security guards.

RETENTION AND DISPOSAL:

Records are retained for 6 years after waiver is approved/denied.

SYSTEM MANAGER(S) AND ADDRESS:

Commander, U.S. Army Finance and Accounting Center, Indianapolis, IN 46249.

NOTIFICATION PROCEDURE:

Information may be obtained from the System Manager, ATTN: Chief, Claims/ Inquiries Division, telephone: 317–542–2793.

RECORD ACCESS PROCEDURES:

Individuals desiring access to information about themselves in this system of records should write to the System Manager, ATTN: Chief, Claims/ Inquiries Division, Centralized Pay Operations, providing their full name, SSN, current address, and signature.

CONTESTING RECORD PROCEDURES:

The Army's rules for access to records and for contesting contents and appealing initial determinations are contained in Army Regulation 340–21 (32 CFR Part 505).

RECORD SOURCE CATEGORIES:

From the individual; Army Finance and Accounting Offices; and other Government agencies.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

A0314.09DACA

SYSTEM NAME:

Nonappropriated Fund Accounts Receivable System.

SYSTEM LOCATION:

Nonappropriated fund activities at Army installations worldwide.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and past members of Officer or Noncommissioned Officer Club facilities whose accounts show balances other than zero; persons using Post billeting facilities on a fee paid basis (bachelor officer quarters, visitor officer quarters and guesthouse facilities) and persons no longer using such facilities whose accounts have other than zero balances; any individual having a statement of account for the billing period, individuals occupying government housing at any military installation; individual class B telephone subscribers; members, customers or civilians having 30 day credit terms for "charge" sales and/or dues obligations to NAF activities; all persons whose accounts have been dishonored by banking institutions and their checks returned to NAF activities; individuals who have cash loans charged to their accounts.

CATEGORIES OF RECORDS IN THE SYSTEM:

Individual's name, SSN, rank, amount of charges, billings of items or services furnished, subsidiary ledgers containing detail of services billed and paid by individual; work order forms, invoice listings, monthly receipt vouchers, date and method of payment, file of billings associated with returned/dishonored checks, and relevant similar documents.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

31 U.S.C. 66; 10 U.S.C. 2481 and 3012; 5 U.S.C. 5101; Pub. L. 216, section 401; Pub. L. 784, section 113.

PURPOSES(S):

To maintain current rosters as subsidiary records for accounts receivable and cash accountability control; to provide monthly statements to customers; to provide ledger balances for activity financial statements; to prepare aged listing of accounts receivable, 30, 60, and 90 days; to answer inquires of members on account status and specific transactions.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

(1) See "Blanket Routine Uses" set forth at the beginning of the Army's listing of record system notices.

(2) Disclosure pursuant to 5 U.S.C. 552a(b)(12) may be made from this system to "consumer reporting agencies" as defined in the Fair Credit Reporting Act (15 U.S.C. 1681a(f)) or the Federal Claims Collection Act of 1966 (31 U.S.C. 3701(a)(3)).

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Magnetic tapes and/or discs by account in numerical and alphabetical order; computer hard copy printouts filed in binders; copies of statements filed in folders.

RETRIEVABILITY:

By customer name and SSN.

SAFEGUARDS:

Records are maintained in lock-type cabinets within storage areas accessible only to authorized personnel.

RETENTION AND DISPOSAL:

Destroyed after 3 years following audit with no exceptions or irregularities disclosed.

SYSTEM MANAGER(S) AND ADDRESS:

Assistant Comptroller of the Army for Finance and Accounting, ATTN: DACA–FAP–N, STOP 66, Indianapolis, IN 46249–1056.

NOTIFICATION PROCEDURE:

Individuals may submit written request to the custodian of nonappropriated fund activities at the installation where record is believed to exist.

RECORD ACCESS PROCEDURE:

Individuals desiring access to records pertaining to them in this system should write to the appropriate fund activity custodian, furnishing full name, SSN, and account number.

CONTESTING RECORD PROCEDURES:

The Army's rules for access to records and for contesting contents and appealing initial determinations are contained in Army Regulation 340–21 (32 CFR Part 505).

RECORD SOURCE CATEGORIES:

From daily transaction registers/ journals received from billeting officers, signal officers, and/or club officers.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

A0403.01DAJA

SYSTEM NAME:

U.S. Army Claims Service Management Information System.

SYSTEM LOCATION:

JACS–Z, Ft Meade, MD 20755–5360. Segments exist at subordinate field operating agencies and at Staff Judge Advocate Offices at Army installations throughout the world.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals, corporations, associations, countries, states, territories, political subdivisions presenting a claim against the United States.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name of claimant, claim file number, type of claim presented, reports of investigation, witness statements, police reports, photographs, diagrams, bills, estimates, expert opinions, medical records and similar reports, copy of correspondence with claimant, potential claimants, third parties, and insurers of claimants or third parties, copies of finance vouchers evidencing payment of claims, and similar relevant information.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C., sections 939, 2733, 2734, 2734a, 2734b, 2737; 28 U.S.C., sections 2671–2680; 31 U.S.C., sections 3711 and 3721; 32 U.S.C., section 715; E.O. 9397.

PURPOSE(S):

To develop and preserve all relevant evidence about incidents which generate claims against the Army. Evidence developed is used as a legal basis to support the settlement of claims. Data are also used as a management tool to supervise claims operations at subordinate commands world-wide.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

(1) Information may be disclosed to Internal Revenue Service for tax purposes;

(2) Department of Justice for assistance to deciding disposition of claims filed against the Government and for considering criminal prosecution, civil court action or regulatory orders;

(3) U.S. Claims and the Court of Appeals for the Federal Circuit, to support legal actions, considerations or evidence to support proposed legislative or regulatory changes, for budgetary purposes, for quality control or assurance type studies, or to support action against a third party;

(4) Foreign governments, for use in settlements of claims under the North Atlantic Treaty Organization Status of Forces Agreement or similar international agreements;

(5) State governments for use in defending or prosecuting claim by the state or its representatives;

(6) Department of Labor, for consideration in determining rights under Federal Employees Compensation Act or similar legislation;

(7) Civilian and Governmental medical experts for evaluation of medical aspects and records and related material;

(8) Office of Management and Budget for preparation of private relief bills for presentation to the Congress;

(9) Government contractors for use in defending or settling claims filed against them, including recovery actions, arising out of the performance of a Government contract;

(10) Federal and State workmen's compensation agencies for use in adjudicating claims.

(11) See 'Blanket Routine Uses' set forth at the beginning of the Army's listing of record system notices.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Index cards, paper records in file folders, computer disc.

RETRIEVABILITY:

By last name.

SAFEGUARDS:

Records are accessible only by authorized personnel who are properly instructed in the permissible use of the information, buildings housing records are locked after normal duty hours.

RETENTION AND DISPOSAL:

Destroyed 10 years after final action.

SYSTEM MANAGER(S) AND ADDRESS:

The Judge Advocate General, Headquarters, Department of the Army, The Pentagon, Washington, DC 20310.

NOTIFICATION PROCEDURE:

Individuals desiring to know whether or not information on them exists in this system of records may write to the Commander, U.S. Army Claims Service, Ft Meade, MD 20755, furnishing full name, current address and telephone number, claim number if known, date and place of incident giving rise to the claim, and any other personal identifying data which would assist in determining location of the records.

RECORD ACCESS PROCEDURE:

Individuals seeking access to records about themselves in this system of records should write to the Commander, U.S. Army Claims Service, Ft Meade, MD 20755–5360, furnishing information required by 'Notification procedure' above.

CONTESTING RECORD PROCEDURES:

The Army's rules for access to records and for contesting contents and appealing initial determinations are contained in Army Regulation 340–21 (32 CFR Part 505).

RECORD SOURCE CATEGORIES:

From the individual; investigative reports originating in the Department of the Army, Federal Bureau of Investigation, and/or foreign, State, or local law enforcement agencies; medical treatment facilities; Armed Forces Institute of Pathology; relevant records and reports in the Department of Defense.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

A0403.06DAJA

SYSTEM NAME:

Tort Claim Files.

SYSTEM LOCATION:

HQDA(DAJA–LT), The Pentagon, Washington, DC 20310–2210.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who have filed a complaint against the U.S. Army in the U.S. District Court under the Federal Tort Claims Act.

CATEGORIES OF RECORDS IN THE SYSTEM:

Pleadings, motions, briefs, orders, decisions, memoranda, opinions,

supporting documentation, and allied material, including claims investigation, reports and files involved in representing the U.S. Army in the Federal Court System.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

28 U.S.C., sections 2671–2680.

PURPOSE(S):

To defend the Army in Civil suits filed against it in the Federal Court System.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Information is disclosed to the Department of Justice and United States Attorneys' offices handling the particular case. Most of the information is filed in some manner in the courts in which the litigation is pending and therefore is a public record. In addition, some of the information will appear in the written orders, opinions, and decisions of the courts which, in turn, are published in the Federal Reporter System under the name or style of the case and are available to individuals with access to a law library. See also 'Blanket Routine Uses' set forth at the beginning of the Army's listing of records system notices.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders; magnetic tapes/discs.

RETRIEVABILITY:

By claimant's surname and court docket number.

SAFEGUARDS:

Records are maintained in file cabinets within secured buildings and available only to designated authorized individuals who have official need thereof.

RETENTION AND DISPOSAL:

Records are destroyed 10 years after final action on the case.

SYSTEM MANAGER(S) AND ADDRESS:

The Judge Advocate General, Headquarters, Department of the Army, Washington, DC 20310–2210.

NOTIFICATION PROCEDURE:

Individuals desiring to know whether or not information on them exists in this system of records may write to the System Manager, furnishing their full name, current address and telephone number, case number that appeared on documentation, any other information that will assist in locating pertinent records and signature.

RECORD ACCESS PROCEDURE:

Individuals desiring access to records on themselves should submit their request as indicated in 'Notification procedure', providing information required therein.

CONTESTING RECORD PROCEDURES:

The Army's rules for access to records and for contesting contents and appealing initial determinations are contained in Army Regulation 340–21 (32 CFR Part 505).

RECORD SOURCE CATEGORIES:

From the individual; Army records and reports.

EXEMPTION CLAIMED FOR THE SYSTEM:

None.

A0403.16DAJA

SYSTEM NAME:

Army Property Claim Files.

SYSTEM LOCATION:

HQDA(DAJA–LT), The Pentagon, Washington, DC 20310–2210.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who, having damaged Government property, were not subject to the collection activities of other agencies or organizations and therefore require litigation on behalf of the Department of the Army.

CATEGORIES OF RECORDS IN THE SYSTEM:

Copies of reports from the claim investigator, accident and police reports relating to damage, and pleadings, motions, briefs, orders, decisions, memoranda, opinions, supporting documentation, and allied material involved in representing the U.S. Army.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

31 U.S.C., section 3711.

PURPOSE(S):

To negotiate with, or to sue, as appropriate, the individual or entity, including insurance carriers, responsible for loss or damage of U.S. Army property.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Information may be disclosed to the Department of Justice, U.S. Attorney, and opposing parties and their attorneys as deemed necessary in litigation property claims. See also "Blanket Routine Uses" set forth at the beginning of the Army's listing of record system notices.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file orders; magnetic tapes/discs.

RETRIEVABILITY:

By individual's surname and court docket number.

SAFEGUARDS:

Records are accessible only by authorized personnel who are properly instructed in the permissible use of the information. Buildings housing records are protected by security guards.

RETENTION AND DISPOSAL:

Records at The Judge Advocate General's Office are destroyed 10 years after final action; i.e., completion of litigation or determination that case will not be prosecuted. Claims settled by local Staff Judge Advocates are destroyed 5 years after final action.

SYSTEM MANAGER(S) AND ADDRESS:

The Judge Advocate General, Headquarters, Department of the Army, Washington, DC 20310–2210.

NOTIFICATION PROCEDURE:

Individuals desiring to know whether or not information on them exists in this system of records may write to the System Manager, furnishing their full name, current address and telephone number, case number that appeared on documenation, any other information that will assist in locating pertinent records, and signature.

RECORD ACCESS PROCEDURES:

Individuals desiring access to records on themselves should submit their request as indicated in "Notification procedure", providing information required therein.

CONTESTING RECORD PROCEDURES:

The Army's rules for access to records and for contesting contents and appealing initial determinations are contained in Army Regulation 340–21 (32 CFR Part 505).

RECORD SOURCE CATEGORIES:

From the individual; Army records and reports; Office of Personnel Management; Department of Justice, U.S. Attorney, opposing counsel, and similar pertinent sources.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

A0403.17DAJA

SYSTEM NAME:

Medical Expense Claim Files.

SYSTEM LOCATION:

Staff Judge Advocate Offices at Army commands, field operating agencies, installations and activities. A segment of the System is located at HQDA(DAJA–LT), The Pentagon, Washington, DC 20310–2210.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who have received medical treatment at the expense of the U.S. Army as a result of a tortuous or negligent act of a third party; third parties causing medical care to be furnished to individuals entitled to medical care at Government expense.

CATEGORIES OF RECORDS IN THE SYSTEM:

Copies of medical and personnel records of individuals injured by a third party from whom the U.S. Army is seeking to recover the costs of medical care furnished the injured party; accident and police reports relating to the injury, claims investigation files; correspondence with attorneys representing the Army's interest; court documents; and similar pertinent documents.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

42 U.S.C., sections 2651–2653; Executive Order 11060; 28 CFR Part 43.

PURPOSES:

To negotiate with the tortfeasor or an insurance carrier, or to sue the same to collect the value of medical care furnished the injured party.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Information may be disclosed to the Department of Justice, appropriate U.S. Attorneys, civilian attorneys representing the injured party who agree also to represent the U.S. Army's claim, and opposing parties and their attorneys. See also "Blanket Routine Uses" set forth at the beginning of the Army's listing of record system notices.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders; magnetic tapes/discs.

RETRIEVABILITY:

By individual's surname and court docket number.

SAFEGUARDS:

Records are accessible only by authorized personnel who are properly instructed in the permissible use of the information. Buildings housing records are protected by security guards.

RETENTION AND DISPOSAL:

Records at The Judge Advocate General's Office are destroyed 10 years after final action; i.e., completion of litigation or determination that case will not be prosecuted. Claims settled by local Staff Judge Advocates are destroyed 5 years after final action.

SYSTEM MANAGER(S) AND ADDRESS:

The Judge Advocate General, Headquarters, Department of the army, Washington, DC 20310–2210.

NOTIFICATION PROCEDURE:

Individuals desiring to know whether or not information on them exists in this system of records may write to the System Manager, furnishing their full name, current address and telephone number, case number that appeared on documentation, any other information that will assist in locating pertinent records, and signature.

RECORD ACCESS PROCEDURES:

Individuals desiring access to records on themselves should submit their request as indicted in "Notification procedure", providing information required therein.

CONTESTING RECORD PROCEDURES:

The Army's rules for access to records and for contesting contents and appealing initial determinations are contained in Army Regulation 340–21 (32 CFR Part 505).

RECORD SOURCE CATEGORIES:

From the individual; Army records and reports; Office of Personnel Management; Department of Justice, U.S. Attorneys, opposing counsel, and similar pertinent sources.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

A0406.08DAJA

SYSTEM NAME:

Patent, Copyright, Trademark, and Properietary Data Files.

SYSTEM LOCATION:

(1) Primary: JALS–PC, Nassif Building, Falls Church, Va 22041–5013

(2) Secondary: Office of the Staff Judge Advocate at major Army commands, field operating agencies, and installations; addresses are listed in the Appendix to the Army inventory of system notices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who have submitted inventions to the Government; inventors with patents or applications for patents procured on behalf of the Department of the Army or in which the Government has an interest; authors of copyrightable or copyrighted material in which the Government has an interest; and Government employees to whom copyright assistance has been rendered.

CATEGORIES OF RECORDS IN THE SYSTEM:

Document relating to: disposition of rights in Government employees' inventions; foreign patent filings; licensing of Government-owned patents, copyrights, and service marks; Government interest in or under patents, applications for patent, and copyrights procured on behalf of the Department of the Army; and invention disclosures including drawings, patentability search reports, evaluation reports, applications, amendments, petitions, appeals, interferences, licenses, assignments, other instruments, and relevant correspondence.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C., section 301.

PURPOSE(S):

To determine the rights in Government employee inventions, and to maintain evidence and record of: Documents used in filing for foreign patents; invention disclosures submitted to the Department of the Army; patents and applications for patent procured on behalf of the Army or in which the Army has an interest; patent and copyright licensing and assignments; and copyright assistance rendered.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

(1) Information from the system may be disclosed to the U.S. Patent and Trademark Office, Department of Commerce, and/or to the Copyright Office, Library of Congress.

(2) In the event of legal proceedings and litigation, information may be disclosed to the Civil Division, Department of Justice.

(3) For foreign patent filings, records are presented to the Director of Patent Administration, Department of National Defense in Ottawa, Ontario, Canada.

(4) Parties to a licensing arrangement have access to the specific files involved.

(5) Concerned contractors and/or Government agencies have access in

order to conduct patent investigations and evaluations.

(6) See 'Blanket Routine Uses' set forth at the beginning of the Army's listing of record system notices.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders.

RETRIEVABILITY:

By individual's surname.

SAFEGUARDS:

Records are maintained in buildings protected by security guards, and are accessible only to authorized persons having need therefor in the performance of official duties.

RETENTION AND DISPOSAL:

At the primary location: Records pertaining to patent matters are retained for 20 to 25 years depending on the specific case; those concerning copyright matters are retained either for 56 years or on expiration of copyright not renewed, after which they are destroyed by shredding. Records at the secondary location are destroyed after 2 years.

SYSTEM MANAGER(S) AND ADDRESS:

The Judge Advocate General, Headquarters, Department of the Army, Washington, DC 20310; senior patent attorney at each secondary location.

NOTIFICATION PROCEDURES:

Individuals desiring to know whether or not information on them exists in the system of records may write to system location, furnishing full name, current address and telephone number, the case number of other identifying information on correspondence emanating from the Army.

RECORD ACCESS PROCEDURES:

Individuals desiring access to their records in system should write to the System Manager, furnishing information required under 'Notification procedure'.

CONTESTING RECORD PROCEDURES:

The Army's rules for access to records and for contesting contents and appealing intitial determinations are contained in Army Regulation 340–21 (32 CFR Part 505).

RECORD SOURCE CATEGORIES:

From the individual, Army records, the Government agency interested n the invention or copyright, research material in libraries, the Patent and Trademark Office, and/or the Copyright Office.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

A0501.10DAMI

SYSTEM NAME:

Counterintelligence Research File System (CIRFS).

SYSTEM LOCATION:

Counterintelligence and Security Division, Assistant Chief of Staff for Intelligence, Department of the Army, the Pentagon, Washington, DC 20310.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who have come to the attention of the U.S. Army counterintelligence community during the course of intelligence operations or normal mission requirements.

CATEGORIES OF RECORDS IN THE SYSTEM:

File contains reports used by the U.S. intelligence community and, in some cases, photographs of the individual. File is random is structure and personalities are coded for retrieval by a computerized index.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Executive Order 10450.

PURPOSE(S):

To assist the Counterintelligence Desk Analyst in compiling a historical record.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

None authorized.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Microfilmed reels in cassettes and indexed on computer diskpack.

RETRIEVABILITY:

Microfilmed in random order. Retrieved by personality name via computer index which identifies the reel and document location containing the requested name.

SAFEGUARDS:

Building protected by security guards and storage point electronically monitored for illegal entry. Computerized index is access controlled by a code word that is issued only to properly screened, cleared and trained personnel. Code word is presently held only by the Assistant Chief of Staff for Intelligence and issued only to the team of a group conducting a screening operation of the CIRFS.

RETENTION AND DISPOSAL:

Records are permanent. They photographed onto microfilm and the original document destroyed. The file is presently being screened for identification of documents no longer needed and selected documents are being destroyed at the direction of the Assistant Chief of Staff for Intelligence, Headquarters, Department of Army.

SYSTEM MANAGER(S) AND ADDRESS:

The Assistant Chief of Staff for Intelligence, Department of the Army, The Pentagon, Washington, DC 20310.

NOTIFICATION PROCEDURE:

Information may be obtained from the Commander, U.S. Army Intelligence and Security Command, ATTN; IACSF–FI, Ft Meade, MD 20755; telephone: 301/677–4242/4243.

RECORD ACCESS PROCEDURE:

Requests from individuals should be addressed to the Commander, U.S. Army Intelligence and Security Command, ATTN: IACSF–FI, Ft Meade, MD 20755. Written requests must contain the full name and SSN of the individual, current address, and telephone number. For personal visits, the individual should furnish acceptable identification and verbal information that can be verified from his/her file card.

CONTESTING RECORD PROCEDURES:

The Army's rules for access to records and for contesting contents and appealing initial determinations are contained in Army Regulation 340–21 (32 CFR Part 505).

RECORD SOURCE CATEGORIES:

From investigative reports of the Defense Investigative Service, U.S. Army Intelligence and Security Command, other Federal and Department of Defense investigative and law enforcement agencies.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

All portions of this System of records which fall within 5 U.S.C. 522a(k)(1), (2), or (5) are exempt from the following provisions of Title 5 U.S.C., Section 552a: (c)(3), (d), (e)(4)(G), (e)(4)(H), (e)(4)(I) and (f).

A0502.03aDAMI

SYSTEM NAME:

Intelligence Collection Files.

SYSTEM LOCATION:

U.S. Army Intelligence and Security Command, Ft Meade, MD 20755. Decentralized segments located at U.S. Army Intelligence and Security Command groups, field stations, battalions, detachments, field offices

and resident offices stationed worldwide.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Any individual who is qualified and may be accepted for sensitive intelligence duties with the U.S. Army.

CATEGORIES OF RECORDS IN THE SYSTEM:

Files contain documents which describe the requirements, the objectives, the approvals, the implementation, the reports, and the results of Department of the Army sensitive intelligence activities.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Executive Order 10450, paragraphs 2, 3, 4, 5, 6, 7, 8, 9, and 14; 10 U.S.C., section 3012(b)(c)(g); National Security Act of 1947, as amended.

PURPOSE(S):

To support contingency planning and military operations.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

(1) Information is used by The Federal Bureau of Investigation and the Central Intelligence Agency for counterintelligence and intelligence; within the continental United States for the FBI and outside the continential United States for the CIA.

(2) Information may be disclosed to foreign law enforcement, security, investigatory, or administrative authorities in order to comply with requirements imposed by, or to claim rights conferred in international agreements and arrangements including those regulating the stationing and status in foreign countries of DOD military and civilian personnel and other countries where there are routine reciprocal exchanges of information.

(3) See 'Blanket Routine Uses' set forth at the beginning of the Army's listing of record system notices.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders and visible, vertical card files; automated records on disc with video display of individual source records on cathrode ray tube.

RETRIEVABILITY:

Alphabetically by last name, numerically by source and numerically by project number.

SAFEGUARDS:

Buildings employ security guards. Records are maintained in areas accessible only to authorized personnel who are properly cleared, and have a need-to-know for the information. Automated media are protected by authorized code word for access to system, controlled access to operations rooms, and controlled input distribution.

RETENTION AND DISPOSAL:

Records are permanent and retained in active file until no longer needed; then retired to the Investigative Records Repository, U.S. Army Intelligence and Security Command, Ft Meade, MD 20755.

SYSTEM MANAGER(S) AND ADDRESS:

The assistant Chief of Staff for Intelligence, Department of the Army, The Pentagon, Washington, DC 20310.

NOTIFICATION PROCEDURE:

Information may be obtained from the Commander, U.S. Army Intelligence and Security Command, ATTN: IACSF–FI, Ft. Meade, MD 20755; telephone: Area Code 301–377–4742/4743.

RECORD ACCESS PROCEDURES:

Requests should be addressed to the Commander, United States Army Intelligence and Security Command, ATTN: IACSF–FI, Ft Meade, MD 20755. Written requests must contain the full name and SSN of the individual, current address, and telephone number. For personal visits, the individual must furnish acceptable identification and verbal information that can be verified from his/her file.

CONTESTING RECORD PROCEDURES:

The Army's rules for access to records and for contesting contents and appealing initial determinations are contained in Army Regulation 340–21 (32 CFR Part 505)

RECORD SOURCE CATEGORIES:

From individual investigative reports of Defense Investigative Services, U.S. Army Intelligence and Security Command, and other Federal and DOD investigative and law enforcement agencies.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

All portions of this system of records which fall within 5 U.S.C. 552a(k)(1), (2), or (5) are exempt from the following provisions of Title 5 U.S.C., section 552a: (c)(3), (d), (e)(4)(G), (e)(4)(H), (e)(4)(I), and (f).

A0502.03bDAMI

SYSTEM NAME:

Technical Surveillance Index.

SYSTEM LOCATION:

Decentralized location at Investigative Records Repository, Headquarters, U.S. Army Intelligence and Security Command, Ft. Meade, MD; Systems Division, Office of the Deputy Chief of Staff, Intelligence, HQ, U.S. Army Europe and Seventh Army, Heidelberg, Germany; Office of the Depty Chief of Staff for Personnel, Headquarters, Department of the Army, The Pentagon; and Crimes Record Center, Ft Holabird, MD.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Persons whose conversations have been intercepted during techical surveillance operations conducted by, or on behalf of the Army.

CATEGORIES OF RECORDS IN THE SYSTEM:

Individual's name and citizenship, any associated telephone number or radio call sign; location, date, and time of the surveillance activity, and the source document.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

18 U.S.C., sections 2510–2520 and 3504.

PURPOSE(S):

To assist the Counterintelligence Officer in compiling a total investigative record.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

None authorized.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Magnetic tapes and paper records.

RETRIEVABILITY:

U.S. Army Europe and Seventh Army segment uses a computerized retrieval system of name, address, telephone number or case designation. Other segments are retrieved manually by name, address telephone number or case designation.

SAFEGUARDS:

Access to buildings is controlled by security gurards. Records are maintained in General Services Administration approved security containers, physically separated from other materials, and are accessible only to authorized personnel who are properly screened, cleared, and trained.

RETENTION AND DISPOSAL:

Records are permanent.

SYSTEM MANAGER(S) AND ADDRESS:

The Assistant Chief of Staff for Intelligence, Headquarters, Department of the Army. The Pentagon, Washington, DC 20310.

NOTIFICATION PROCEDURE:

Information may be obtained from Headquarters, Department of the Army, ATTN: DAMI–CIS, The Pentagon, Washington, DC 20310; telephone: (202) 697–7993.

RECORD ACCESS PROCEDURES:

Requests should be addressed to the appropriate decentralized repository. Written requests should contain the full name of the individual, current address, and telephone number.

CONTESTING RECORD PROCEDURES:

The Army's rules for access to records and for contesting contents and appealing initial determinations are contained in Army Regulation 340–21 (32 CFR Part 505)

RECORD SOURCE CATEGORIES:

From the Army and other investigative agencies.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

All portions of this system of records which fall within 5 U.S.C. 522a (k)(1), (2), or (5) are exempt from the following provisions of Title 5 U.S.C., Section 522a (c)(3), (d), (e)(4)(G), (e)(4)(H), (e)(4)(I).

A0502.08DAMI

SYSTEM NAME:

Badge and Credential Files.

SYSTEM LOCATION:

U.S. Army Intelligence and Security Command, Ft Meade, MD 20755. Decentralized Segments exist at U.S. Army Intelligence and Security Command groups, field stations, battalions, detachments, field or resident offices having assigned personnel who possess Military Intelligence badges and credentials.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who currently possess or in the past possessed Military Intelligence badge and credential.

CATEGORIES OF RECORDS IN THE SYSTEM:

Card file contains the names, SSN, rank, and badge and credenital number of each person who has been issued Military Intelligence badge and credential. This card file is an index to a numerical filing system consisting of envelopes having a badge and credential status and Control Card (MIA Form 70) attached which contains the name of the individual, badge and credential number, component (military or civilian), military occupational speciality, clearance of civilian, authority for issue, and comments which indicate the history of the badge and credential keyed to the individuals having been assigned the badge and credential.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Executive Order 10450, sections 2, 3, 4, 5, 6, 7, 8, 9 and 14; 10 U.S.C., section 3012(b)(c)(d) and (g); National Security Act of 1974, as amended.

PURPOSE(S):

To maintain control and accountability over Military Intelligence badges and credentials.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Information may be disclosed to Federal investigative and/or intelligence agencies to ascertain if an individual legally possesses badges and credentials. See "Blanket Routine Uses" set forth at the beginning of the Army's listing of record system notices.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Card files.

RETRIEVABILITY:

Alphabetically by last name of possessor of badge and credential.

SAFEGUARDS:

Primary system is maintained in buildings employing security guards. Records are maintained in areas accessible only to authorized personnal who are properly cleared and trained.

RETENTION AND DISPOSAL:

Records are maintained indefinitely. Destruction is authorized by Central Custodian of the badge and credential.

SYSTEM MANAGER(S) AND ADDRESS:

The assistance Chief of Staff for Intelligence, Headquarters, Department of the Army, The Pentagon, Washington, DC 20310.

NOTIFICATION PROCEDURE:

Information may be obtained from the Commander, U.S. Army Intelligence and Security Command, ATTN: IACSF–FI, Ft Meade, MD 20755; telephone 301/677–4742/47443.

RECORD ACCESS PROCEDURE:

Requests should be addressed to the Commander, U.S. Army Intelligence and Security Command, ATTN: IACSF–FI, Ft Meade, MD 20755. Written request must contain the full name and SSN of the individual, current address, and telephone number. For personal visits, the individual should furnish acceptable identification and verbal information that can be verified from his/her file card.

CONTESTING RECORD PROCEDURES:

The Army's rules for access to records and for contesting contents and appealing initial determinations are contained in Army Regulation 340–21 (32 CFR Part 505).

RECORD SOURCE CATEGORIES:

U.S. Army personnel and security records and U.S. Army Orders.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

A0502.10aDAMI

SYSTEM NAME:

USAINSCOM Investigative Files System.

SYSTEM LOCATION:

U.S. Army Intelligence and Security Command, Ft Meade, MD 20755. Decentralized segments are located at U.S. Army Intelligence and Security Command groups, field stations, battalions, detachments, and field officers stationed worldwide.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Military personnel of the U.S. Army, including active duty, National Guard, reservists and retirees; civilian employees of the Department of the Army, including contract, temporary, part-time, advisory, and volunteer, citizen and alien employees located both in the U.S. and in overseas areas; industrial or contractor personnel who are civilians working in private industry for firms which have contracts involving access to classified Department of Defense information; aliens granted limited access authorization to U.S. Defense information; DOD alien personnel investigated for visa purposes; individuals about whom there is a reasonable basis to believe that they are engaged in, or plan to engage in, activities such as (1) theft, destruction, or sabotage of ammunition, equipment, facilities, or records belonging to DOD units or installations, (2) possible compromise of classified defense information by unauthorized disclosure or by espionage, (3) subversion of loyalty, discipline or morale of Department of Army military or civilian personnel by actively

encouraging violation of lawful orders and regulations or disruption of military activities, (4) demonstrations on active or reserve Army installations or immediately adjacent thereto which are of such character that they are likely to interfere with the conduct of military operations, (5) direct threats to DOD military or civilian employees regarding their official duties or to other persons authorized protection by DOD resources, and (6) activities or demonstrations endangering classified defense contract facilities or key defense facilities of the Panama Canal approved by Headquarters, Department of the Army; certain non-DOD affiliated persons whose activities involve them with the DOD, namely, activities involving requests for admission to DOD facilities or requests for certain information regarding DOD personnel, activities, or facilities; persons formerly affiliated with the DOD; persons who applied for or are/were being considered for employment with or access to DOD such as applicants for military service, pre-inductees and prospective contractors; visa applicants, individuals residing on, having authorized official access to, or conducting or operating any business or other function at any DOD installation and facility; and U.S. Army Intelligence and Security Command sources.

CATEGORIES OF RECORDS IN THE SYSTEM:

(1) Requests for investigation and attachments thereto such as personal history statements; fingerprint cards; personnel security questionnaire; waivers for release of credit; medical and/or educational records; and National Agency check requests.

(2) Investigations conducted by U.S. Army Intelligence and Security Command or other DOD, Federal, State or local investigative agency to include: National Agency checks; local agency checks; military records; birth records; employment records; education records; credit records; interviews of education, employment, and credit references; interviews of listed and developed character references; interviews of neighbors; documents which succinctly summarize information in subject's investigative file; case summaries prepared by both investigative control offices and requesters of investigation interrogation reports, correspondence pertaining to the investigation or its adjudication by clearance authority to include; (1) information which reflects the chronology of the investigation and adjudication; (2) all recommendations regarding the future status of the subject; (3) actions of security/loyalty review boards (4) final actions/ determinations made regarding the subject, and (5) security clearance, limited access authorization, or security determination; index tracing reference which contains aliases and the names of the subject and names of co-subjects; U.S. Army Intelligence and Security Command form indicating dossier has been reviewed and all material therein conforms to Department of Defense policy regarding retention criteria; U.S. Army Intelligence and Security Command form to indicate material has been removed and forwarded to the Defense Investigative Service; security termination statements; notification of denial, suspension, or revocation of clearance; record of U.S. Army Intelligence and Security Command agent case assignments; reports of casualty, biographic data concerning Army personnel who are missing or captured; cross reference sheets which indicate the removal of investigative documents requiring limited access.

(3) Case control and management documents that serve as the basis for conducting the investigation. This includes documents requesting the investigation; background data such as personal history statement, fingerprint cards, National Agency check requests, and release statements; and documents used in case management and control such as lead sheets, other field tasking documents, and transfer forms.

(4) Card index of personnel investigations/operations which are under controlled access, to include U.S. Army Intelligence and Security Command personnel, file procurement officers, and sensitive counter-espionage, counter-sabotage, and counter-subversion investigations and/or operations.

(5) Accession file maintained to keep record of all persons and agencies authorized to receive Investigative Records Repository (IRR) Files.

(6) Microfilm index and catalogue file, which is an index to all investigative holdings contained in microfilmed investigative records.

(7) Investigative index card file record system maintained to keep a permanent record of all dossiers charged out of U.S. Army Intelligence and Security Command on loan to user agencies or on permanent transfer to Defense Investigative Service.

(8) Document account record or dossiers of their reproductions or microfiche files forwarded from and returned to U.S. Army Intelligence and Security Command.

(9) File containing a record of all favorable IRR dossiers destroyed because no action has transpired in the file within the past 15 years. File consists of either the last clearance certificate contained in the dossier or, if no clearance certificate exists, a summary card containing the name of the individual, his/her date and place of birth, his/her SSN, or Army service number, date and type of investigation, and the name of the agency which conducted the investigation.

(10) Records accounting for the disclosure of U.S. Army Intelligence and Security Command investigative material made outside the U.S. Army.

(11) Card file containing a summary of all actions taken by the U.S. Army Intelligence and Security Command in the conduct of security adjudication.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Executive Order 10450, Sections 2, 3, 4, 5, 6, 7, 8, 9 and 14; Title 10 U.S.C., Section 3012(b)(c)(g); National Security Act of 1947, as amended; Executive Order 11652 Sections, 1, 2, 3, 4, 5, 6, 7, 8, 9, 10 and 12; Executive Order 9397.

PURPOSE(S):

To provide information to assess an individual's acceptability for assignment to or retention in sensitive positions consistent with the interest of national security; to provide authorized protective service; and to conduct counterintelligence and limited reciprocal investigations.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Information may be disclosed to:

(1) Accredited Federal criminal and civil law enforcement agencies including those responsible for conducting their own investigations as to suitability for employment or access of current or potential employees formerly affiliated with the Department of Defense.

(2) Other accredited Federal agencies serviced by the Office of Personnel Management but with a need to evaluate the suitability of potential employees formerly affiliated with the Department of Defense.

(3) Congress, including the General Accounting Office.

(4) Veterans Administration.

(5) Specific uses of U.S. Army Intelligence and Security Command Investigative files are:

(6) To determine the loyalty, suitability, eligibility, and general trustworthiness of individuals for assignment or appointment to sensitive military duties or to critical sensitive civilian positions.

(7) To determine the eligibility and suitability of individuals for entry and retention in the Armed Forces.

(8) To provide information for ongoing security and suitability investigations being conducted by Federal agencies.

(9) To provide information to assist Federal agencies in the administration of criminal justice and prosecution of offenders.

(10) To provide information in judicial or adjudicative proceedings, including litigation, or in accordance with a court order.

(11) To make statistical evaluations of investigative activities.

(12) To provide protective services when authorized by the Secretary of Defense for the Department of Defense, Distinguished Visitors Protection Program. The objective of this program is to provide physical protection for distinguished foreign visitors of Department of Defense and the Military departments and high ranking members of the Department of Defense and its agencies, and to assist the U.S. Secret Service in its protective functions.

(13) To provide information in response to Inspector General, Equal Employment Opportunity, other complaint investigations and Congressional inquiries.

(14) To determine the eligibility and suitability of an individual for favorable personnel actions in the Armed Forces of the U.S., to include Reserve and National Guard.

(15) For use in alien admission and naturalization inquiries conducted under section 105 of the Immigration and Nationality Act of 1952, as amended.

(16) For use in benefit determinations by the Veterans Administration.

(17) The distribution of investigative information to other DA activities or outside agencies is based on this agency's evaluation of their needs and the relevance of the information to the use for which it is provided. Information collected for one purpose is not automatically used for the other purposes or by the other users indicated in this description.

(18) See 'Blanket Routine Uses set forth at the beginning of the Army's listing of record system notices.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

Upon receipt of a valid request for an investigation, the request package is given a control number and placed in a case folder (paper record) together with identification data concerning the subject of the request for investigation and control number. The request is entered into an automated data processing system (U.S. Army Intelligence and Security Command case control system), which is designed to provide statistical data and case control management information on the number and types of investigations that are opened, currently pending, and closed in U.S. Army Intelligence and Security Command. This automated system triggers automatic requests upon the Defense Central Index of Investigations (DCII), a master index that holds reference to all Department of Defense investigations conducted by U.S. Army Intelligence and Security Command and the Military Services investigative file repositories. If there are files on the subject, a request is generated by U.S. Army Intelligence and Security Command upon the appropriate repository. Upon review of the request package and other investigative files retrieved through DCII, investigative requirements are then determined by the U.S. Army Intelligence and Security Command Control Office and investigative leads are dispatched to the U.S. Army Intelligence and Security Command field elements and other pertinent Governmental investigative agencies. Upon receipt of the investigative leads at the field level, a duplicate investigative field is prepared by the receiving field element. This file contains investigatory report and case control material pertaining only to the specific investigative leads assigned to the controlling field element. At this point the U.S. Army Intelligence and Security Command investigative file enters into a pending status. During this pending status, investigative reports are prepared by U.S. Army Intelligence and Security Command field element and sent to the control office, based upon record and interview data obtained during the investigation. Upon completion of the investigation, the closed investigative file held by the U.S. Army Intelligence and Security Command Control Office is forwarded thru the IRR to the requestor of the investigation. Upon receipt, the requestor adjudicates the investigation and returns it to the IRR for retention. The duplicate files prepared by U.S. Army Intelligence and Security Command field elements are destroyed 120 days after the closing.

STORAGE:

Paper records in file folders, rolled microfilm, and microfiche.

RETRIEVABILITY:

(a) File folders are maintained in terminal digit order by regular dossier number and SSN. In order to obtain the dossier number of the subject at least one personal identifier is required. For those subjects who have no identifying data such as date of birth, military service number or SSN, the name only index is searched. Additionally, a non-standard search is required. The name only index will provide a subject's name and dossier number only. The non-standard search will provide a listing of all subjects with identifying data. In these instances, some other identifying data must be furnished such as address. Dossiers possibly identical with the subject may be forwarded to the requester.

(b) Microfiche files are maintained in duplicate copy in separate locations in Microfilm Division, IRR. The records are maintained in terminal digit order according to regular dossier number or SSN.

(c) Microfilm records are retrieved by name or dossier number.

SAFEGUARDS:

Building 4552, which houses the IRR, is under 24-hour guard and accessible only to authorized personnel. Only individuals accredited as file procurement officers may obtain and review IRR investigative records. Subordinate U.S. Army Intelligence and Security Command elements and other official requesters are required to have General Services Administration approved containers for the storage of investigative files. Certified mail is used to forward any investigative files to official requesters of U.S. Army Intelligence and Security Command subordinate elements.

RETENTION AND DISPOSAL:

Personnel security investigative files may be retained for 15 years after last action reflected in the file, except that files which resulted in adverse action against the individual will be retained permanently. However, once affiliation is terminated, acquiring and adding material to the file is prohibited unless affiliation is renewed.

SYSTEM MANAGER(S) AND ADDRESS:

The Assistant Chief of Staff for Intelligence, Headquarters, Department of the Army, The Pentagon, Washington, DC 20310.

NOTIFICATION PROCEDURE:

Information may be obtained from the Commander, U.S. Army Intelligence and Security Command, ATTN: IACSF-FI, Ft. Meade, MD 20755; telephone: 301/677-4742-4743.

RECORD ACCESS PROCEDURES:

Requests should be sent to the Commander, U.S. Army Intelligence and

Security Command, ATTN: IACSF–FI, Ft. Meade, MD 20755. Written requests should contain the full name of the individual, SSN, previous service number (if any), current address, and telephone number. Visits are limited to Building 4552, Ft. Meade, MD 20755; Visitors must provide acceptable identification (e.g., valid driver's license, employing officer's identification card) and verbal information that can be verified with his/her case folder.

CONTESTING RECORD PROCEDURES:

The Army's rules for access to records and for contesting contents and appealing initial determinations are contained in Army Regulation 340–21 (32 CFR Part 505).

RECORD SOURCE CATEGORIES:

Department of Defense and Military Department records; Federal Agency records; State, county, and municipal records; employment records of private schools, colleges, universities, technical and trade schools; hospital records; real estate agencies; credit bureaus, loan companies, credit unions, banks, and other financial institutions which maintain credit information on individuals; Transportation companies, (airlines, railroads, etc.); Other private records sources deemed necessary in order to complete an investigation; miscellaneous records such as: Telephone directories; city directories; Who's Who in America; Who's Who in Commerce and Industry; Who Knows What—A listing of experts in various fields; American Medical Directory; Martindale-Hubbell Law Directory; U.S. Postal Guide; Insurance Directory; Dunn and Bradstreet; and The U.S. Army Register; any other type of miscellaneous record deemed necessary to complete the U.S. Army Intelligence and Security Command investigation; the interview of individuals who have knowledge of the subject's background and activities; the interview of witnesses; the interview of victims; the interview of confidential sources; and the interview of other individuals deem necessary to complete the U.S. Army Intelligence and Security Command investigation.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

All portions of this system of records which fall within 5 U.S.C. 552a(k) (1), (2), or (5) are exempt from the following provisions of Title 5 U.S.C. section 552a: (d), (e)(4)(G), (e)(4)(H), and (e)(4)(I).

A0503.03aDAMI

SYSTEM NAME:

Department of the Army Operational Support Activities Files.

SYSTEM LOCATION:

U.S. Army Intelligence and Security Command, Ft. Meade, MD 20755–5995.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Selected members of the U.S. Army and civilian employees of the Department of the Army who participate in and have received support for conducting U.S. Army intelligence and counterintelligence duties. Included are personnel of other Federal agencies who request and receive support from appropriate authority.

CATEGORIES OF RECORDS IN THE SYSTEM:

Card file with automated index of individuals who have received support from Department of the Army in completing specialized duties within the Army's intelligence and counterintelligence activities. Card files and duplicate automated files of individuals indicating any identity and other data which may be used to identify them in their support of the Department of Army's intelligence and counterintelligence activities.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Executive Order 10450, sections 2, 3, 4, 5, 6, 7, 8, 9, and 14; 10 U.S.C., section 3012(b)(c)(g); National Security Act of 1947, as amended; E.O. 9397.

PURPOSE(S):

To identify and manage the career of individuals performing duties in the Department of the Army specialized intelligence and counterintelligence assignments.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Other Federal investigative and/or intelligence agencies use the file to verify identity and assignments. See also 'Blanket Routine Uses' set forth at the beginning of the Army's listing of record system notices.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders, vertical card file, computer diskpack and printouts.

RETRIEVABILITY:

Alphabetically by individual's surname; automated files by SSN.

SAFEGUARDS:

Material is stored in General Services Administration containers approved for the storage of secret material. Building in which material is stored is locked during hours of nonoccupancy. Automated files are access controlled by a codeword issued only to properly screened, cleared, and trained personnel.

RETENTION AND DISPOSAL:

Permanent.

SYSTEM MANAGER(S) AND ADDRESS:

The Assistant Chief of Staff for Intelligence, Department of the Army, Washington, DC 20310.

NOTIFICATION PROCEDURE:

Information may be obtained from the Commander, U.S. Army Intelligence and Security Command, ATTN: IACSF–FI, Ft. Meade, MD 20755; telephone: 301/677–4742–4743.

RECORD ACCESS PROCEDURES:

Requests from individuals should be addressed to the Commander, U.S. Army Intelligence and Security Command, ATTN: IACSF–FI, Ft Meade, MD 20755. Written requests must contain the full name and SSN of the individual, current address, and telephone number. For personal visits, the individual must furnish acceptable identification and verbal information that can be verified from his/her file card.

CONTESTING RECORD PROCEDURES:

The Army's rules for access to records and for contesting contents and appealing initial determinations are contained in Army Regulation 340–21 (32 CFR Part 505).

RECORD SOURCE CATEGORIES:

From the individual; investigative reports of Defense Investigative Service, U.S. Army Intelligence and Security Command, and other Federal and Department of Defense investigative and law enforcement agencies.

EXEMPTION CLAIMED FOR THE SYSTEM:

All portions of this system of records which fall within 5 U.S.C. 552a(k) (1), (2), or (5) are exempt from the following provisions of Title 5 U.S.C., section 552a: (c)(3), (d), (e)(4)(g), (e)(4)(H), (e)(4)(I), and (f).

A0503.06aDAMI

System name:

Counterintelligence Operations Files.

System location:

Primary: U.S. Army Intelligence and Security Command, Ft Meade, MD 20755. Decentralized segments exist at U.S. Army Intelligence and Security Command groups, field stations,

battalions, detachments, and field offices stationed world-wide.

Categories of individuals covered by the system:

Active and retired military personnel, Department of Defense affiliated civilians including contractor personnel employed by civilian firms having defense contracts, and individuals not affiliated with the Department of Defense only if there is a reasonable basis to believe that one or more of the following situations exist: Theft, destruction or sabotage of weapons, ammunition, equipment, facilities or records belonging to Department of Defense units or installations; possible compromise of classified defense information by unauthorized disclosure or by espionage; subversion of loyalty, discipline or morale of Department of the Army military or civilian personnel by actively encouraging violation of laws, disobedience of lawful orders and regulations, or disruption of military activities; demonstrations on active or reserve Army installations or demonstrations immediately adjacent to them which are of such a size or character that they are likely to interfere with the conduct of military activities (Armed Forces Induction Centers, U.S. Army Recruiting Stations located offpost and facilities of Federalized National Guard Units are considered to be active DOD installations. For the purpose of the sub-paragraph, Reserve Officer Training Corps installations on campuses are not considered to be active or reserve Army installations and coverage of demonstrations at or adjacent to such installations is not authorized); direct threats to Department of Defense military or civilian personnel regarding their official duties or to other persons authorized protection by Department of Defense resources; activities or demonstrations endangering classified Defense contract facilities or key defense facilities, including Panama Canal, approved by Headquarters, Department of the Army as key to the defense and operation of the Panama Canal.

Categories of records in the system:

Documents used to conduct foreign counterintelligence operations and investigations pertaining to the U.S. Army's responsibilities under the categories of counterintelligence, counterespionage, counter-sabotage, counter-subversion, and international terrorism.

Authority for maintenance of the system:

Executive Order 10450, Security Requirements for Government Employment, in particular Sections 2 and 9c thereof; Executive Order 12036, U.S. Intelligence Activities, in particular paragraph 1–1104, 1–1112, 1–1113, 1–204(b) and 2–208; the National Security Act of 1947, as amended (10 U.S.C., Section 3012(b)(c) and (g); E.O. 9397.

Purpose(s):

To document investigations and operations pertaining to the U.S. Army's responsibilities for counterintelligence, and to detect, identify, and neutralize foreign intelligence and international terrorist threats to the Department of Defense.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

(1) Information is provided to Federal agencies and other services and governmental agencies whose missions contain responsibility for foreign counterintelligence activities.

(2) Information may be disclosed to foreign law enforcement, security, investigatory or administrative authorities in order to comply with requirements imposed by or to claim rights conferred in international agreements and arrangements including those regulating the stationing and status in foreign countries of Department of Defense military and civilian personnel and other countries where there are routine reciprocal exchanges of information.

(3) This distribution of operational and investigative information to outside agencies is based on the evaluation by the U.S. Army Intelligence and Security Command of the other activity's needs and the relevance of the information to the use for which it is to be provided. Information collected is not automatically used for all the purposes or by all the other users listed in this description.

(4) See 'Blanket Routine Uses' set forth at the beginning of the Army's listing or record system notices.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

Reports generated in the documentation of agency investigations and operations are retained in original report format as paper records in file folders. Other records and reports are maintained as paper records in file folders and in microfiche. Extracted information is converted into appropriate language for storage on a computer diskpack.

Retrievability:

Paper records are retrieved by name or file number. Computerized data are retrieved by name, SSN, date of birth, placed of birth, and aliases; by designation of the operation or investigation, or by identification of foreign intelligence agency.

Safeguards:

Files are maintained in three-position combination, fire resistant steel security containers housed in security controlled areas accessible only to authorized personnel. Computerized data are controlled by a codeword that is issued only to properly screened, cleared and trained personnel. System employs on-line, dial-up procedures, enhanced by shielding and other appropriate technical safeguards to protect data against potential compromising emanations and/or unauthorized access.

Retention and disposal:

Paper records documenting foreign counterintelligence operations are permanent. At the termination of the operation/investigation, files are retired to the U.S. Army Intelligence and Security Command's Investigative Records Repository. Computerized information is updated periodically and all previous copies destroyed.

System manager(s) address:

The Assistant Chief of Staff for Intelligence, Department of Army, Washington, DC 20310.

Notification procedure:

Information may be obtained by writing to the Commander, U.S. Army Intelligence and Security Command, ATTN: IACSF–FI, Ft Meade, MD 20755; telephone: (301) 677–4742/4743.

Record access procedures:

Requestor should contact the Commander, U.S. Army Intelligence and Security Command, ATTN: IACSF–FI, Ft Meade, MD 20755; furnishing full name, SSN, current address, and telephone number. For personal visits, requestor should present acceptable proof of identity such as a valid driver's license, military identification card, Department of Defense building pass, or other type of identification containing photograph and identity data.

Contesting record procedures:

The Army's rules for access to records and for contesting contents and appealing initial determinations are contained in Army Regulation 340–21 (32 CFR Part 505).

Record source categories:

From individuals.

Exemptions claimed for the system:

All portions of this system of records which fall within 5 U.S.C. 552a(k)(1), (2), or (5) are exempt for provisions of Title 5 U.S.C., section 552a: (c)(3), (d), (e)(1), (e)(4)(G), (e)(4)(H), (e)(4)(I), and (f).

A0609.02DAAG

SYSTEM NAME:

Army Nuclear Test Personnel Review Program (ANTPR).

SYSTEM LOCATION:

(1) Primary system exist at The Adjutant General's Office, Headquarters, Department of the Army, Washington, DC 20310.

(2) Automated segments exist at JAYCOR, 1608 Spring Hill Road, Vienna, VA 22180–2270, and at Reynolds Electrical and Engineering Company, INC., Mail Shop 543, P.O. Box 1440, Las Vegas, Nevada 89114.

(3) Extracts of individual records are located at Headquarters, Defense Nuclear Agency, Washington, DC 20305.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Army military and civilian personnel and/or contractor personnel in support of the Army who were exposed to radiation as the direct result of government-sponsored atmospheric nuclear detonation occurring between 1945 and 1962.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name, rank/grade, service number, Social Security Number, current or last known address, dates of test participation, radiation exposure and dosage data, Army unit/office of assignment at time of exposure, current medical status, and next- of-kin data.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C., section 3012; 42 U.S.C., section 2013c; E.O. 9397.

PURPOSE(S):

To identify personnel who either were exposed to or participated in the atmospheric nuclear detonation program and to collect radiation exposure information so as to determine appropriate government-provided medical treatment; and to answer inquiries.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Information from this system of records may be dislcosed to:

(1) Veterans Administration, to process/adjudicate claims in which service-connected disabilities resulting from radiation exposure are alleged.

(2) National Research Council and similar government authorized agencies, to conduct epidemiological studies of effects of ionizing radition from atmospheric nuclear weapons tests.

(3) Authorized contractors of the Department of Defense and Department of Energy, to reconstruct individual dosimetry data based on research and application of mathematical factors and to write historical summaries of atmospheric nuclear testing.

(4) See 'Blanket Routine Uses' set forth at the beginning of the Army's listing of record system notices.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records on file folders; computer magnetic tapes, disks, and printouts.

RETRIEVABILITY:

By individual's name and/or service number/SSN.

SAFEGUARDS:

Access is limited to properly cleared personnel having need for the information in the preformance of official duties. Paper records are maintained in locked containers. Magnetic tapes and discs are stored in secured computer areas, access to which is controlled by password.

RETENTION AND DISPOSAL:

Paper records are retained after data are transferred to magnetic tapes; retired to Washington National Records Center upon completion of ANTPR program. Magnetic tapes and discs are retained indefinitely.

SYSTEM MANAGER(S) AND ADDRESS:

The Adjutant General, Headquarters, Department of the Army, Washington, DC 20310.

NOTIFICATION PROCEDURE:

Information may be obtained from the System Manager, ATTN: DAAG–ESG–N, Room 210, 1730 K Street, NW., Washington, DC 20006–3868.

RECORD ACCESS PROCEDURE:

Individuals may access records pertaining to them by writing as indicated in 'Notification procedure', and furnishing full name, SSN or service number, Army unit/office to which assigned at time of radiation exposure, and place and approximate date(s) of exposure.

CONTESTING RECORD PROCEDURES:

The Army's rules for access to records and for contesting contents and appealing initial determinations are contained in Army Regulation 340–21 (32 CFR Part 505).

RECORD SOURCE CATEGORIES:

From the individual, Army organizational personnel, and medical records, Veterans Administration, Department of Energy, Defense Nuclear Agency, and other military departments.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

A0614.01NGB

SYSTEM NAME:

Equal Opportunity Investigative Files.

SYSTEM LOCATION:

Office of Human Resources (Field Operating Activity) HRA–FOA, 5600 Columbia Pike, Falls Church, VA 22041–5125.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

National Guard Technicians and military members who file complaints of discrimination or who are involved in such complaints.

CATEGORIES OF RECORDS IN THE SYSTEM:

Formal complaints of discrimination; counselors' reports; notification letters to the complainant; affidavits from complainant and/or witnesses; investigative reports; hearings transcript; examiner's findings, recommendations; decisional documents; and similar relevant records.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Title VI, Civil Rights Act of 1964, Pub. L. 92–261.

PURPOSE(S):

To investigate and resolve complaints of discrimination, provide facts to the Adjutant General of a State for issuing a proposed disposition to a complainant.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Information may be disclosed to the Equal Employment Opportunity Commission, Washington, DC (see EEOC–GOVT–1 system of records notice). See also 'Blanket Routine Uses' set forth at the beginning of the Army's listing of record system notices.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders.

RETRIEVABILITY:

By name of complainant.

SAFEGUARDS:

Records are maintained in secured rooms/cabinest accessible only to designated officials having a need therefor in the performance of assigned duties.

RETENTION AND DISPOSAL:

Records are permanent. They are retained in active file until the case is closed, then forwarded to the Washington National Records Center, Suitland, MD.

SYSTEM MANAGER(S) AND ADDRESS:

Office of Human Resources (Field Operating Activity) HRA–FOA, 5600 Columbia Pike, Falls Church, VA 22041–5125.

NOTIFICATION PROCEDURE:

Individuals wishing to know whether or not information on them exists in this system of records should write to the System Manager, ATTN: Office of Human Resources (Field Operating Activity) HRA–FOA, 5600 Columbia Pike, Falls Church, VA 22041–5125. Individual should provide his/her full name, current address and telephone number, sufficient details concerning the complaint to facilitate locating the record, and signature.

RECORD ACCESS PROCEDURE:

Individuals desiring access to records on themselves should write as indicated in 'Notification procedure', providing information specified therein.

CONTESTING RECORD PROCEDURES:

The Army's rules for access to records and for contesting contents and appealing initial determinations are contained in Army Regulation 340–21 (32 CFR Part 505).

RECORD SOURCE CATEGORIES:

From the individual, investigative reports, witness statements, Army records and reports.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

A0704.10bUSMEPCOM

SYSTEM NAME:

ASVAB Student Test Scoring and Reporting System.

SYSTEM LOCATION:

Primary System is located at the U.S. Military Entrance Processing Command, 2500 Green Bay Road, North Chicago, IL 60064–3094. Segments exist at Military Entrance Processing Stations (MEPS), participating school system; State departments of education/testing agencies; Air Force Human Resources Laboratory, Brooks Air Force Base, TX 78236; Defense Manpower Data Center, Monterey, CA 93940; and all service recruiters/recruiting commands.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

High school, job corps, college, and other students who have been administered the student version of the Army Services Vocational Aptitude Battery (ASVAB).

CATEGORIES OF RECORDS IN THE SYSTEM:

Individual's name, SSN, address, telephone number, date of birth, sex, ethnic group identification, grade, booklet number of ASVAB test, individual's plans after graduation, and individual item responses to each of the 10 ASVAB subtests.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C., sections 133 and 3012; E.O. 9397.

PURPOSE(S):

To compute and furnish test score products for career/vocational guidance and group assessment of aptitude test performance; to establish eligibility for enlistment and verify enlistment and placement scores and retest eligibility; for marketing evaluation, assessment of manpower trends and characteristics; and related statistical studies and reports.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

See 'Blanket Routine Uses' set forth at the beginning of the Army's listing of record system notices.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Microfiche, optical mark sense answer sheets, computer magnetic tapes.

RETRIEVABILITY:

By individual's name and Social Security Number (SSN).

SAFEGUARDS:

Records are maintained in locked rooms or filing cabinets, accessible only to authorized personnel having need therefor in the performance of official duties. Information in automated media is further protected by user identification and manual controls.

RETENTION AND DISPOSAL:

Records are maintained for 2 years from the date the Armed Services Vocational Aptitude Battery (ASVAB) is administered. Research data maintained by contractors for longer periods require segregation of personal identifying information and test score data, with analyses performed using only summary statistics. Personal identifying information is also erased from data residing at the Defense Manpower Data Center.

SYSTEM MANAGER(S) AND ADDRESS:

Commander, U.S. Military Entrance Processing Command, 2500 Green Bay Road, North Chicago, IL 60064–3094.

NOTIFICATION PROCEDURE:

Information may be obtained from the Military Entrance Processing Stations (MEPS). Individual should provide his/her full name, SSN, date tested, address at the time of testing, and signature.

RECORD ACCESS PROCEDURE:

Individuals desiring access to records about themselves in this system should inquire of the MEPS providing information specified in 'Notification Procedure'.

CONTESTING RECORD PROCEDURES:

The Army's rules for access to records and for contesting contents and appealing initial determinations are contained in Army Regulation 340–21 (32 CFR Part 505).

RECORD SOURCE CATEGORIES:

From the individual; ASVAB tests.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Portions of this system which fall within the purview of 5 U.S.C. 552a(k)(6) are exempt from subsection (d) of 5 U.S.C. 552a.

A0708.02cDAPC

SYSTEM NAME:

Officer Personnel Management Information System (OPMIS).

SYSTEM LOCATION:

U.S. Army Military Personnel Center, 200 Stovall Street, Alexandria, VA 22332–0400.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals projected for entrance into the Army officer corps; Army officer and warrant officer personnel projected to

enter on active duty, separated, or in-retired status; individuals, civilian and military, who serve as senior rating officials on the officer evaluation reports (OERs) of Army officers.

CATEGORIES OF RECORDS IN THE SYSTEM:

(1) Officer Master File (OMF) contains name, SSN, grade and date of rank, appointment and service agreement, service data and date, promotion, assignment, qualifications, specialties, efficiency, education and training, occupation, language, career pattern, awards and badges, physical location, separation, retirement, date and place of birth, race, religion, ethnic group, dependents, sex, citizenship, marital status, and mailing address.

(2) Management Accession Information System (AMIS) contains selected information for the OMF, date of entry on active duty, personal demographic data, and assignment information.

(3) Assignments and Training Selection for ROTC graduates contains selected information from the OMF, the cadet's preference statement for specialty (branch), duty and initial training; Reserve Forces duty or delay selection, Regular Army selection, and branch selection.

(4) Officer Evaluation Reporting System (OERS) contains selected information from the OMF; selection board status; OER suspense indicator for action being taken to obtain missing or erroneous OER; selected information for each of the last ten OERs; and the name, SSN, and rating history of each individual, military and civilian, who has served as the senior rating official for an active duty Army officer.

(5) Officer Distribution and Assignment System (ODAS) contains selected information from the OMF, projected assignment information for officers and warrant officers who are being reassigned.

(6) Reserve Officer Training Corps (ROTC) Instructor File contains selected information from the OMF and the following information pertaining to ROTC instructors; ROTC detachment, duty station, date assigned to ROTC detachment, date projected to be reassigned.

(7) Officer Civil Schools Management Information System (CSMIS) contains the following selected information from the OMF and the following information concerning officer and warrant officer personnel participating or who have participated in the Army sponsored degree completion program; school attended, start and completion dates, degree level and discipline, and Army Education Requirements Board (AERB) positions.

(8) Army Education Requirements Board (AERB) File contains selected information from the OMF for officer and warrant officer personnel who are serving or are projected to serve in an AERB approved position requiring graduate level education.

(9) USMA Potential Instructor File contains selected information from the OMF and the following information pertaining to previous, current, and potential instructors for the United States Military Academy (USMA) teaching staff; academic department and projected availability for USMA instructor duty.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C., section 301; 10 U.S.C., section 3012; E.O. 9397.

PURPOSE(S):

Information used for personnel management strength accounting, manpower management, accessioning and determining basic entry specialty (branch) and initial duty assignments; tracking Officer Evaluation Reports, the rating history of senior rating official's posting of the senior rating official's rating history on individual Officer Evaluation Reports, producing reports on active duty officers who have served as senior rating officials; managing instructor population at ROTC detachments and U.S. Military Academy; tracking information relating to the Army Degree Completion Civil School Program; transmitting necessary assignment instructions.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Information may be disclosed to:

(1) Social Security Administration: To verify SSNs.

(2) Smithsonian Institution (The National Museum of American History); Copy of the U.S. Army Active Duty Register, for historical research purposes (not authorized for public display).

(3) See 'Blanket Routine Uses' set forth at the beginning of the Army's listing of record system notices.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Computer mangetic tapes and discs.

RETRIEVABILITY:

By SSN, name, or other individual identifying characteristics.

SAFEGUARDS:

Physical security devices, guards, computer hareware and software features, and personnel clearances. Automated media are protected by authorized password for system controlled access to operator rooms and controlled output distribution.

RETENTION AND DISPOSAL:

Records are retained on the active OMF files for 4 months after separation. Historical OMF records are retained dating back to FY 1970. Accessions in AMIS are retained on active file until effective date of accession and are than placed on a history file for a period of 6 months. Records in the ROTC Graduate Assignment and Training Selection File are retained for approximately 400 days after the file is created (approximately December each year). Historical files for the OER system are kept for the life of the system. All other records are retained for active duty only until the individual is released from active duty and then destroyed.

SYSTEM MANAGER(S) AND ADDRESS:

Commander, U.S. Army Military Personnel Center, 200 Stovall Street, Alexandria, VA 22332–0400.

NOTIFICATION PROCEDURE:

Information may be obtained from the System Manager. Individuals must furnish full names, SSN, whether awaiting active duty, active retired, or separated; return address; and must identify the specific category of record involved. Blanket requests against this consolidated system will not be accepted. If separated, individual must state date of separation; if awaiting active duty, specify the date thereof.

RECORD ACCESS PROCEDURE:

Individuals desiring to access records about themselves should write to the System Manager, furnishing information required by 'Notification procedure'.

CONTESTING RECORD PROCEDURES:

The Army's rules for access to rcords and for contesting contents and appealing initial determinations are contained in Army Regulation 340–21 (32 CFR Part 505).

RECORD SOURCE CATEGORIES:

From the individual, Army records and reports, other Federal agencies and departments.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

A0708.05DAPC

SYSTEM NAME:

Emergency Data Files.

SYSTEM LOCATION:

U.S. Army Military Personnel Center, 200 Stovall Street, Alexandria, VA 22332. Copy of Record of Emergency Data (DD Form 93) exists in soldier's Military Personnel Records Jacket.

CATEGORIES OF RECORDS IN THE SYSTEM:

File contains DD Form 93, Record of Emergency Data. Document reflects the service member's name; social security number (SSN); spouse and children's name and current address; persons to be and not to be notified in the event of death or injury; information on wills, insurance, and other such information; and designation of beneficiaries for certain benefits.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Title 10 U.S.C., Section 3012; E.O. 9397.

PURPOSE(S):

To document names and addresses of person(s) to be notified in emergency situations; to determine lawful disposition of service member's pay and allowances when that member is missing, captured, or becomes a casualty.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

See 'Blanket Routine Uses' set forth at the beginning of the Army's listing of record system notices.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Machine processed card in vertical file; paper copy in Military Personnel Records Jacket.

RETRIEVABILITY:

Card is retrieved by SSN; paper copy in MPRJ is retrieved by soldier's surname.

SAFEGUARDS:

Building employs security guards; the Office in which record is locaed is in operation 24 hours a day, 7 days a week. Records are accessible only to authorized personnel.

RETENTION AND DISPOSAL:

The Emergency Data Card is retained until individual separates from the Army; then destroyed. Copy in the MPRJ is retired with the MPRJ. If individual dies, the form becomes part of the casualty case file which is retired upon completion to the National Personnel Records Center (Military), St. Louis, MO 63132.

SYSTEM MANAGER(S) AND ADDRESS:

Commander, U.S. Army Military Personnel Center, 200 Stovall Street, Alexandria, VA 22332.

NOTIFICATION PROCEDURE:

Information may be obtained from HQDA (DAPC–PE–SI), 200 Stovall Street, Alexandria, VA 22332; telephone 703/325–0719

RECORD ACCESS PROCEDURES:

Individuals desiring access to information in this system should inquire of the System Manager, ATTN: DAPC–PE–SI, 200 Stovall Street, Alexandria, VA 22332, providing sufficient information to located record desired.

CONTESTING RECORD PROCEDURES.

The Army's rules for access to records and for contesting contents and appealing initial determinations are contained in Army Regulation 340–21 (32 CFR Part 505).

RECORD SOURCE CATEGORIES:

Service member.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

A0708.18DAPC

SYSTEM NAME:

Line of Duty Investigations.

SYSTEM LOCATION:

Personnel Actions Branch of Army Installations.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Service members who have been injured, are diseased, or deceased.

CATEGORIES OF RECORDS IN THE SYSTEM:

Department of the Army (DA) Form 2173 (Statement of Medical Examination and Duty Status); DD Form 261 (Report of Investigation-Line of Duty and Misconduct Status); and supporting documents such as military police reports, accident reports, witness statements, and appointment instruments, and action on appeals.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C., sections 972, 1204, 1207, 3822, and 37 U.S.C., 802; E.O. 9397.

PURPOSE(S):

To review facts and circumstances of service member's injury and render decision having the effect of approving/denying certain military benefits, pay and allowances.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Information may be provided to the Veterans Administration or other Government agencies, to include State agencies, for a determination of the service member's entitlements to benefits. See 'Blanket Routine Uses' set forth at the beginning of the Army's listing of record system notices.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders; microfiche.

RETRIEVABILITY:

By service member's surname.

SAFEGUARDS:

Records are maintained in metal file cabinets accessible only to designated authorized personnel.

RETENTION AND DISPOSAL:

The original is a permanent part of member's Official Military Personnel File. Copies filed in offices of the investigating officer, unit commander, appointing authority, and final reviewing authority are destroyed after 5 years.

SYSTEM MANAGER(S) AND ADDRESS:

Commander, U.S. Army Military Personnel Center, 200 Stovall Street, Alexandria, VA 22332–0400.

NOTIFICATION PROCEDURE:

(1) Information may be obtained from: a. Commander, U.S. Army Enlisted Records and Evaluation Center, Ft. Benjamin Harrison, IN 46249 (for enlisted personnel on active duty); b. HQDA, U.S. Army Military Personnel Center, ATTN: DAPC–MSR–R, 200 Stovall Street, Alexandria, VA 22332 (for officers on active duty); c. Commander, Army Personnel Center, 9700 Page Boulevard, St. Louis, MO 63132 (for Army reserve personnel); d. National Personnel Records Center (Military), 9700 Page Boulevard, St. Louis, MO 63132 (for separated enlisted and officer personnel); e. National Guard Bureau, 5611 Columbia Pike, Falls Church, VA 22041 (for full-time National Guard Duty under Title 32, U.S.C., those in federalized status, or those attending active Army service school).

(2) Individual must provide full name, SSN, present address, and signature.

RECORD ACCESS PROCEDURES:

Individuals desiring to access information pertaining to them should submit a written request as indicated in 'Notification procedure', providing the information required therein.

CONTESTING RECORD PROCEDURES:

The Army's rules for access to records and for contesting contents and appealing initial determinations are contained in Army Regulation 340–21 (32 CFR Part 505). Appeals of determinations by authority of the Secretary of the Army are governed by AR 600–8–1; collateral review of decided cases is limited to questions of completeness of the records of such determinations.

RECORD SOURCE CATEGORIES:

From the applicant, medical records, DA Form 2173, service member's commander, official Army records and reports, witness statements.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

A0708.20DARC

SYSTEM NAME:

Philippine Army Files.

SYSTEM LOCATION:

U.S. Army Reserve Personnel Center, 9700 Page Boulevard, St Louis, MO 63132–5200.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Members of the Philippine Commonwealth Army who were inducted for service with the U.S. Armed Forces Far East under the Military Order of the President of the United States dated July 26, 1941; Philippinos who served in Guerrilla units officially recognized and listed in the Recognized Philippine Guerrilla Rosters.

CATEGORIES OF RECORDS IN THE SYSTEM:

Individual military personnel file contains enlistment papers, orders inducting individual into U.S. Armed Forces Far East service, soldier's qualification card, unit orders of assignment, efficiency rating sheets, pay vouchers or receipts, affidavits and certificates, service records, determination of status under the Missing Persons Act.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Pub. L. 490–77, 7 May 1942.

PURPOSE(S):

To answer inquiries regarding individuals who served, or allegedly served, with the Philippine Commonwealth Army including recognized Guerrilla Forces, during World War II, in the Philippines.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Information may be disclosed to:

(1) Veterans Administration: To verify or certify service with the U.S. Armed Forces Far East or recognized guerrilla units; provide available medical records or other documents to assist in determining benefits.

(2) Department of Justice: To certify or verify service regarding application of individual for citizenship.

(3) Department of Health and Human Services: To verify type of service that is used to assist in determining eligibility for benefits.

(4) Department of State: To provide statement of service or verification of type of service performed.

(5) See 'Blanket Routine Uses' set forth at the beginning of the Army's listing of record system notices.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders.

RETRIEVABILITY:

By name, service number, VA claim number, units assigned to during period of service in question, names or parents, birth date and place, name of spouse and children if applicable. (Due to similarity of names complete file must be screened to determine proper individual.)

SAFEGUARDS:

Records are maintained in area accessible only to designated personnel having official need therefor.

RETENTION AND DISPOSAL:

Records are permanent.

SYSTEM MANAGER(S) AND ADDRESS:

Commander, U.S. Army Reserve Personnel Center, 9700 page Boulevard, St. Louis, MO 63132–5200.

NOTIFICATION PROCEDURE:

Individuals wishing to know whether or not information on them exists should write to the System Manager, ATTN: DARP–PAS–EAP, providing full name, service number, VA claim number, if applicable, and name and/or number of the unit to which assigned during the period of service.

RECORD ACCESS PROCEDURE:

Individuals desiring access to records on themselves should write as indicated in 'Notification procedure', providing information required therein.

CONTESTING RECORD PROCEDURES:

The Army's rules for access to records and for contesting contents and appealing initial determinations are contained in Army Regulation 340–21 (32 CFR Part 505).

RECORD SOURCE CATEGORIES:

From records of military service compiled during period of individual's service with the Philippine Commonwealth Army and/or the U.S. Armed Forces Far East prior to December 7, 1941 up to August 1945.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None

A0709.03DAPE

SYSTEM NAME:

U.S. Military Academy Personnel Cadet Records.

SYSTEM LOCATION:

U.S. Military Academy, West Point, NY 10996–5000.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Present and former Cadets of the U.S. Military Academy.

CATEGORIES OF RECORDS IN THE SYSTEM:

Application and evaluations of cadet for admission; letters of recommendation/endorsement; academic achievements, awards, honors, grades and transcripts; performance counseling; health, physical aptitude and abilities and athletic accomplishments, peer appraisals; supervisory assessments; suitability data, including honor code infractions and disposition. Basic biographical and historical summary of Cadet's tenure at the U.S. Military Academy is maintained on cards in the Archives Office or on microfiche in the Cadet Records Section.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C., sections 3012 and 4334; E.O. 9397.

PURPOSE(S):

To record the Cadet's appointment to the Academy, his/her scholastic and athletic achievements, performance, motivation, discipline, final standing, and potential as a military career officer.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Academic transcripts may be provided to educational institutions. See

also 'Blanket Routine Uses' set forth at the beginning of the Army's listing of record system notices.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Manual records in the file folder; microfilm.

RETRIEVABILITY:

By surname, or Social Security Number.

SAFEGUARDS:

Access to records is limited to persons having official need therefor; records are maintained in secure file cabinets and/or in locked rooms.

RETENTION AND DISPOSAL:

Records of Cadets who are commissioned become part of his/her Official Military Personnel File. Records of individuals not commissioned are destroyed after 5 years. Microfilmed records maintained by USMA are Permanent; hardcopy files are destroyed after being microfilmed.

SYSTEM MANAGER(S) AND ADDRESS:

Superintendent, U.S. Military Academy, West Point, NY 10996–5000.

NOTIFICATION PROCEDURE:

Individuals wishing to inquire whether this system of records contains information about them should contact the System Manager.

RECORD ACCESS PROCEDURE:

Individuals may request access to their records by contacting the System Manager, furnishing their full name, SSN, and signature.

CONTESTING RECORD PROCEDURES:

The Army's rules for access to records and for contesting contents and appealing initial determinations are contained in Army Regulation 340–21 (32 CFR Part 505).

RECORD SOURCE CATEGORIES:

From the individual, his/her sponsors, peer evaluations, grades and reports of U.S. Military Academy academic and physical education department heads, transcripts from other educational institutions, medical examinations/assessments, supervisory counseling/performance reports.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Parts of this system which fall within 5 U.S.C. 552a(k) (5) and (7) are exempt from subsection (d) of 5 U.S.C., section 552a.

A0710.02DAJA

SYSTEM NAME:

JAGC Reserve Components Officer Personnel Records.

SYSTEM LOCATION:

JAGS–ZA, 600 Massey Street, Charlottesville, VA 22903–1781.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All Judge Advocate General Corps (JAGC) U.S. Army Reserve and National Guard officers, not serving on extended active duty; and officers seeking appointment, branch transfer, or Federal Recognition to the JAGC without concurrent call to active duty.

CATEGORIES OF RECORDS IN THE SYSTEM:

Individual's name, SSN, application for appointment, active duty training, constructive credit, mobilization designee position, educational courses completed, home and business addresses and telephone numbers, grade, promotion eligibility date, primary military occupational specialty, date of birth, sex, basic date of mandatory removal, unit assignment and address, employer, job title, specialty and awards, correspondence between Army and the individual.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C., section 275(a); E.O. 9397.

PURPOSE(S):

To schedule Judge Advocate General Corps reserve officer training; select officers for reserve unit command positions; identify individual reservists in need of training; determine mandatory retirement dates; provide full background information on individuals applying for mobilization designee positions, constructive credit for training courses and/or active duty for training, to document background of applicants for appointment in the Judge Advocate General Corps or branch transfer consistent with prerequisites required for type of appointment/branch transfer and to establish eligibility for appointment/branch transfer. Records are also used for management and statistical studies and reports.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

See 'Blanket Routine Uses' set forth at the beginning of the Army's listing of record system notices.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders, magnetic tape/disc.

RETRIEVABILITY:

By individual's surname, SSN.

SAFEGUARDS:

All records are maintained in secured areas, accessible only to designated officials. Automated records require password for access.

RETENTION AND DISPOSAL:

Records are retained until individual officer retires from the Reserves, held 2 additional years, and then destroyed.

SYSTEM MANAGER(S) AND ADDRESS:

The Judge Advocate General, Headquarters, Department of the Army, The Pentagon, Washington, DC 20310.

NOTIFICATION PROCEDURE:

Individuals wishing to know whether or not information on them exists in this system should inquire of the Director, Reserve Affairs Department at The Judge Advocate School, Charlottesville, VA 22901. Individual must provide his/her name, SSN, sufficient details to permit locating pertinent records, and signature.

RECORD ACCESS PROCEDURE:

Individuals desiring access to records about themselves should submit a written request as indicated in 'Notification procedure', providing information specified therein.

CONTESTING RECORD PROCEDURES:

The Army's rules for access to records and for contesting contents and appealing initial determinations are contained in Army Regulation 340–21 (32 CFR Part 505).

RECORD SOURCE CATEGORIES:

From the individual; official personnel documents.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

A0710.08DAAR

SYSTEM NAME:

Career Management Files of Dual Component Personnel.

SYSTEM LOCATION:

U.S. Army Reserve Personnel Center, 9700 Page Boulevard, St. Louis, MO 63132–5200.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Any reserve or warrant officer on active duty as an enlisted man; any reserve officer on active duty as a Regular Army warrant officer.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name, rank, SSN, basic pay entry date, promotion eligibility date, mandatory removal date, military education, copies of officer evaluation reports, academic reports, qualification records, letters of appreciation and commendations, general orders concerning awards; and similar documents, records and reports.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C., section 275; E.O. 9397.

PURPOSE:

To advise reserve officers when they will be considered for promotion, military education that needs to be completed for eligibility; to determine if officer should be removed for substandard performance of duty; to advise of eligibility for retirement as either an officer or enlisted person; to appraise individuals of changes in the reserve program affecting them.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

See "Blanket Routine Uses" set forth in the beginning of the Army's listing of record system notices.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders; magnetic tape/disc.

RETRIEVABILITY:

By individual's surname and SSN.

SAFEGUARDS:

All records are restricted to officially designated individuals having need therefor in assigned duties. Records are maintained in secured buildings; automated data are stored in vaults.

RETENTION AND DISPOSAL:

Records on this system are combined with Army personnel records and retained either at U.S. Army Reserve Personnel Center, if officer, or at U.S. Army Enlisted Records and Evaluation Center, if an enlisted person.

SYSTEM MANAGER(S) AND ADDRESS:

Commander, U.S. Army Reserve Personnel Center, 9700 Page Boulevard, St. Louis, MO 63132–5200.

NOTIFICATION PROCEDURE:

Information may be obtained from the System Manager, ATTN: DARP–MOB–SD; Individual should provide full name, SSN, current address and telephone number and signature.

RECORD ACCESS PROCEDURE:

Individuals desiring access to records about themselves should write as indicated in "Notification procedure", providing information specified therein.

CONTESTING RECORD PROCEDURES:

The Army's rules for access to records and for contesting contents and appealing initial determinations are contained in Army Regulation 340–21 (32 CFR Part 505).

RECORD SOURCE CATEGORIES:

From Army records and reports.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

A0710.09DAAG

SYSTEM NAME:

Personnel Management Officer Files.

SYSTEM LOCATION:

U.S. Army Reserve Personnel Center, 9700 Page Boulevard, St. Louis, MO 63132–5200.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Members of the Individual Ready Reserve (IRR), Standby Reserve, Retired Reserve, unit personnel.

CATEGORIES OF RECORDS IN THE SYSTEM:

Correspondence; orders; pay vouchers; efficiency reports; assignment instructions; medical evaluations; request for wavier of disqualifications; grade determinations; flagging actions which preclude completion of favorable personnel actions; transcripts; requests for transfer to another Branch, status, or service; claims for pay; assignment instructions for Active Duty or Active Duty for Training; applications for delay or exemption from Active Duty/Active Duty for Training; nominations for decorations or wards; notification of removal from active Reserve status for physical disqualification, nonparticipation, two-time passover for promotion or elimination action; application for waiver of disqualification for enlistment in U.S. Army Reserves; requests for discharge or voiding of enlistments; requests for transfer to or from the Ready Reserve, Standby Reserve, or Retired Reserve; claims for pay not received while on active duty; request for assignment/attachment to Army National Guard units, mobilization designation positions or detachments, reinforcement training units, and U.S. Army Reserve school student detachments; applications for participation in Army Reserve Logistic Career Program and Foreign Area Officer Program; decisions pertaining to the career management of officers and senior enlisted personnel.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C., section 275.

PURPOSE(S):

To respond to inquiries from an individual or other government agencies concerning reserve status of Army personel.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

See "Blanket Routine Uses" set forth at the beginning of the Army's listing of record system notices.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file cabinets; card files.

RETRIEVABILITY:

By individual's surname.

SAFEGUARDS:

Records are accessed only by designated individuals having official need therefor in the performance of assigned duties.

RETENTION AND DISPOSAL:

Records are maintained for a period of 6 months to 3 years depending on the type of action involved, after which they are destroyed by shredding.

SYSTEM MANAGER(S) AND ADDRESS:

Commander, U.S. Army Reserve Personnel Center, 9700 Page Boulevard, St. Louis, MO 63132–5200.

NOTIFICATION PROCEDURE:

Individuals wishing to know whether or not this system of records contains information on them should write to the System Manager, ATTN: DARP–IMG–F, and provide full name, current address, and telephone number.

RECORD ACCESS PROCEDURE:

Individuals desiring access to records about themselves should write as indicated in "Notification procedure", providing information required therein.

CONTESTING RECORD PROCEDURES:

The Army's rules for access to records and for contesting contents and

appealing initial determinations are contained in Army Regualtion 340–21 (32 CFR Part 505).

RECORD SOURCE CATEGORIES:

From the individual; Army records and reports.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

A0722.02DACH

SYSTEM NAME:

Baptism, Marriage, and Funeral Files.

SYSTEM LOCATION:

Records from 1917–1952 are in the National Archives, National Archives and Record Administration. Records from 1953–1977 are in the Washington National Records Center, Washington, DC 20409, as well as the office, Chief of Chaplains, Department of the Army, Washington, DC 20310.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Any service member, his/her dependent, authorized civilian personnel, or retired service member for whom an Army chaplain has performed a baptism, marriage, or funeral.

CATEGORIES OF RECORDS IN THE SYSTEM:

Names of individuals who apply for marriage, those on whom funeral services are conducted, or baptisms are performed.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C., section 3547.

PURPOSE(S):

To render service to military members, their dependents and authorized civilians.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

See 'Blanket Routine Uses' set forth at the beginning of the Army's listing of record systems notices.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Microfilm at office of the Chief of Chaplains; paper records at the Washington National Record Center for period 1917–1952.

RETRIEVABILITY:

Marriage records are filed by groom's surname; funeral records by surname of deceased person; baptismal records by the individual's surname.

SAFEGUARDS:

Records are retained in buildings which employ security guards.

RETENTION AND DISPOSAL:

Records from 1953 to 1977 are retained for 50 years; this system was discontinued October 1, 1977 after which no information was collected or is retained.

SYSTEM MANAGER(S) AND ADDRESS:

The Chief of Chaplains, Headquarters, Department of the Army, Washington, DC 20310–2700.

NOTIFICATION PROCEDURE:

Information may be obtained from the Office, Chief of Chaplains, Headquarters, Department of the Army, ATTN: DACH–IMW, Washington, DC 20310–2700.

RECORD ACCESS PROCEDURE:

Individuals may write to the System Manager, providing the following information:

(1) For baptismal records: Full name of person baptized, approximate date, names of parents, name of chaplain, and place of baptism.

(2) For marriage records: Full name of groom and maiden name of bride, approximate date, installation at which married, and name of chaplain.

(3) For funeral records: Name of deceased person, year of death, and name of next-of-kin.

CONTESTING RECORD PROCEDURES:

The Army's rules for access to records and for contesting contents and appealling initial determinations are contained in Army Regulation 340–21 (32 CFR Part 505).

RECORD SOURCE CATEGORIES:

From the individual.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

A0722.05DACH

SYSTEM NAME:

Chaplain Counseling/Interview Files.

SYSTEM LOCATION:

Army installations; official addresses are contained in the directory at the end of the Army inventory of record system notices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Army members, their dependents and other individuals who have received pastoral counseling from Army chaplains.

CATEGORIES OF RECORDS IN THE SYSTEM:

Memoranda and/or documents resulting from counseling or interview sessions between a chaplain and an individual.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C., section 301.

PURPOSE(S):

To document privileged counseling/interview sessions between Army chaplains and individuals.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

None authorized; See Army Regulation 165–20.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in locked file cabinets.

RETRIEVABILITY:

By individual's surname.

SAFEGUARDS:

Information is stored in locked cabinets or desks, and is accessible only to the chaplain maintaining the record.

RETENTION AND DISPOSAL:

Retained for 2 years after the individual case is closed; then destroyed by shredding.

SYSTEM MANAGER(S) AND ADDRESS:

The Chief of Chaplains, Headquarters, Department of the Army, Washington, DC 20310–2700.

NOTIFICATION PROCEDURE:

Individuals desiring to know whether or not information on them exists in this system of records should inquire of either the System Manager or the Chaplain at the Army installation where counseling or interview occurred.

RECORD ACCESS PROCEDURES:

Individuals may write to the System Manager or the Chaplain at the Army installation where record is believed to exist; individuals must provide their full name, present address and telephone number, and signature.

CONTESTING RECORD PROCEDURES:

The Army's rules for access to records and for contesting contents and appealing initial determination are contained in Army Regulation 340–21 (32 CRF Part 505).

RECORD SOURCE CATEGORIES:

From the individual.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

A0722.06DACH

SYSTEM NAME:

Religious Census, Education, and Registration Files.

SYSTEM LOCATION:

Army installations; official addresses are contained in the directory at the end of the Army inventory of record system notices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Military, dependent, and civilian personnel who voluntarily participated in religious services and/or activities.

CATEGORIES OF RECORDS IN THE SYSTEM:

Individual's name, age, denominational preference, religious education desired/attained, and similar information.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C., section 301.

PURPOSE(S):

To provide data on religious education/training or needs of faith groups, denominations, or religious sects; to determine and administer educational or training needs in social, spiritual, and humanitarian relationships for military community served; to record attendance, training accomplished, participation, and spiritual growth.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

See 'Blanket Routine Uses' set forth at the beginning of the Army's listing of record system notices.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Maintained in file folders and/or card files.

RETRIEVABILITY:

By individual's surname.

SAFEGUARDS:

Information is accessed only by individuals determined to have need therefor in the performance of official business.

RETENTION AND DISPOSAL:

Information retained until individual is no longer active in official chaplain-sponsored services and activities.

SYSTEM MANAGER(S) AND ADDRESS:

The Chief of Chaplains, Headquarters, Department of the Army, Washington, DC 20310–2700.

NOTIFICATION PROCEDURE:

Individuals may inquire of the Chaplain at the Army installation where he/she participated in religious education/training.

RECORD ACCESS PROCEDURES:

See "Notification procedure."

CONTESTING RECORD PROCEDURES:

The Army's rules for access to records and for contesting contents and appealing initial determination are contained in Army Regulation 340–21 (32 CFR Part 505).

RECORD SOURCE CATEGORIES:

From the individual.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

A0726.06DAPC

SYSTEM NAME:

Casualty Information System (CIS).

SYSTEM LOCATION:

U.S. Army Military Personnel Center, 200 Stovall Street, Alexandria, VA 22332.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Army personnel who are reported as casualties in accordance with Army Regulation 600–10.

CATEGORIES OF RECORDS IN THE SYSTEM:

Individual's name, social security number (SSN), date of brith, branch of service, organization, duty, Military Occupational Specialty, rank, sex, race, religion, home of record, and other pertinent information; DD Form 1300, notification/certificate of death.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C., sec. 3012; Pub. L. 93–289; E.O. 9397.

PURPOSE(S):

To respond to inquiries; to provide statistical data comprising type, number, place and cause of casualty/death of Army members.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

See "Blanket Routine Uses" set forth at the beginning of the Army's listing of record system notices.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Magnetic tapes, computer printouts, paper records in file cabinets.

RETRIEVABILITY:

By individual's name and/or SSN or any other data element.

SAFEGUARDS:

All information is restricted to a secure area in buildings which employ security guards. Computer printouts and magnetic tapes and files are protected by password known only to properly screened personnel possessing special authorization for access.

RETENTION AND DISPOSAL:

Records are permanent.

SYSTEM MANAGER(S) AND ADDRESS:

Commander, U.S. Army Military Personnel Center, 200 Stovall Street, Alexandria, VA 22332.

NOTIFICATION PROCEDURE:

Information may be obtained from HQDA (DAPC–PE–SI), 200 Stovall Street, Alexandria, VA 22332, telephone: 202/325–0719.

RECORD ACCESS PROCEDURES:

Written requests should contain the individual's name, current address and telephone number, and should identify the person who is the subject of the inquiry by name, rank and SSN.

CONTESTING RECORD PROCEDURES:

The Army's rules for access to records and for contesting contents and appealing initial determinations are contained in Army Regulation 340–21 (32 CFR Part 505).

RECORD SOURCE CATEGORIES:

From casualty reports received from Army commanders or from next-of-kin who provide notification or certificate of death.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

A0727.09DAAG

SYSTEM NAME:

Army Civilian/Military Service Review Board.

SYSTEM LOCATION:

U.S. Army Reserve Personnel Center, 9700 Page Boulevard, St. Loius, MO 63132–5200.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Civilian or contractual personnel (or their survivors) who were members of a group certified by the Secretary of the Air Force to have performed active duty with the Armed Forces of the United States.

CATEGORIES OF RECORDS IN THE SYSTEM:

Application of individuals for recognition of service, evidence that supports claim of membership in approved group, action of the Army Civilian/Military Service Review Board, DD Form 214 and DD Form 256 or 257 as appropriate, and similar relevant documents.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Section 401, Pub. L. 95–202; DOD Directive 1000.20.

PURPOSE(S):

To determine whether individual applicants were members of civilian or contractual groups approved as having rendered service to the Army and whose service constitutes active military service, and to issue appropriate discharge or casualty documents, including applicable pay and equivalent rank or grade.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Copy of DD Form 214 is furnished to the Veterans Administration for benefits entitlements. See also "Blanket Routine Uses" set forth at the beginning of the Army's listing of record system notices.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Papers stored in file folders.

RETRIEVABILITY:

By applicant's surname.

SAFEGUARDS:

Information is accessible only to designated persons having official need therefor in the performance of their duties. During non-duty house, guards assure that records areas are secured.

RETENTION AND DISPOSAL:

Upon favorable Board decision, an Official Military Personnel File is created, containing individual's application, Board action, DD Form 214, DD Form 256 or 257 as appropriate, DD Form 1300 if applicable. This file is transferred to the National Personnel Records Center, General Services Administration, where it is retained permanently. Disapproved applications, together with supporting documentation and the Board's decision, are retained for 2 years, following which they are destroyed by shredding.

SYSTEM MANAGER(S) AND ADDRESS:

Commander, U.S. Army Reserve Personnel Center, 9700 Page Boulevard, St. Louis, MO 63132–5200.

NOTIFICATION PROCEDURE:

Requests from individuals as to whether or not information on them exists in this system should be addressed to the System Manager, ATTN: DARP–PAS–ENC. Individual should provide full name at the time of the recognized military service, data and place of birth, details concerning affiliation with group certified to have performed active duty with the Army, and signature.

RECORD ACCESS PROCEDURES:

Requests for access should be submitted as specified under "Notification procedure" above.

CONTESTING RECORD PROCEDURES:

The Army's rules for access to records and for contesting contents and appealing initial deteminations are contained in Army Regulation 340–21 (32 CFR Part 505).

RECORD SOURCE CATEGORIES:

From the inidividual.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

A1012.03bAMC

SYSTEM NAME:

Student/Faculty Records: AMC Schools System.

SYSTEM LOCATION:

U.S. Army Logistics Management Center, Ft. Lee, VA; U.S. Army Management Engineering Training Agency, Rock Island, IL; U.S. Army Defense Ammunition Center and School, Savanna, IL; USAMC Field Safety Agency, Charlestown, IN.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Students enrolled/attending schools identified above, faculty, instructors, and guest speakers.

CATEGORIES OF RECORDS IN THE SYSTEM:

Student academic records consisting of course completion and results, aptitudes and personal qualities, grades/ratings assigned; instructor/guest speaker qualifications and evaluations, including biographical data; class historical/academic achievements; and related information.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C sec. 301; E.O. 9397.

PURPOSE(S):

To determine applicant eligibility, monitor individual's progress, maintain record of student/faculty achievements, and to provide bases for management assessment of curricula and faculty effectiveness and class standing.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

See "Blanket Routine Uses" set forth at the beginning of the Army's listing of record system notices.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records; cards, photographs; magnetic tapes/discs; and printouts.

RETRIEVABILITY:

By name, SSN, military service number.

SAFEGUARDS:

Records are maintained in locked cabinets within secured areas accessible only to authorized persons having an official need-to-know.

RETENTION AND DISPOSAL:

Individual academic records are retained for 40 years, 3 of which are at the school which created them; they are subsequently transferred to the National Personnel Records Center, 9700 Page Boulevard, St. Louis, MO 63132. Faculty/instructor qualifications records are retained until individual transfers from the facility, held for 5 years, and then destroyed. Other records are retained until no longer needed, at which time they are destroyed.

SYSTEM MANAGER(S) AND ADDRESS:

Commander, U.S. Army Materiel Command, 5001 Eisenhower Avenue, Alexandria, VA 22333–0001.

NOTIFICATION PROCEDURE:

Information may be obtained from the Commandant/Director of the appropriate School/Agency. Requests should contain person's full name, rank/grade, SSN, course title/class number, and date of attendance or, if a faculty member; name, course(s) taught, and period in which instructed at named training facility.

RECORD ACCESS PROCEDURES:

Written requests for information should be made to the Commandant/Director of the appropriate training facility, giving information specified in "Notification procedure".

CONTESTING RECORD PROCEDURES:

The Army's rules for access to records and for contesting contents and appealing initial determinations are contained in Army Regulation 340–21 (32 CFR Part 505).

RECORD SOURCE CATEGORIES:

From the individual student, faculty, instructor, guest speaker, and management analyses of class performance.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

A1012.03gHSC

SYSTEM NAME:

Academy of Health Sciences; Academic and Supporting Records.

SYSTEM LOCATION:

Academy of Health Sciences, Ft. Sam Houston, TX 78234 and Fitzsimons Army Medical Center, Aurora, CO 80045–5001.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Resident and correspondence students enrolled in courses at the Academy.

CATEGORIES OF RECORDS IN THE SYSTEM:

Student's name, SSN, grade/rank, academic qualifications, progress reports, academic grades, ratings attained, aptitudes and personal qualities, including corporate fitness results; faculty board records pertaining to class standing/rating/classification/proficiency of students; class academic records maintained by instructors indicating attendance and progress of class members.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. section 301; E.O. 9397.

PURPOSE(S):

To determine eligibility for enrollment/attendance, monitor student progress, record accomplishments, and serve as record of courses which may prerequisite for other formal courses of instruction.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Information may be disclosed to colleges or universities or medical institutions which accredit the Academy's instruction. See also "Blanket Routine Uses" set forth at the beginning of the Army's listing of record system notices.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records, microfiche, cards, magnetic tape and/or disc, and computer printouts.

RETRIEVABILITY:

By individual's name, SSN, student number.

SAFEGUARDS:

Information is accessed only by individuals having need therefor in the performance of their duties; automated data are protected further by assigned passwords.

RETENTION AND DISPOSAL:

Academic records are maintained 40 years at the Academy of Health Sciences. Except for the master file, automated data are erased after the fourth updating cycle.

SYSTEM MANAGER(S) AND ADDRESS:

Superintendent, Academy of Health Sciences, Ft. Sam Houston, Texas 78234.

NOTIFICATION PROCEDURE:

Individuals desiring to know whether or not information on them is contained in this system of records may inquire of the Register, Academy of Health Sciences, Ft. Sam Houston, TX. Inquiries should furnish full name, SSN, date attended/enrolled, current address, and signature.

RECORD ACCESS PROCEDURES:

Written requests should be sent to the Superintendent, Academy of Health Sciences, Ft. Sam Houston, TX 78234 and include the information in "Notification procedure".

CONTESTING RECORD PROCEDURES:

The Army's rules for access to records and for contesting contents and appealing initial determinations are contained in Army Regulation 340–21 (32 CFR Part 505).

RECORD SOURCE CATEGORIES:

From the individual; Academy of Health Sciences staff and faculty.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

A1012.03jHSC

SYSTEM NAME:

Practical Nurse Course Files.

SYSTEM LOCATION:

Practical Nurse Course, Fitzsimons Army Medical Center, Aurora, CO 80045–5001.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

These files relate to student personnel who attend a formal course of instruction at the Practical Nurse Course.

CATEGORIES OF RECORDS IN THE SYSTEM:

Individual Academic Record Files consisting of courses attended by Army members, length of each, extent of each, completion and results, aptitudes and personal qualities, grade and rating attained and related data for each individual. Faculty Board Files pertaining to the class standing, rating, classification and proficiency of students; Class Academic Record indicating progress and attendance of class members.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C., section 301.

PURPOSE(S):

To confirm eligibility for attendance, monitor student progress, determine successful completion of academic requirements and prepare transcripts. Records reflect accomplishment of courses which may be prerequisites for attendance at other formal courses of instruction, or taking of State Board, Licensed Practical Nursing examinations.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

See "Blanket Routine Uses" set forth at the beginning of the Army's listing of record system notices.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders, card files; magnetic discs and tapes.

RETRIEVABILITY:

By name and/or assigned class number.

SAFEGUARDS:

Building housing records has limited access; information is released only to authorized personnel.

RETENTION AND DISPOSAL:

Individual Academic Records and Class Academic records are destroyed after 40 years; collateral individual training records are destroyed after 1

year; Faculty Board files are destroyed after 1 year.

SYSTEM MANAGER(S) AND ADDRESS:

Commander, Health Services Command, Ft. Sam Houston, TX 78234.

NOTIFICATION PROCEDURE:

Information may be obtained from the Practical Nurse Course, Fitzsimons Army Medical Center, Aurora, CO 80045–5001.

RECORD ACCESS PROCEDURES:

Written requests for information should be addressed to the appropriate course director, and include student's full name, rank at time of attendance, SSN, military service number or student number, if applicable, course title and class number, or description of type training received and dates of course attendance.

CONTESTING RECORD PROCEDURES:

The Army's rules for access to records and for contesting contents and appealing initial determinations are contained in Army Regulation 340–21 (32 CFR Part 505).

RECORD SOURCE CATEGORIES:

From staff and faculty of the school responsible for presentation of instruction.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

A1106.04USAISC

SYSTEM NAME:

Military Affiliate Radio System.

SYSTEM LOCATION:

U.S. Army Information Systems Command, Ft. Huachuca, AZ for individuals on whom an investigation or inquiry has been received. For addresses of locations where member records exist, the System Manager may be contacted.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals having a valid amateur radio station license issued by the Federal Communications Commission who apply for membership in the Army Military Affiliate Radio System (MARS).

CATEGORIES OF RECORDS IN THE SYSTEM:

Applicant's name, home address and telephone number, licensing data and call-sign provided by Federal Communications Commission, Army MARS call sign, relevant inquiries/records and reports.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C., section 3012; DOD Directive 4650.2; E.O. 9397.

PURPOSE(S):

To provide a potential reserve of trained radio communications personnel for military duty when needed and/or to provide auxiliary communications for military, civil, and/or disaster officials during periods of emergency.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Information may be disclosed to Department of Army and Department of Defense communication agencies and their authorized contractors in connection with individual's participation in the Army Military Affiliate Radio System (MARS) Program and to Federal supply agencies in connection with individual's participation in the Army MARS Equipment Program. See also "Blanket Routine Uses" set forth at the beginning of the Army's listing of record system notices.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Cards; paper in file folders, computer tapes, discs, listings.

RETRIEVABILITY:

By member's name.

SAFEGUARDS:

Information is maintained in buildings having security guards and is accessible only to individuals who have need therefor in the performance of their duties. Automated records are further protected by a product control number assigned to designated persons.

RETENTION AND DISPOSAL:

Retained 1 year beyond the time individual is active in the program, then destroyed by shredding.

SYSTEM MANAGER(S) AND ADDRESS:

Commander, U.S. Army Information Systems Command, Ft. Huachuca, Arizona 85613–5000.

NOTIFICATION PROCEDURE:

Individuals desiring to know whether or not information on them exists in this system of records should write to the System Manager, furnishing name under which licensed in the Army MARS program, SSN, present address, call sign, and signature.

RECORD ACCESS PROCEDURES:

Individuals desiring access to their records should follow instructions given under "Notification procedure".

CONTESTING RECORD PROCEDURES:

The Army rules for access to records and for contesting contents and appealing initial determinations are contained in Army Regulation 340–21 (32 CFR Part 505).

RECORD SOURCE CATEGORIES:

From the individual; Federal Communications Commission.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

A1108.16DAIM

SYSTEM NAME:

Postal and Mail Service System.

SYSTEM LOCATION:

Postal facilities at Army headquarters offices, commands and installations.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Persons designated as mail agents; military personnel assigned/attached to Army installations who desire mail handling service; standing delivery order agents designated by individuals who desire such service.

CATEGORIES OF RECORDS IN THE SYSTEM:

DD Form 285 designating Army postal clerks/NCO's/supervisors; locator cards comprising a directory of individuals assigned enroute, and/or departing given installation showing individual's full name, grade, current mailing address, date of assignment/detachment, and SSN (latter is voluntary); standing delivery order designations of agents to handle individual's mail.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C., section 3012; E.O. 9397.

PURPOSE(S):

To designate persons authorized to perform Army postal functions; to maintain current addresses of persons arriving/departing units for purpose of handling personal mail.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Information may be disclosed to U.S. Postal Service. See also 'Blanket Routine Uses' set forth at the beginning of the Army's listing of record system notices.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Cards, paper records; microfiche, word processing disc.

RETRIEVABILITY:

By individual's surname.

SAFEGUARDS:

Records are located in secured buildings, accessible only to designated persons having an official need for the information. Where word processing equipment is used, information is protected by a password system; when not in use, word processing equipment is locked.

RETENTION AND DISPOSAL:

Postal designations and designation of mail delivery agents by individuals are destroyed 1 year following termination of individual's duty as such. Directory locator cards are retained 6 months after individual departs a unit.

SYSTEM MANAGER(S) AND ADDRESS:

The ACSIM, Headquarters, Department of the Army, 2461 Eisenhowere Avenue, Alexandria, VA 22331–0301

NOTIFICATION PROCEDURE:

Individuals desiring to know whether this system of records contains information concerning them should inquire of this Postal Director at the unit where assigned or employed.

RECORD ACCESS PROCEDURE:

Written requests should contain individual's full name, rank/grade, SSN, and any other information that will assist in locating records. Personal visits may be made; individual must furnish proof of identity.

CONTESTING RECORD PROCEDURES:

The Army's rules for access to records and for contesting contents and appealing initial determinations are contained in Army Regulation 340–21 (32 CFR Part 505).

RECORD SOURCE CATEGORIES:

From the individual, unit commanders and Army postal officers.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

A1111.01TRADOC

SYSTEM NAME:

Individual Flight Records Folder.

SYSTEM LOCATION:

Decentralized to Flight Operations Section of Army/Army Reserve/National Guard units for all personnel on whom flight records are maintained. Copies of individual flight records (DA Form 795) are maintained at the Directorate of Evaluation and Standardization, ATTN: ATZQ–ESO, U.S. Army Aviation Center, Ft Rucker, AL, for active Army and Reserve Component personnel who are instructor pilots, standardization instructor pilots, or instrument flight examiners; USAMILPERCEN, HQDA(DAPC–OPE–V), for active Army officers; USAMILPERCEN, HQDA(DAPC–OPW–AV), for active Army warrant officers; and HDQA(DASG–HCO–A) for active Army MSC officers. Records of Army reservists not on extended active duty are maintained at the U.S. Army Reserve Personnel Center, St Louis, MO; those of National Guardsmen are maintained at the National Guard Bureau, Aberdeen Proving Ground, MD.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Army aviators who are members of the Active and Reserve Components and qualified and current in the aircraft to be flown; civilian employees of Government agencies and Government contractors who have appropriate certifications or ratings, flight surgeons or aeromedical physicians' assistance in aviation service, enlisted crew chief/crew members, aerial observers, personnel in non-operational aviation positions, and those restricted or prohibited by statute from taking part in aerial flights.

CATEGORIES OF RECORDS IN THE SYSTEM:

DA Forms 759 and 759–1 (Individual Flight Records and Flight Certificate Army (Sections I, II, and III); DA Form 4186 (Medical Recommendations for Flying Duty), results of annual aviation written examinations, waivers, disqualifications, DA Form 4187 requesting requalification, requalification orders, aeronautical orders awarding ratings.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C., section 301; 10 U.S.C., section 3012; E.O. 9397.

PURPOSE(S):

To record the flying experience and qualifications data of each aviator, crewmembers, and flight surgeon in aviation service.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Information may be disclosed to the Federal Aviation Agency and/or the National Transportation safety Board. See also 'Blanket Routine Uses' set forth at the beginning of the Army's listing of record system notices.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders.

RETRIEVABILITY:

By individual's surname and/or SSN.

SAFEGUARDS:

Records are maintained in controlled areas accessible only to designated persons having official need therefor.

RETENTION AND DISPOSAL:

So long as an aviator remains operational, records are maintained by installation operations officer; when individual is no longer in operational flying status, individual Flight Records Folder is collocated with his/her Military Personnel Records Jacket.

SYSTEM MANAGER(S) AND ADDRESS:

Commander, U.S. Army Training and Doctrine Command, Fort Monore, VA 23651.

NOTIFICATION PROCEDURE:

Individuals desiring to know whether or not this system of records contains information on them should inquire of the Flight Operations Section of their current unit, furnishing full name and SSN; if not on active duty, inquiry should be addressed as indicated in 'System location'.

RECORD ACCESS PROCEDURE:

Access may be achieved by writing or visiting the appropriate office and furnishing information required by "Notification procedure".

CONTESTING RECORD PROCEDURES:

The Army's rules for access to records and for contesting contents and appealing initial determinations are contained in Army Regulations 340–21 (32 CFR Part 505).

RECORD SOURCE CATEGORIES:

From the individual, Federal Aviation Agency, flight surgeon, evaluation reports, proficiency and readiness tests, and other relevant records and reports.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

A1201.02MTMC

SYSTEM NAME:

Personnel Property Movement and Storage Records.

SYSTEM LOCATION:

Installation Transportation Offices and Joint Personal Property Shipping Offices, world-wide; addresses may be obtained from the System Manager.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Military members of the Army, Navy, Marine Corps, and Air Force; civilian employees; dependents; personnel of other government agencies when sponsored by the Department of Defense.

CATEGORIES OF RECORDS IN THE SYSTEM:

Orders authorizing shipment/storage of personal property to include privately owned vehicles and house trailers/mobile homes; Department of Defense Form 1131 (Cash Collection Voucher), DD Form 1299 (Application for Shipment and/or Storage of Personal Property), DD Form 1384 (Transportation Control and Movement Document), DD Form 1797 (Personal Property Counseling Checklist), Standard Form 1203 (Government Bill of Lading), Storage contracts and other related documents.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C., section 3012; E.O. 9397.

PURPOSE(S):

To arrange for the movement, storage and handling of personal property; to identify/trace lost of damaged shipments; to answer inquiries and monitor effectiveness of personal property traffic management functions.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Information may be disclosed to commercial carriers to identify ownership, verify delivery of shipment, support billing for services rendered, and justify claims for loss, damage, or theft. See also "Blanket Routine Uses" set forth at the beginning of the Army's listing of record system notices.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders; microfilm; magnetic tapes and computer printouts.

RETRIEVABILITY:

By individual's surname.

SAFEGUARDS:

Information is maintained in secured areas, accessible only to authorized personnel having an official need-to-know. Automated segments are further protected by code numbers/passwords.

RETENTION AND DISPOSAL:

Documents relating to packing, shipping and/or storing of household goods within continental United States are destroyed after 3 years; those relating to oversea areas are destroyed after 6 years. Documents regarding shipment of Privately owned vehicle/house trailers are destroyed after 2 years. Shipment discrepancy reports are destroyed after 2 years or when claim/investigation is settled, whichever is later. Administrative files reflecting queries and responses are retaind for 2 years; then destroyed.

SYSTEM MANAGER(S) AND ADDRESS:

Commander, Headquarters, Military Traffic Management Command, Falls Church, VA 22041-5050.

NOTIFICATION PROCEDURE:

Information may be obtained from the Installation Transportation Office which processed the shipping/storage documents.

RECORD ACCESS PROCEDURES:

Written requests should contain requester's full name, SSN, current address and telephone number, and any information which will assist in locating the records requested (e.g. type of shipment, origin, destination, date of application, etc.).

CONTESTING RECORD PROCEDURES:

The Army's rules for access to records and for contesting contents and appealing initial determinations are contained in Army Regulation 340-21 (32 CFR Part 505).

RECORD SOURCE CATEGORIES:

From the individual whose personal property is shipped/stored; from the carrier/storage facility.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

A1301.07AMC

SYSTEM NAME:

Food Taste Test Panel Files.

SYSTEM LOCATION:

U.S. Army Natick Research, Development and Engineering Center, Natick, MA 01760.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Civilian and military personnel who volunteer to participate in sensory taste tests of food items.

CATEGORIES OF RECORDS IN THE SYSTEM:

Questionnaire and locator documents completed by participants containing name, date, organization, business telephone number, sex, age, martial status, rank/grade, present/prior military service, highest educational level attained, section of country lived in the longest, willingess to test irradiated foods, food aversion/food preference data.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C., section 3012.

PURPOSE(S):

To evaluate food rations under development by the Army; to determine acceptability of food items in consideration of purchase.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

See 'Blanket Routine Uses' set forth at the beginning of the Army's listing of record system notices.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Computer paper printouts, cards, magnetic tapes and paper records in file folders.

RETRIEVABILITY:

By participant's surname or assigned unique number

SAFEGUARDS:

Records are stored in metal file cabinets which are locked when not under the control of authorized personnel. Buildings housing the records employ security guards.

RETENTION AND DISPOSAL:

Records are destroyed when participant is no longer active in the program.

SYSTEM MANAGER(S) AND ADDRESS:

Commander, U.S. Army Natick Reserch, Development and Engineering Center, Natick, MA 01760.

NOTIFICATION PROCEDURE:

Information may be obtained by writing to the System Manager, ATTN: Science and Advance Technology Directorate.

RECORD ACCESS PROCEDURES:

Individuals who believe information on them is contained in this sytem of records should write to the Sensory Analysis Branch, Science and Advanced Technology Directorate, U.S. Army Natick Research, Development and Engineering Center, Natick, MA 01760, furnishing their full name and current address.

CONTESTING RECORD PROCEDURES:

The Army's rules for access to records and for contesting contents and appealing intitial determinations are contained in Army Regulation 340–21 (32 CFR Part 505).

RECORD SOURCE CATEGORIES:

From the individual.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

A1401.07dDAIM

SYSTEM NAME:

Library Borrowers'/Users' Profile Files

SYSTEM LOCATION:

Libraries on Army installations activities.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Authorized users of Army library facilities.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name, address, SSN, and telephone number of the user.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C., section 301; E.O. 9397.

PURPOSE(S):

To identify individuals authorized to borrow library materials; to ensure that all library property is returned and individual's account is cleared, and to provide librarian useful information for selecting, ordering, and meeting user requirements.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

See "Blanket Routine Uses" set forth at the beginning of the Army's listing of record system notices.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Card files, magnetic tapes, computer printouts.

RETRIEVABILITY:

By user's surname, SSN, and/or residence.

SAFEGUARDS:

Information is maintained in areas accessible only to authorized persons who have official need therefor. Libraries are secured during non-duty hours.

RETENTION AND DISPOSAL:

Records are destroyed when no longer needed to obtain and/or control library materials.

SYSTEM MANAGER(S) AND ADDRESS:

Office of Assistant Chief of Staff for Information Management, Department of the Army, Washington, DC 20310–0700.

NOTIFICATION PROCEDURE:

Individuals desiring to know whether or not information on them is contained in this system of records should inquire of the specific library that provided the services, furnishing their name, period, in which a user and any other information that would assist in locating applicable records.

RECORD ACCESS PROCEDURE:

Individuals seeking access should follow the guidance in 'Notification procedure'.

CONTESTING RECORD PROCEDURES:

The Army's rules for access for records and for contesting contents and appealing initial determinations are contained in Army Regulation 340–21 (32 CFR Part 505).

RECORD SOURCE CATEGORIES:

From the Individual.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

A1402.18DAJA

SYSTEM NAME:

Procurement Misconduct Files.

SYSTEM LOCATION:

HQDA(DAJA–LT), The Pentagon, Washington, DC 20310–2210.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals or legal entities investigated for alleged procurement misconduct, such as fraudulent activities in securing or performing a Government contract.

CATEGORIES OF RECORDS IN THE SYSTEM:

Criminal and administrative investigations of fraudulent, criminal or other misconduct in connection with Government procurement activities and Consolidated List of Debarred, Suspended, and Ineligible Contractors.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C., section 3012.

PURPOSE(S):

To determine whether criminal or civil proceeding should be initiated against the contractor with the Government or government procurement officials for criminal conduct in connection with procurement activities and to maintain and distribute a list of contractors determined to be ineligible to participate in Government procurement activities.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Information may be disclosed to the Department of Justice and United States Attorney. See also 'Blanket Routine Uses' set forth at the beginning of the Army's listing of record system notices.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders.

RETRIEVABILITY:

By last name.

SAFEGUARDS:

Records are maintained in file cabinets accessible only by authorized personnel who are properly instructed in the permissable use of the information.

RETENTION AND DISPOSAL:

Destroyed 15 years after final action on the case.

SYSTEM MANAGER(S) AND ADDRESS:

The Judge Advocate General, Headquarters, Department of the Army, The Pentagon, Washington, DC 20310.

NOTIFICATION PROCEDURE:

Individuals wishing to know whether or not information on them exists in this system of records may write to the System Manager, ATTN: Chief, Litigation Division, furnishing full name, current address and telephone number, specific details that will enable locating the record, and signature.

RECORD ACCESS PROCEDURES:

Individuals desiring access to records about themselves should write as indicated in 'Notification procedure', supplying information required therein.

CONTESTING RECORD PROCEDURES:

The Army's rules for access to records and for contesting contents and appealing initial determinations are contained in Army Regulation 340–21 (32 CFR Part 505).

RECORD SOURCE CATEGORIES:

Department of the Army Staff agencies, Army records and reports, Department of Justice, U.S. Attorney, opposing counsel, and similar relevant sources.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

A1506.03aDAEN

SYSTEM NAME:

Relocation Assistance Files.

SYSTEM LOCATION:

Office, Chief of Engineers, Headquarters, Department of the Army, Washington, DC 22314; Engineer Division and District Offices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who apply for relocation assistance pursuant ot Title II of Pub. L. 91–646.

CATEGORIES OF RECORDS IN THE SYSTEM:

Individual's application for relocation assistance; relevant correspondence; documents relating to the movement of displaced persons because of acquisition of real estate for Army Military, Civil works, or other Federal agency use.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Pub. L. 91–646.

PURPOSE(S):

To process applications for relocation assistance benefits and to consider appeals.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

See 'Blanket Routine Uses' set forth at the beginning of the Army's listing of record system notice.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file holders; magnetic tape, cards, discs.

RETRIEVABILITY:

By applicant's surname.

SAFEGUARDS:

Records are maintained in areas accessible only to authorized personnel having need therefor, within buildings protected by security guards.

RETENTION AND DISPOSAL:

Records are destroyed 10 years after final action or determination on appeals, as applicable at offices performing Army-wide responsibility. Other offices destroy records 10 years after payment in full satisfaction of claim or final payment, as applicable. Records are destroyed by shredding.

SYSTEM MANAGER(S) AND ADDRESS:

Chief of Engineers, Headquarters, Department of the Army, Washington, DC 20314.

NOTIFICATION PROCEDURE:

Information may be obtained by writing to the System Manager, ATTN: DAEN–REH–O; individual must furnish full name, address and telephone number, state of residence at the time application was filed, other pertinent information that will assist in locating the records, and signature.

RECORD ACCESS PROCEDURES:

Individuals desiring access to records about themselves in this system of records should submit a request as indicated under 'Notification procedure', providing the information required therein.

CONTESTING RECORD PROCEDURES:

The Army's rules for access to records and for contesting contents and appealing initial determination are contained in Army Regulation 340–21 (32 CFR Part 505).

RECORD SOURCE CATEGORIES:

From the individual, Army records and reports.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

A1511.02DAEN

SYSTEM NAME:

Army Housing Operations Management System.

SYSTEM LOCATION:

Office, Chief of Engineers, Headquarters, Department of the Army, Washington, DC 20314; Housing Managers at Army installations worldwide.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Military personnel, their dependents, Department of Defense or other key civilian personnel.

CATEGORIES OF RECORDS IN THE SYSTEM:

Applications for on/off post housing containing name, service/SSN, rank/grade and date, service data, organization of assignment, home address and telephone number; locator data; appropriate travel orders; records reflecting housing availability/assignment/termination; housing financial records; referral services; property inventories, hand receipts; and issues slips; cost control, job orders; survey data; reports of liaison with real estate boards, realtors, brokers and other Government agencies; other management reports regarding the Army housing system, complaints and investigations; and similar relevant documents.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C., sections 133 and 2674; DOD Instructions 1100.16, 4165.27, 4165.34, 4165.43, 4165.44, 4165.47, 4165.51 and E.O. 9397.

PURPOSE(S):

To provide information relating to the management, operation, and control of the Army housing program; to provide necessary housing for military personnel, their dependents, and qualified civilian employees; to determine housing adequacy/suitability to document cost data for alterations/repair of units; to establish rental rates; to provide guidance and referral service; to reflect liaison with real estate boards, brokers, and other Government agencies; to render reports; to investigate complaints and related matters.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

See 'Blanket Routine Uses' set forth at the beginning of the Army's lising of record system notices.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records; cards; computer tapes, discs, and printouts.

RETRIEVABILITY:

By individual's surname, facility name or number.

SAFEGUARDS:

Records are maintained in areas accessible only to authorized persons having official need therefor, housed in buildings protected by security guards or lock when not in use. Information in automated media is further protected by physical security devices; access or to update of information in the system is protected through a system of passwords, thereby preserving integrity of data.

RETENTION AND DISPOSAL:

Installation troop housing files are destroyed after 3 years; installation housing project tenancy files are destroyed 3 years after termination of quarters occupancy; faily housing cost controls are destroyed 11 years after last entry; family housing leasing files are destroyed 3 years after lease

terminates, is cancelled, lapses, or after any litigation is concluded; family housing rental rates are destroyed after 10 years; housing referral services are destroyed after 5 years; off-post rental housing reports are destroyed after 2 years; off-post housing complaints and investigations are destroyed 5 years after completion at office having Army wide responsibility, and at other offices complaint and investigation records are destroyed 2 years after completion.

SYSTEM MANAGER(S) AND ADDRESS:

Chief of Engineers, Headquarters, Department of the Army, Washington, DC 20314.

NOTIFICATION PROCEDURE:

Information may be obtained from the Director of Industrial Operations, Office of the Chief of Engineers or his counterpart in District/Division Engineer Offices providing housing service.

RECORD ACCESS PROCEDURES:

An individual's request may be addressed to the Director of Industrial Operations at the appropriate installation, and contain his/her name and address and last assignment location.

CONTESTING RECORD PROCEDURES:

The Army's rules for access to records and for contesting contents and appealing initial determinations are contained in Army Regulation 340–21 (32 CFR Part 505).

RECORD SOURCE CATEGORIES:

From the individual, his/her personnel records, tenants/landlords and realty activities, financial institutions, and previous employers/commanders.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

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federal register

Tuesday
May 19, 1987

Part VIII

Department of Health and Human Services

Health Care Financing Administration

42 CFR Part 412

Medicare; Capital Payments Under the Inpatient Hospital Prospective Payment System; Proposed Rule

Medicare Program; Changes to the DRG Classification System; Proposed Notice

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Part 412

[BERC-403-P]

Capital Payments Under the Inpatient Hospital Prospective Payment System

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

ACTION: Proposed rule.

SUMMARY: We are proposing to amend the Medicare regulations governing the inpatient hospital prospective payment system to incorporate capital-related costs into that system.

DATES: Comments will be considered if we receive them at the appropriate address, as provided below, no later than 5:00 p.m on July 20, 1987.

ADDRESS: Mail comments to the following address: Health Care Financing Administration, Department of Health and Human Services, Attention: BERC-403-P, P.O. Box 26676, Baltimore, Maryland 21207.

If you prefer, you may deliver your comments to one of the following addresses:

Room 309-G, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC.

Room 132, East High Rise Building, 6325 Security Boulevard, Baltimore, Maryland.

In commenting, please refer to file code BERC-403-P. Comments received timely will be available for public inspection as they are received, generally beginning approximately three weeks after publication of a document, in Room 309-G of the Department's offices at 200 Independence Avenue, SW., Washington, DC., on Monday through Friday of each week from 8:30 a.m. to 5:00 p.m. (phone: 202-245-7890).

FOR FURTHER INFORMATION, CONTACT: Linda Magno, (301) 594-9343.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Introduction

On June 3, 1986, we published a notice of proposed rulemaking (the June 1986 NPRM) in the **Federal Register** (51 FR 19970) to amend the regulations governing the prospective payment system and to update various components of the system. In particular, we proposed, under section 1886(a)(4) of the Social Security Act (the Act), to incorporate capital-related costs into the prospective payment system effective with cost reporting periods beginning in Federal fiscal year (FY) 1987, which began on October 1, 1986. However, on July 2, 1986, the Urgent Supplemental Appropriations Act for FY 1986 (Pub. L. 99-349) was enacted, and section 206 of that law amended section 1886(a)(4) of the Act to extend the period (through cost reporting periods beginning prior to October 1, 1987) during which capital-related costs must be treated separately from other inpatient hospital costs. In effect, section 206 of Pub. L. 99-349 precluded the incorporation of capital-related payments into the prospective payment system, as we had proposed, until October 1, 1987. As a result, and in order to devote more time to analysis of the public comments on the capital-related provisions of the NPRM, we decided to remove those provisions from the prospective payment system update for FY 1987 (published as a final rule on September 3, 1986 (51 FR 31454)) and to publish them in a separate rule.

In addition, on October 21, 1986, the Omnibus Budget Reconciliation Act of 1986 (Pub. L. 99-509) was enacted and included a provision, section 9303, that amended section 1886(g) of the Act. Section 9303 of Pub. L. 99-509 also requires that the amount of payments for capital-related costs attributable to inpatient services of prospective payment hospitals, otherwise determined to be reasonable under current law, be reduced by—

- Three and one-half percent for payments attributable to portions of cost reporting periods occurring during FY 1987;
- Seven percent for payments attributable to portions of cost reporting periods or discharges (as the case may be) occurring during FY 1988; and
- Ten percent for payments attributable to portions of cost reporting periods or discharges (as the case may be) occurring during FY 1989.

Section 9303 also provides that, in any inclusion of capital-related costs into the prospective payment system, the aggregate Medicare capital payments, for those capital-related costs attributable to portions of cost reporting periods occurring during FYs 1988 and 1989, must be neither greater nor less than the aggregate Medicare capital payments that would have been made, taking into account the reductions mandated under section 9303 of Pub. L. 99-509, without such inclusion of capital related costs into the prospective payment system.

Furthermore, sections 9303(b) and 9304 of Pub. L. 99-509 amended sections 1886(d) and 1886(g) of the Act to include hospitals in Puerto Rico under the prospective payment system effective for inpatient hospital discharges in fiscal years beginning on or after October 1, 1987.

Accordingly, in this proposed rule, we are proposing to change the regulations that apply specifically to the way in which inpatient hospital capital-related costs, excluding payments to proprietary hospitals for a reasonable rate of return on equity capital, will be treated for Medicare payment purposes effective with hospital cost reporting periods beginning on or after October 1, 1987. Capital-related costs under Medicare include depreciation, interest, taxes, insurance and similar expenses (defined further in § 413.130) for plant and fixed equipment, and moveable equipment. We are taking into consideration the public comments on the June 1986 NPRM concerning the capital-related proposals (including recommendations from the Prospective Payment Assessment Commission (ProPAC)). Affected regulations are located in 42 CFR Parts 412 and 413.

Inpatient operating costs are the only costs currently covered by the prospective payment amounts for those hospitals subject to the prospective payment system (§ 412.2(c)) and by the target rate-of-increase limits for those hospitals and units excluded from the prospective payment system (§ 413.40). Accordingly, under current Medicare rules, payment for capital-related costs

is on a reasonable cost basis (§ 413.5) because those costs are specifically excluded from the definition of inpatient operating costs for both hospitals subject to and those excluded from the prospective payment system.

This proposed rule would eliminate the previous distinction maintained between capital-related and operating costs only for Medicare inpatient hospital services provided by hospitals subject to the prospective payment system for cost reporting periods beginning on or after October 1, 1987. However, section 9303(a) of Pub. L. 99–509 provides that sole community hospitals are exempt from the capital cost reductions through portions of cost reporting periods or discharges (as the case may be) occurring during FY 1989 (section 1886(g)(3)(A) and (B) of the Act), and from the inclusion of capital-related costs in operating costs of inpatient hospital services, through their cost reporting periods beginning before October 1, 1990 (section 1886(g)(3) (C)(i) of the Act); accordingly, we are proposing to exempt them from the provisions of this rule for those periods.

II. Background

Section 1886(a)(4) of the Act, as amended by section 601(a)(2) of the Social Security Amendments of 1983 (Pub. L. 98–21), section 9107 of the Consolidated Omnibus Budget Reconciliation Act of 1985 (Pub. L. 99–272), section 206 of Pub. L. 99–349, and sections 9303(c) and 9320(g)(1) of Pub. L. 99–509 states:

> For purposes of this section, the term "operating costs of inpatient hospital services" includes all routine operating costs, ancillary service operating costs, and special care unit operating costs with respect to inpatient hospital services as such costs are determined on an average per admission or per discharge basis (as determined by the Secretary). Such term does not include costs of approved educational activities, a return on equity capital, or, *with respect to costs incurred in cost reporting periods beginning prior to October 1 of 1987 (or of such later year as the Secretary may, in his discretion, select), other capital-related costs, as defined by the Secretary.* (Emphasis added.)

The first statutory distinction between capital-related costs and total Medicare Part A hospital inpatient operating costs was made with the enactment of Pub L. 98–21 on April 20, 1983 Prior to that time capital-related costs were identified and treated separately for Medicare payment purposes only under regulations—specifically, § 413.30, under which capital-related costs were excluded from the inpatient routine operating cost limits (that is, the section 223 limits enacted by the Social Security Amendments of 1972 (Pub. L. 92–603)) for cost reporting periods beginning on or after July 1, 1979, and § 413.40, under which capital-related costs were excluded from the inpatient total operating cost limits and rate-of-increase limits enacted as part of the Tax Equity and Fiscal Responsibility Act of 1982 (Pub L. 97–248). Section 601(a)(2) of Pub. L. 98–21, however, amended subsection 1886(a)(4) of the Act, specifying that the term "operating costs of inpatient hospital services" did not include costs that are defined by the Secretary as capital-related costs. Initially, the exclusion of capital-related costs was to apply only to cost reporting periods beginning prior to October 1, 1986. However, section 206 of Pub. L. 99–349 further amended section 1886(a)(4) of the Act by postponing for an additional year the inclusion of capital-related costs into the definition of operating costs (that is, for cost reporting periods beginning prior to October 1, 1987). Subsequently, section 9303(c) of Pub. L. 99–509 further revised section 1886(a)(4) of the Act by providing that capital-related costs be excluded from inpatient operating costs for cost reporting periods beginning prior to October 1, 1987 or later at the Secretary's discretion. Therefore, until the Secretary amends the regulations to include them, capital-related costs are excluded from costs that are incorporated into the prospective payment system under section 1886(d) of the Act and the rate-of increase limits under section 1886(b) of the Act; they are instead subject to reasonable cost reimbursement provisions under section 1861(v) of the Act.

Section 1886(d)(1)(A) of the Act establishes the prospective payment system as the sole basis for paying for "operating costs of inpatient hospital services (as defined in subsection (a)(4))" for hospitals subject to that system. The current prospective payment rates are not set at levels designed to cover capital-related costs as well as operating costs as previously defined. We are, therefore, setting forth in this proposed rule prospectively determined capital-related payment rates to be effective with cost reporting periods beginning on or after October 1, 1987, as authorized under sections 9303 and 9304 of Pub. L. 99–509.

As a means of providing complete information to the public concerning our approach to new capital payment regulations, we summarize below the capital provisions of the June 1986 NPRM. We also discuss some of the comments on that NPRM, and a summary of the April 1, 1986 and April 1, 1987 recommendations of ProPAC concerning capital.

III. Summary of Proposed Changes to Capital Payment in the June 1986 NPRM

We stated in the June 1986 NPRM our intention to change the way we make capital payments for hospital inpatient services from the reasonable cost-based reimbursement system to the prospective payment system in light of the statutory limit on the Secretary's authority to distinguish capital related costs from other inpatient operating costs under section 1886(a)(4) of the Act. We proposed a methodology to incorporate capital payments into the prospective payment system that conformed with the statutory provisions governing the payment for all inpatient operating costs, while using the Secretary's exceptions and adjustments authority under section 1886(d)(5)(C)(iii) of the Act as the basis for phase-in rules to ease the transition of hospitals from cost reimbursement to the inclusion of capital payments under the prospective payment system.

A. Hospitals Subject to the Prospective Payment System

Section 1886(a)(4) of the Act, prior to enactment of Pub. L. 98–21, simply incorporated capital-related costs into the definition of operating costs. As noted above, we proposed to establish a transition period and other refinements that would improve the equity of the system by using the exceptions and adjustments authority under section 1886(d)(5)(C)(iii) of the Act. We proposed a four-year transition period, effective with cost reporting periods beginning on or after October 1, 1986, leading to fully national capital payment rates. During each year of the proposed transition period, payments to hospitals were to be based on a combination of a Federal capital rate and a hospital-specific capital portion. The proposed schedule for the phase-in period to national capital payment rates was indicated for each component as shown in the following table:

For cost reporting periods beginning in Federal FY	Hospital-specific portion (percent)	Federal portion (percent)
1987	80	20
1988	60	40
1989	40	60
1990	20	80
1991-on	0	100

We proposed to add new §§ 412.65 through 412.67 to the regulations to describe the new payment policy.

B. Determination of Federal Capital Payment Rates

We proposed to compute the Federal capital-related rate using audited hospital inpatient capital-related cost data from Medicare cost reports for reporting periods beginning on or after October 1, 1982 and before October 1, 1983 (that is, Federal FY 1983) to develop average capital-related costs per discharge. We reduced those costs by an estimated amount to reflect an offset for interest income earned on funded depreciation. We then used the base period (Federal FY 1983) cost data to establish an average standardized amount per discharge for each payment area (that is, urban and rural) of each census division and for the nation in the following manner:

- The FY 1983 costs per discharge were inflated through FY 1986 using the historical and projected annual rates of increase in the capital component of the proposed hospital market basket.
- The costs were standardized to remove the effects of factors causing variation in hospital operating costs that are subsequently recognized in the computation of each hospital's prospective payment. Because capital-related costs were to be treated as "other nonlabor standardized amounts" in the prospective payment methodology, we proposed that each hospital's capital-related costs be standardized for the effects of case, mix, indirect medical education costs, and the higher costs of treating a disproportionate share of low income patients. In addition, because Alaska and Hawaii have a higher cost of living compared to other States, the capital-related costs for hospitals in these two States were also standardized by the applicable cost-of-living adjustment factor.
- We computed separate averages of the adjusted capital-related costs per discharge for urban hospitals and rural hospitals, nationally and in each census division.
- Each of the average capital-related standardized amounts was reduced by the estimated proportion (five percent in FY 1987) of total prospective payments that are for outlier cases.
- We adjusted each of the average capital-related standardized amounts by the appropriate indirect medical education payment equality factor.

In order to remain consistent with the prospective payment rules governing the transition from regional to national Federal rates, we proposed that the Federal capital-related rates for discharges in Federal FY 1987 be a blend of Federal regional (50 percent) and national (50 percent) rates. For discharges occurring in Federal FY 1988 and onward, we proposed that the full national rate be applicable.

C. Determination of Hospital-Specific Capital-Related Payment Rates

In the June 1986 NPRM, we proposed that the hospital-specific portion of the capital-related payment be based on the lesser of—

- Its hospital-specific capital-related rate (that is, its audited inpatient capital-related cost per discharge, standardized for case mix, from its cost reporting period beginning in Federal FY 1986, updated through each year of the transition period by the prospective payment update factor; or
- Its actual inpatient capital-related cost per discharge in each transition year.

D. New Hospitals

We proposed that new hospitals would be paid on the basis of the full Federal capital-related rate (that is, there would be no capital-related phase-in period for these facilities).

E. Capital Expenditure Agreements

Section 1886(g)(1) of the Act provided that, if legislation concerning payment for capital-related costs for inpatient hospital services is not enacted before October 1, 1986 (subsequently amended by section 206 of Pub. L. 99-349 to October 1, 1987), certain restrictions would apply. No payment would be made for capital-related costs of capital expenditures for inpatient hospital services in a State, if such expenditures were obligated after September 30, 1986 (subsequently amended to September 30, 1987), unless—

- The State has an agreement with the Secretary under section 1122(b) of the Act; and
- The State has recommended approval of the capital expenditure under the agreement.

For purposes of section 1886(g)(1) of the Act, capital-related costs of capital expenditures are defined in section 1122(g) of the Act as those expenditures that, under generally accepted accounting principles, are not properly chargeable as an expense of operation and maintenance, and that—

- Exceed $600,000 (or such lesser amount as the State may establish);
- Change the bed capacity of the facility with respect to which the expenditure is made; or
- Substantially change the services of the facility with respect to which the expenditure is made.

However, under section 1122(j) of the Act, for those capital expenditures that are made by a health maintenance organization or a competitive medical plan, no State review is required if 75 percent of the enrollees are expected to use the service for which the capital expenditure is made, and the Secretary determines that the expenditures are necessary for the organization to operate efficiently and economically.

Under the June 1986 NPRM, capital-related costs for expenditures disapproved by a State under section 1122 of the Act would be considered nonallowable costs for Medicare cost reporting purposes. We proposed to adjust the Federal portion of the capital-related prospective payment amount on the basis of the percentage of the total disapproved capital expenditures to total capital assets. Because our capital payment proposal provided that the hospital-specific portion of the capital payment would be determined on a reasonable cost basis for allowable costs (that is, costs that are specifically approved under section 1122 of the Act), we did not propose to adjust the hospital-specific capital payments.

F. Sole Community Hospitals

We proposed to pay sole community hospitals (SCHs) the capital-related payment rates for all discharges occurring in cost reporting periods beginning on or after October 1, 1986 at—

- 25 percent of the Federal regional capital-related rates, plus
- 75 percent of their capital-related hospital-specific rate.

We also proposed to—

- Disregard the blending of Federal and hospital-specific rates and the transition to full national rates applicable to all other hospitals; and
- Apply the additional payment provisions applicable to SCHs under § 412.92(e) to include capital-related payment adjustments.

G. Hospitals and Units Not Subject to the Prospective Payment System

We proposed, for a limited time, not to incorporate capital-related costs into inpatient operating costs for those hospitals and units not subject to the prospective payment system, using the Secretary's exception authority under section 1886(b)(4)(A) of the Act. Their capital related costs were to continue to be paid on a reasonable cost basis. However, we noted that it was our intention to develop an alternative to reasonable cost reimbursement for the capital-related costs of these excluded facilities.

H. Summary of Additional Options Presented in the June 1986 NPRM

We specifically invited public comment on an option in which we would not standardize for case mix, indirect medical education or disproportionate share payments. In addition to the basic proposal outlined above, we set forth and solicited comments on several options (described below) that we were considering in order to permit hospitals to better adjust to this significant change in the way Medicare would pay for inpatient hospital capital-related costs and to avoid sudden and severe disruptions in hospital capital funding.

1. Distinguishing Plant and Fixed Equipment from Moveable Equipment during Transition

Under this option, all moveable equipment costs would have been incorporated into the Federal prospective payment rates with no transition, and a transition of longer than four years as proposed would have been provided for plant and fixed equipment.

As a variation to this approach, we considered paying hospitals based on the costs reported in their FY 1986 cost reports for plant and fixed equipment related to debt service (principal and interest) and lease costs. Depreciation, as it is currently defined in regulations at § 413.134 through § 413.149, would not have been paid on a hospital-specific basis.

2. Alternative to Hospital-Specific Rate—Rolling Base

Rather than establishing a hospital-specific capital-related rate from a fixed base year, we indicated we would consider using the actual costs during each transition year to determine the hospital-specific portion of the blended payment amount

3. Transitional Exception Process for Hospitals Disadvantaged by Phasing Capital-Related Payments Into the Prospective Payment System

Under this approach, an exceptions process which was distinct for capital-related costs, was set forth pursuant to the general authority granted to the Secretary under section 1886(d)(5)(C)(iii) of the Act to provide for such exceptions and adjustments to prospective payment amounts as are deemed appropriate. Under this option, the amounts to be paid under the capital payment exception process would be funded by a reserve of funds obtained by reducing the average standardized capital-related payment rates by five to ten percent to generate a pool equal to the amount estimated to be paid to hospitals meeting the following exceptions criteria:

- The ratio of current liabilities to current assets exceeds 200 percent.
- Inpatient per discharge capital-related costs exceed 200 percent of the Medicare adjusted standardized capital payment for a hospital's payment area (region and urban or rural location). Only costs associated with capital-related items and services that were obligated before a specified date, for example, before January 1, 1986, were to be considered.
- Total inpatient cost per discharge exceeds total prospective payments and pass-through payments per discharge (capital and noncapital payments per case).

4. Lengthening the Capital Payment Transition Period

We proposed consideration of a phase-in period longer than the four years stated in our proposal.

5. Variations in Blending Federal and Hospital-Specific Rates During Transition

We proposed consideration of an increase in the hospital-specific proportion and a commensurate decrease in the Federal proportion during the transition period so that the capital-related hospital-specific portion would be weighted higher in the early years of the transition period than was specified in the June 1986 NPRM.

6. Adjustment to Hospital-Specific Rates for Low Occupancy

Under this approach, the capital-related hospital-specific rate was to be modified when a hospital's occupancy rate was significantly below the national average. We stated that we would inflate the number of total inpatient days in the cost reporting year by the percentage difference between the hospital's actual occupancy rate in that period and an appropriate percentage threshold. Using the resulting adjusted inpatient days figure, we would derive the capital-related cost per diem to be used in determining the hospital's total inpatient capital-related cost for the cost reporting period. This modification was to result in an appropriate and proportional reduction in the hospital's rate per case in making its capital payment.

7. Update of the Capital-Related Hospital-Specific Rate

Rather than updating the capital-related hospital-specific rate by the overall prospective payment update factor, as proposed, we indicated that we were considering an alternative to update that rate by the percentage change in the capital component of the hospital market basket.

IV. April 1, 1986 ProPAC Recommendations on Capital Payment

In its April 1, 1986 Report to the Secretary (published as Appendix C of the June 1986 NPRM (51 FR 20123)), ProPAC made recommendations related to the incorporation of capital-related costs into the prospective payment system. We described those proposals in detail in that NPRM and provided our responses. The following is a summary of those recommendations.

A. Including Capital in the Prospective Payment System (Recommendation 5)

ProPAC recommended that beginning in FY 1987, the Secretary should initiate a transition to all-inclusive prospective prices that combine inpatient operating and inpatient capital-related cost components in a single prospective payment per case for hospitals. The capital payment methodology that is adopted—

- Should provide neutrality in capital-related cost and operating cost trade-offs; and
- Should not favor either capital-related or operating costs but should encourage hospital managers to choose the optimal combination of those cost components. An all-inclusive payment rate would allow individual providers the flexibility to make what they consider to be the most cost-effective decisions based on the unique characteristics of their institutions.

B. Capital Payment Method (Recommendation 6)

ProPAC recommended that the Federal portion of capital payments should be calculated as a fixed percentage add-on to the standardized amounts, beginning in FY 1987, and that the Secretary should immediately develop capital components to be added to the hospital market basket. When appropriate data become available, the components of prospective payments should be recalculated to reflect the addition of capital costs. The results of this recomputation should be implemented as soon as possible, but no later than FY 1988.

C. Level of Capital Payment (Recommendation 7)

ProPAC recommended that capital payment should be added to the Federal portion of the prospective payment rates

for hospital accounting years beginning in FY 1987 in the following steps:

- For building and fixed equipment, average actual Medicare capital-related costs per discharge for FY 1985, projected forward to FY 1987 by an index of construction capital costs.
- For moveable equipment, average actual Medicare capital costs per discharge for hospital cost reporting year FY 1983, projected forward to FY 1987 by an index of equipment capital costs
- The proportion attributed to moveable equipment should be the lesser of the FY 1983 proportion or 40 percent.

D. Capital Payment Transition (Recommendation 8)

ProPAC recommended that the transition to Federal capital payments under the prospective payment system should begin in FY 1987 in accordance with the following provisions:

- There should be no transition for moveable equipment. All payments for moveable equipment should be included as a fixed percentage add-on to the Federal standardized amounts beginning in FY 1987.
- Payment for plant and fixed equipment should be phased in as a fixed percentage add-on to the Federal standardized amounts over a seven- to ten-year period on a straight line basis.
- For plant and fixed equipment, the hospital-specific capital payment portions should be based on the actual costs incurred during each year of the transition.
- During the transition, the Federal portion for plant and fixed equipment should be updated each year by an index of construction costs.
- The addition of capital to the Federal standardized amounts should reflect base-year treatment of return on equity and interest offsets. Return on equity payments should be added to the hospital-specific portion of operating costs. Once the transition to fully national rates for operating payments ends, there should be no hospital specific payment for return on equity.

V. Proposed Changes to Capital Payment

A. General Discussion

A wide variety of comments were received on the policies and options described in the June 1986 NPRM. We have revised our original proposal in several substantial ways in response to the comments and in light of section 206 of Pub. L. 99–349 and sections 9303 and 9304 of Pub. L. 99–509. Below, we describe in detail various aspects of our proposal and the specific methodology that we would use to implement our proposal.

- As discussed earlier, section 206 of Pub. L. 99–509 extended the period during which the Secretary is required to distinguish and treat capital-related costs separately from other inpatient hospital operating costs that are subject to the provisions of section 1886 of the Act (that is, subject to the prospective payment system, the rate-of-increase limits, and State reimbursement control systems). Section 9303 of Pub. L. 99–509 amended section 1886(g)(3) of the Act to provide that, in the design of a prospective payment system for capital-related costs, the aggregate capital payments attributable to portions of cost reporting periods occurring during FYs 1988 and 1989 shall be neither greater nor less than the aggregate capital payments that would have been made on a reasonable cost basis subject to the reductions of seven percent in FY 1988 and ten percent in FY 1989, as authorized under section 9303(a) of Pub. L. 99–509. In addition, section 9304 of Pub. L. 99–509 provides for inclusion of hospitals in Puerto Rico under the prospective payment system effective with inpatient hospital discharges beginning in FY 1988. We plan to implement the provisions concerning hospitals in Puerto Rico in a separate proposed rule to be published shortly in the **Federal Register**. (We note that in that document we plan to further amend Subpart K to Part 412 to implement those provisions. In this proposed rule, we are proposing to add Subpart K consisting of § 412.214 to implement the provision for incorporating capital payments into the prospective payment system for hospitals in Puerto Rico.) Section 9304 of Pub. L. 99–509 also revises section 1886(d) of the Act (by adding section 1886(d)(9)(D)(iii)) to authorize the Secretary to make exceptions and adjustments under which we believe a transition period and other refinements for incorporating capital payments into the prospective payment system could be extended to hospitals in Puerto Rico. (We note that the reductions in capital payments for FY 1988 and FY 1989, as provided under section 1886(g)(3) of the Act, also apply to hospitals in Puerto Rico.)

The regulations for implementation of the incorporation of capital payments into the prospective payment system, which we propose to be effective with cost reporting periods beginning on or after October 1, 1987, would be different from the June 1986 NPRM in the following manner:

- We would establish national urban and rural capital rates separately for plant/fixed equipment and for moveable equipment, using the best data currently available, that is, capital-related costs for cost reporting periods beginning in Federal FY 1984. (Since the Federal capital rates are calculated according to the Federal fiscal year, we would update the national capital rates each Federal fiscal year.)
- We would determine the hospital-specific portion of the capital payment on the basis of each hospital's allowable capital-related costs for plant and fixed equipment and for moveable equipment in each year of the transition.
- We would provide a ten-year transition period for incorporating capital payments for plant and fixed equipment into the prospective payment system.
- We would provide a two-year transition period for incorporating capital payments for moveable equipment into the prospective payment system.
- We would amend the existing payment policy for outliers (42 CFR Part 412, Subpart F), which is mandated by section 1886(d)(5)(A) of the Act, by adding a portion of the Federal capital payment to the pool set aside for total outlier payments. The cost outlier policy (§ 412.84) would be based on capital and noncapital-related costs, and we would pay high capital cost cases only when both the capital-related and noncapital-related operating costs for a case are above the cost outlier threshold. We believe that there is no need to make cost outlier payments for cases in which both capital-related and noncapital-related operating costs are below the cost outlier threshold.
- The blending of Federal and hospital-specific portions of the capital payment for plant and fixed equipment during the transition period would be weighted heavily toward the hospital-specific portion in the earlier transition years as follows:

Cost reporting period beginning on or after	Plant and fixed equipment		Moveable equipment	
	Federal (percent)	Hospital-specific (percent)	Federal (percent)	Hospital-specific (percent)
1988	5	95	33	67
1989	10	90	67	33
1990	15	85	100	0
1991	20	80	.....	.....
1992	25	75	.....	.....
1993	30	70	.....	.....
1994	40	60	.....	.....
1995	50	50	.....	.....
1996	65	35	.....	.....
1997	80	20	.....	.....
1998	100	0	.....	.....

• We would determine the hospital-specific portion based on Medicare's share of total allowable capital-related costs of plant and fixed equipment, and Medicare's share of total allowable capital-related costs of moveable equipment (rolling base) subject to the applicable blending percentages in each year of the transition for each hospital.

• We would include Puerto Rico hospitals in the prospective capital payment process in accordance with sections 1886(d)(9) and (g)(3)(A) of the Act.

• For Federal FYs 1988 and 1989, we would adjust the capital payment amounts (Federal and hospital-specific portions) in order that the aggregate capital payment amounts under the prospective payment system approximate the aggregate capital payment amounts that would have been made, taking into account the reductions prescribed under section 9303 of Pub. L. 99–509, on a reasonable cost basis during Federal FYs 1988 and 1989.

• We would make capital payments to new hospitals on the same basis as all other hospitals subject to the prospective payment system, using the rolling base approach and the applicable Federal/hospital-specific blend for the Federal fiscal year in which the hospital first participates in the Medicare program.

• We would exclude sole community hospitals from inclusion of capital into the prospective payment system for cost reporting periods beginning before October 1, 1990, in accordance with section 1886(g)(3)(C)(i) of the Act.

• We believe that the proposed capital payment policy would negate the need for a further distinct capital outlier policy or exceptions process. As we described it in the June 1986 NPRM, an additional distinct exceptions process would provide a payment adjustment to those hospitals that could document that their capital-related inpatient costs were substantially in excess of a prescribed threshold (for example, twice the standardized capital payment amount and total prospective payments less than total inpatient costs covered by the prospective payment system). We recognize that capital expenditures for plant and fixed equipment are subject to long-term replacement, renovation and expansion cycles and may not be amenable to short-term adjustment due to the commitment of capital funds involved. Due to these factors, we are proposing to adopt those options that called for a longer transition period, with payments for fixed capital costs more heavily weighted toward the hospital-specific portion of the blend during the phase-in, and a rolling base year approach in determining the hospital-specific portion (that is, paying a portion of the actual allowable capital-related costs in each transition year as opposed to a fixed base year rate updated during the transition period).

In selecting these options, it became apparent that there would be little remaining rationale to support a provision for a distinct capital exceptions process. Because a rolling base, initially heavily weighted to hospital-specific costs, would recognize not only a hospital's prior commitments (higher than average standardized costs), but also costs for acquisitions during the transition period (that are normally committed for in prior years), there should be practically no basis on which a hospital would find itself in financial distress over capital expenditures due solely to Medicare's incorporation of such payments into the prospective payment system. An adequately long transition period for plant and fixed equipment gives hospitals sufficient time to plan for changes in capital or other operating expenditures, especially since the payment levels are known in advance under a prospective system Also, with capital payments tied closely to current costs with eight years of the ten-year transition period for plant/fixed equipment being paid at 50 percent or more of the hospital-specific costs, hospitals' financial situations would not be substantially affected before the hospitals have had adequate time to make adjustments even in the face of long-term capital cycles.

In moving to a process that would allow hospitals to meet prior capital commitments for a longer term through an extended transition period, and with full knowledge of the rate of future payments, hospitals would have adequate financing for old debt (prior capital commitments) and adequate information regarding future capital income to plan future capital expenditures without the need of an additional safeguard in the program. In addition, this process could act as a disincentive for hospitals to take appropriate action to bring capital costs into line with expected payment levels under future standardized rate schedules.

For these reasons, we conclude that the added administrative complexity of a capital payment exceptions process, as well as the reduction in rates required to establish a pool of exception payment funds, are persuasive arguments against creating such an exceptions process. However, we are open to suggestions and will continue to consider a potential exceptions process or additional outlier capital policy during the transition period.

B. Capital Payment Policy—Specific Methodology

Under this proposed rule, hospitals subject to the prospective payment system, other than SCHs, would begin receiving capital payments on a prospective payment basis effective with cost reporting periods beginning on or after October 1, 1987, based on a combination of a Federal capital rate and a hospital-specific portion during ten-year and two-year transition periods. This would continue until capital payments are fully integrated into the prospective payment system with cost reporting periods beginning on or after October 1, 1997. Following is a step-by-step description of the methodology we have used in determining the proposed capital payment rates.

We would extend the prospective payment system to capital-related costs under the authority of section 1886(a)(4) of the Act. We would establish special transitional and other procedures for capital-related costs under the authority in section 1886(d)(5)(C)(iii) of the Act to make necessary exceptions and adjustments to the prospective payment system.

1. Determination of Federal Capital Payment Rates

Step 1—Split of plant and fixed equipment from moveable equipment. Inpatient capital-related cost data from FY 1984 Medicare cost reports (latest available audited data) were used in the determination of the proposed Federal capital payment rates. In determining the split of plant and fixed equipment from moveable equipment, ratios of plant and fixed equipment costs to the total capital-related costs, and of moveable equipment costs to the total of capital-related, costs were developed for each hospital Capital-related costs for departments as shown on the Medicare cost report, such as nursery, other reimbursable cost centers (for example, home dialysis), and nonreimbursable cost centers were excluded from these totals because these costs do not represent inpatient capital costs for Medicare payment. Since a split of plant/fixed equipment and moveable equipment could not be determined for directly assigned capital-related costs, directly assigned capital-related costs were treated as moveable equipment costs only for those hospitals that did not separately report capital-related costs in the moveable equipment cost center.

For those cases in which capital related costs were reported in both the moveable equipment cost center and the directly assigned cost center, the directly assigned costs were not used in the ratio calculations. That is, it was assumed that the split of plant and fixed equipment from moveable equipment in the directly assigned cost category is consistent with the split in the plant and fixed equipment from moveable equipment cost centers.

Inpatient capital-related costs apportioned to the Medicare program were split between plant/fixed equipment and moveable equipment, using the ratios as determined above for each hospital.

We note that through additional audit efforts, we are in the process of collecting additional information on directly assigned capital-related costs to disaggregate these costs between plant/fixed equipment and moveable equipment, more precisely. In addition, we will be examining alternative methodologies to apportion Medicare inpatient capital-related costs between plant/fixed equipment and moveable equipment, more appropriately. For example, we will be looking at approaches to apportion ancillary plant/fixed equipment costs and moveable equipment costs between inpatient and outpatient services as a refinement to the split ratios in apportioning Medicare inpatient capital related costs between plant/fixed equipment and moveable equipment.

Step 2—Adjustments and standardizations—General. The Federal capital payment rates calculated separately for plant/fixed equipment and for moveable equipment from Federal FY 1984 cost reporting data are adjusted, updated, standardized and computed as separate national averages for urban and rural hospitals, in the 50 States and the District of Columbia as described in the June 1986 NPRM (51 FR 19975).

Puerto Rico. We developed a separate adjusted average for urban and rural hospitals in Puerto Rico using FY 1984 Puerto Rico hospital data and, in general, the same methodology as that used for the 50 States and the District of Columbia. We note that we are continuing to look at data on Puerto Rico hospitals and will conduct further audits of the hospital data. Also, we are considering whether other methods of determining the classification of plant/fixed equipment from moveable equipment are appropriate.

Standardization. We are standardizing the Medicare capital-related plant/fixed equipment and moveable equipment costs of each hospital to eliminate cost variation due to differences in case mix complexity, indirect medical education, and disproportionate share payments (and for the moveable capital costs of hospitals in Alaska and Hawaii, a cost-of-living adjustment) because the statute, by permitting the Secretary to define capital-related costs as operating costs, requires both the standardization of the rates and the adjustments to payments to hospitals for these factors, unless there is an appropriate reason for not standardizing capital-related costs by one or more of these factors. Our preliminary statistical analysis indicates that there is a reasonable analytical support for standardizing capital-related costs by the hospital case-mix index. The evidence, however, for standardizing the indirect costs of medical education and disproportionate share adjustments is inconclusive.

Since we have no strong evidence to suggest that is is inappropriate to standardize capital-related costs by the same factors used in standardizing inpatient hospital operating costs, we propose to standardize capital-related costs by the indirect teaching factor, disproportionate share adjustment, and the case-mix index. We will continue to examine the appropriateness of standardizing capital-related costs by these factors. (We refer the reader to the regulatory impact analysis in Appendix D of this document for further information on the effects of standardization.) We are required to compute urban and rural averages as provided by sections 1886(d)(2)(D) and (d)(3)(D) of the Act. We note that rural referral centers (see § 412.96) would be paid on the same basis for capital as for other operating costs under the prospective payment system.

Local cost variations. Several commenters on the June 1986 NPRM suggested that we adjust the capital payment amounts for area construction cost variations. In recognition of the variations in construction cost among areas, a construction cost index (listed in Appendix B of this document) would be applied in making payments for plant/fixed equipment This construction cost index would apply only to the Federal payment portion for plant/fixed equipment since such variations would already be recognized on an individual hospital basis in determining the hospital-specific portion using a "rolling base." The construction cost index would be applied to standardize the plant/fixed equipment cost data in the same manner that cost data are standardized for case mix, indirect medical education and disproportionate share.

Construction and renovation of hospital facilities represent most of hospital fixed capital expenditures Since the cost of construction varies geographically, we believe it is necessary to include an index of geographic variation in construction costs to incorporate fixed capital costs into the prospective payment system. We reviewed a variety of data sources from which a construction cost index could be developed, including the Bureau of the Census, the Bureau of Labor Statistics, and non-government sources The criteria we considered important in our review were the type of data available, the comprehensiveness of the data, the degree to which it was specific to hospital construction, the number of years for which data were available, the timeliness of the data, and the geographic detail available.

We selected the Dodge/Data Resources, Incorporated (DRI)

Construction Potentials database as the most appropriate source for developing a fixed capital construction cost index for the prospective payment system The Dodge/DRI database contains information on all major building projects in the country, both new construction and additions and alterations, with a projected value of over $25,000. Data collected from architects, developers, building contractors, building permit offices, newspapers, and other sources by a network of 1,500 correspondents are entered into the database when a contract has been signed and construction is to begin within 60 days. Data recorded on each project include the date, type of facility to be built, contracted cost and square footage to be constructed, location by city and county and other information. The Dodge/DRI database is widely used as a data source by the construction industry. (Congress itself recently provided for the use of a Dodge Construction Index to measure certain construction costs incurred by skilled nursing facilities in the Medicaid program. See section 1902(a)(13)(C) of the Act, as amended by section 9509 of Pub. L. 99–272. We believe that this is evidence of the widespread acceptance of those indexes by the industry.)

Data on institutional construction. From the Dodge/DRI database, we developed a file of nonresidential "institutional" construction by Metropolitan Statistical Area (MSA) and New England County Metropolitan Area (NECMA) for each year 1972 to 1986. Counties that did not fall into MSA/NECMA areas were included in the appropriate state rural areas. We used the MSA-NECMA assignment that was listed in Table 4a (Wage Index for Urban Areas) in the addendum to the September 3, 1986 final rule (51 FR 31555). Types of construction included in our file were as follows:

- Schools and colleges;
- Nonmanufacturing owned laboratories;
- Libraries and museums;
- Hospitals and other health treatment buildings;
- Capitols, court houses, city halls and other government service buildings; and
- Houses of worship and other religious buildings.

We selected these types of construction for the file because they included all types of construction in the Dodge/DRI database that reasonably represented relative variations in hospital construction costs. For that reason, we excluded residential construction (also because it would include a substantial volume of small wood frame construction not representative of hospital construction). Amusement, social, recreational and transportation terminal buildings (gymnasiums, arenas, auditoriums, theaters, airports etc.) were excluded because we expected their cost per square foot would vary too much by size of the facility rather than by geographic area. We also excluded other noninstitutional construction (stores, restaurants, office and bank buildings).

In determining the types of construction to include in computing a prospective payment system construction cost index, we first considered using only hospital construction. However, in some geographic areas, this resulted in no data in some years because no hospital construction had taken place in the area in those years and some areas had less than five years of hospital-only construction data to average in the 15 year period. For the types of construction we included in our file, the methodology used to compute the prospective payment system construction cost index for fixed capital is as follows:

Step a. The contracted cost of all construction for each urban or State rural area (365 different geographic areas) was totaled by year. Likewise. the square footage of all construction for each geographic area was totaled by year.

Step b. For each year from 1972 to 1986, a national average construction cost per square foot was computed for the year by summing the construction cost for the year over all geographic areas and dividing by the total square footage of construction over all geographic areas for that year.

Step c. The cost per square foot for each geographic area for each year was calculated by dividing the construction cost for each area by the square footage for each area. This resulted in 365 different cost per square foot values, one for each geographic area for each of the 15 years, or 5,475 total values. Aberrant values were defined to be geographic areas that had an average cost per square foot exceeding three times the national average for that year, or less than one-third the national average for that year. Fifteen of the 5,475 cost per square foot values exceeded these limits and were dropped as aberrant values, thus leaving 5,460 cost values.

Step d. A construction cost index for each geographic area for each year was obtained by dividing the cost per square foot for each area by the national cost per square foot for the respective year. This resulted in 5,460 index values.

Step e. A 15-year average index for each geographic area was computed by multiplying each area's index for each year by the square footage of construction for the area for that year and summing across years, then dividing by the total square footage of construction for the area over the entire 15 year period This resulted in a 15-year average index for each of the 365 geographic areas. For areas with aberrant values (as described in step c above) for a particular year, that year's index and square footage were excluded in calculating the 15 year average index for that area.

Step f. The arithmetic mean of these 365 fifteen year average construction cost indexes was computed and each of the index values was divided by this mean to obtain an index with a national mean of 1.000. The resulting indexes are listed in Appendix B of this document.

The criteria used for excluding aberrant values had a more significant impact on the index when only hospital construction was used because the hospital construction cost per square foot in some areas for some years ranged from 11 percent to 1,443 percent of the national average. Although averaging the index over 15 years for each geographic area helped smooth out this variation, the index was still rather volatile and would have produced a final index that ranged from .43 to 1.80 with a standard deviation of .21, rather than the index in Appendix B, which ranges from .73 to 1.72 with a standard deviation of .16. We are continuing to investigate criteria for determining aberrant values that might result in a less volatile index based only on hospital construction.

In computing the construction cost index, we had available two additional years of data, 1970 and 1971. (Dodge/DRI has collected hospital construction data since 1970.) We considered using periods of other than 15 years for computing the multiyear average index for each area. We chose 15 years because the year-to-year correlation reached 99 percent by year 15. This result produces a very stable index and reduces major fluctuations in Medicare hospital capital payments as new investments are incurred each year. Also, since the capitalization of construction project costs averages roughly 30 years, using an index averaged over 15 years allows the cost of an amortized project to influence the construction cost index for the median of its useful life. Using a shorter averaging period would result in a more volatile index, with a year to year correlation from about 60 percent to 90

percent, depending on the number of years averaged. As a result, some areas would experience significant changes in their index each time the index is updated. This would allow the index to respond more quickly to abrupt changes in the cost of construction in a particular area, but would also allow a very large single contract in a particular area in one year to have a possibly disruptive impact on the fixed capital payments for that area when the index is next updated.

Local cost variation—Puerto Rico. DRI does not collect construction cost data for Puerto Rico, and we were not able to compute a construction cost index for Puerto Rico in the same manner as for other areas. We are not including index values for Puerto Rico in the construction cost indexes in Appendix B of this document, but are considering three proxy approaches to estimate the construction cost index for Puerto Rico.

- Our first approach for estimating a construction cost index for hospitals located in Puerto Rico would be to calculate the average cost per square foot for Federal government building rental in Puerto Rico, and divide by the average cost per square foot for Federal government building rental for the State with the lowest construction cost index in the United States. We are currently obtaining data on the cost of renting Federal government buildings from the General Services Administration. We would use the ratio calculated above to determine a construction cost index for Puerto Rico. For the Puerto Rico rural construction cost index, we would multiply that ratio by the rural construction cost index for the State with the lowest rural construction cost index. For the Puerto Rico urban construction cost index, we would determine a single value for all Puerto Rico urban areas by applying the ratio to the average of the urban indexes for the urban areas of the State with the lowest average urban construction cost index.
- A second approach would be to identify a geographic area in the United States in which economic conditions are most comparable to those in Puerto Rico.
- A third approach would be the direct collection of construction cost records and information from Puerto Rico hospitals, and computation of urban/rural indexes as the construction cost per square foot of Puerto Rico hospitals divided by the average construction cost per square foot for hospitals in the continental United States. We are evaluating the feasibility and reliability of such a survey.

We are evaluating the merits of each of these approaches and specifically solicit public comments on other approaches in determining the appropriate construction cost index for Puerto Rico hospitals.

Conclusion. We are continuing to investigate the manner in which the construction cost index is calculated and, in particular, solicit suggestions regarding—

—Developing a methodology for computing a less volatile index based only on hospital construction;

—Developing an index that is a combination of hospital-only construction and other institutional construction, in which the data are combined in a manner other than just summation. Examples would be a hospital-only construction index for those areas with a large amount of hospital construction data, and a proxy based on general institutional construction for areas with a small amount of hospital construction. Also, a different method of weighting other than square footage of construction could be used to obtain the multiyear average index;

—Adding or deleting types of construction to the index;

—Changing the length of the averaging period for the index; and

—Using a different geographical unit to determine the index (for example, census regions).

We will continue to examine the construction cost index we are proposing and will attempt to increase the precision with which it reflects variation in construction costs across geographic areas. We expect to update the index on a periodic basis to reflect recent changes in area construction costs.

We also seek comments on the alternatives of using the hospital wage index (used for purposes of the inpatient hospital prospective payment system) or no construction cost index in lieu of the proposed construction cost index to adjust the plant/fixed capital-related Federal rates for area variation in hospital construction costs. We plan to update the values of the hospital wage index as part of the proposed update of the hospital prospective payment system for FY 1988 to be published shortly in the **Federal Register.** We caution the reader that the rates in tables one and two of Appendix A of this proposed rule would change if either alternative is adopted because the underlying plant/fixed equipment costs used to derive the rates in the tables reflect standardization by the proposed construction cost index. That standardization would be eliminated entirely if no construction cost index were adopted, and would be replaced with standardization by the hospital wage index if that alternative were selected.

Step 3—Updating. The results from step 2 (the standardized average fixed and moveable costs per case for each hospital) are updated through FY 1987 using the estimated rate of increase in actual inpatient hospital capital costs. In the June 1986 NPRM, we proposed to update the FY 1983 average cost per case through FY 1986 using the capital component of the hospital market basket, and for FY 1987 onward, the prospective payment update factor in order to be consistent with the prospective payment system methodology for all other inpatient operating costs. However, in light of the requirement that aggregate payments for inpatient capital costs under a prospective payment system approximate aggregate payments for inpatient capital-related costs under cost reimbursement subject to the reductions under section 1886(g)(3) of the Act, we propose instead to update hospitals' FY 1984 costs per case through FY 1987 by the estimated actual increase in capital costs per case for purposes of establishing the rates. We would also update costs for FY 1988 and FY 1989 for purposes of estimating the payments that would be made, subject to the reductions under section 1886(g)(3) of the Act, under reasonable cost principles. (The latter estimate would form the basis of the budget neutrality adjustment to the rates.) For FY 1990 onward, the same update factor (the applicable percentage change under sections 1886(b)(3)(B) and (e)(4) of the Act) would apply to the capital-related rates as to all other inpatient hospital operating rates. We also wish to point out that no updating of the hospital-specific portion of capital-related payments would be necessary under this proposed rule since a rolling base year (actual costs in each transition year) would be used rather than a fixed base year.

Step 4—Separate averages. The amounts resulting from step 3 are then used to compute average standardized rates for plant/fixed equipment and moveable equipment, for all urban hospitals and for all rural hospitals in the United States and the District of Columbia, and for urban and rural hospitals in Puerto Rico. The national urban and rural averages are discharge-weighted in the same manner as the prospective payment rates for other inpatient hospital operating costs that

will be in effect with discharges occurring on or after October 1, 1987.

Step 5—Reducing for outliers. In accordance with section 1886(d)(5)(A) of the Act, we would amend the current outlier policy (in 42 CFR Part 412, Subpart F) by adding capital to the pool set aside for outliers. The average standardized rates for plant/fixed equipment and moveable equipment resulting from step 4 are reduced by the proportion (estimated by HCFA) of the amount of payments that, based on the total amount of the Federal capital-related payments for urban hospitals and the total amount of the Federal capital-related payments for rural hospitals, are additional payments for outlier cases.

We are proposing that payment for capital-related day outliers (extended length-of-stay cases) be determined based on the same provisions in effect for noncapital-related day outliers (§ 412.82). We are proposing that payment for capital related cost outliers (extraordinarily high-cost cases) be determined based on both capital-related and noncapital related costs. We would amend § 412.84 to provide that payment for high capital cost cases would occur only when both the capital related and noncapital-related costs exceed the cost outlier threshold. We believe it would be inappropriate to make cost outlier payments for high capital cost cases in which the capital related and noncapital-related costs are below the cost outlier threshold.

Step 6—Budget neutrality. Section 1986(g)(3)(C)(ii) of the Act requires that, effective with cost reporting periods occurring during FY 1988, Medicare capital-related payments into the prospective payment system shall approximate the amount that would have made (that is, make budget neutral) (taking into account the seven percent reduction in capital-related payments in FY 1988 under section 1886(g)(3)(A)(ii) of the Act) without such inclusion into the prospective payment system. Since we assumed that the seven percent reduction to capital-related payments applied with or without the incorporation of capital into the prospective payment system, we did not reduce the amounts resulting from step 5 by seven percent. As well, since sole community hospitals are excluded from a capital prospective payment system (section 1886(g)(3)(C)(i) of the Act) through cost reporting periods beginning before October 1, 1990, we did not adjust the amounts resulting from step 5 for their costs.

We are adjusting the amounts resulting from step 5 (by a budget neutrality adjustment factor of 1.0382) so that capital-related payments during FY 1988 under the proposed capital prospective payment system equal the capital-related costs that would have been paid for the same time period in the absence of the proposed system (that is, under the reasonable cost reimbursement system). Taking into consideration the different blends of the hospital-specific and Federal portions applied to plant/fixed equipment and moveable equipment in FY 1988, the budget neutrality equation is as follows:

.95 HSP Fixed + .05 Fed Fixed + .67 HSP Mov + .33 Fed Mov = CRC Fixed + CRC Mov

where—

- HSP Fixed and HSP Mov represent the total hospital-specific payments made for plant/fixed equipment and moveable equipment during FY 1988 under the proposed capital prospective payment system;
- Fed Fixed and Fed Mov are the total Federal payments for plant/fixed equipment and moveable equipment during FY 1988 under the proposed capital prospective payment system; and
- CRC Fixed and CRC Mov are the capital-related costs for plant/fixed equipment and moveable equipment that would have been paid under the reasonable cost reimbursement system.

Since the hospital-specific capital payments are based on actual costs in FY 1988, the budget neutrality equation can be modified as follows:

.05 Fed Fixed + 33 Fed Mov = .05 HSP Fixed + .33 HSP Mov

The terms on both sides of the equation were estimated for each hospital applying the proposed payment rules described elsewhere in this proposed rule. For each hospital, the hospital-specific payments were adjusted to the midpoint of the hospital's FY 1988 fiscal year. The Federal payments were estimated using rates adjusted to the midpoint of FY 1987. In both cases, these adjustments were based on estimates of the actual rate of increase in capital-related costs per admission derived from AHA data. As a result of the one year difference between the updating of the hospital-specific and Federal variables, the adjustment factor defined below accounts both for capital cost differences between 1987 and 1988 and for the budget neutrality requirement.

Federal payments were computed using case-mix indexes for FY 1986. Since all estimates were made on a per discharge basis, the number of discharges has no effect on the value of the adjustment factor.

To calculate the required adjustment to the Federal rates, we substituted the adjusted Federal payments for the Federal terms in the equation above. Let the adjustment factor applied to the Federal rates be k. Then the adjusted Federal payments are k*Fed fixed and k*Fed Mov. Solving the resulting equation for k yields the following:

k = (.05 HSP Fixed + .33 HSP Mov)/(.05 Fed Fixed + .33 Fed Mov)

2. Determination of the Hospital-Specific Portion of the Capital Payment

The hospital-specific portion of the capital payment during the transition period would be made by determining Medicare's share of the actual allowable capital-related costs of hospital plant/fixed equipment and of moveable equipment apportioned to inpatient areas for each transition year reducing those costs by the percentage factors (seven and ten percent) mandated for FYs 1988 and 1989, respectively, and the appropriate blend percentages.

Step 1—Allocation of equipment. The amount of Medicare allowable capital-related costs of plant/fixed equipment and of moveable equipment, separately apportioned to inpatient hospital services, would be determined pursuant to §§ 412.113(a) and 413.130. Due to the importance of splitting fixed/plant from moveable equipment, we are proposing a detailed list for classifying the current and future stock of hospital capital. The list, presented in appendix C of this document, is compatible with the definitions of fixed/plant and moveable equipment contained in section 104 of Chapter 1 of the Provider Reimbursement Manual (HCFA Pub. 15-1). The HCFA list is an adaptation of the list of the American Hospital Association (AHA) 1987 Edition and is an extensive, but not exhaustive list of items of plant/fixed equipment, and of moveable equipment. (We note that we have added extracorporeal shockwave lithotripters and magnetic resonance imaging equipment to the AHA list of equipment under the moveable equipment category.) We are proposing that HCFA update the list periodically as necessary through notices published in the **Federal Register**. We are also proposing that the definition contained in the Provider Reimbursement Manual be used to classify equipment not specified on the list.

For hospitals that have been classifying a capital item differently than it would be classified under the list, we would consider allowing them to continue the present classification practice if they can justify it to their fiscal intermediary. We request comment on the plant/fixed and moveable classification scheme as

described in the proposed § 412.67 and Appendix C and the potential policy that would allow hospitals to classify items differently from the list.

Step 2—Apportionment. The Medicare allowable capital-related costs of plant/fixed equipment and of moveable equipment, apportioned to inpatient hospital services, are reduced by the appropriate percentage factor pursuant to section 1886(g)(3) of the Act, as added by section 9303 of Pub. L. 99–509. The capital-related costs thus reduced by seven percent and ten percent in FYs 1988, 1989, respectively, are then multiplied by the appropriate hospital-specific blend percentage applicable to the pertinent transition cost reporting period.

3. Additional Payments

We are directed by section 1886(d)(5) of the Act to provide additional payments for outliers (section 1886(d)(5)(A)), indirect medical education (section 1886(d)(5)(B)), and disproportionate share adjustments (section 1886(d)(5)(C)) for hospitals that are under the prospective payment system. As a result, we are required to add to the current noncapital-related payment the portion of the Federal capital-related payment for those additional payments that we are proposing to include in the prospective payment rate.

a. Payments for Outliers. The pool of funds for day and cost outlier payments would be increased by reducing the average standardized Federal capital payment rates by the same factors used to reduce noncapital-related prospective payment rates. In determining the amount of a day outlier payment, we are proposing to use the same methodology currently used for noncapital-related costs. That is, the Federal capital-related and noncapital-related standardized amounts, adjusted to reflect the construction cost index and the wage index (as appropriate), and also to reflect the appropriate blends, would be multiplied by the applicable DRG weighting factor. The resulting adjusted standardized amounts for capital and noncapital would be added together, and the result divided by the geometric average length-of-stay figure for the DRG. This amount would then be multiplied by .60 (the marginal cost factor), and the resulting amount would be paid to the hospital for each day of care beyond the day outlier threshold.

In determining the amount for a cost outlier payment, we are proposing to use the same methodology currently used for noncapital-related costs. Since we are proposing to include capital-related costs as part of total inpatient operating costs, we would make any appropriate changes to the cost outlier thresholds to reflect additional capital-related costs. The plant/fixed capital-related portion of the thresholds would be adjusted by the construction cost index in the same manner as the noncapital-related portion is adjusted by the hospital wage index. In addition, the national cost-to-charge ratio used in determining cost outlier payments would be increased to reflect capital-related costs.

We note that capital outlier payments would not be paid until a hospital is subject to prospective payments for capital, that is, effective for discharges in cost reporting periods beginning on or after October 1, 1987. For example, if a hospital's cost reporting period in FY 1988 begins January 1, 1988, capital outlier payments would be made, if applicable, for discharges occurring on or after January 1, 1988. Therefore, adjustments to outlier payments for capital would not be available to that hospital until January 1, 1988. In addition, both changes to the outlier (both cost and day outliers) criteria and capital outlier payments would apply on a Federal fiscal year basis in order to maintain consistency with the outlier policy for other noncapital operating costs under the prospective payment system. This means that changes in outlier criteria and payments announced next year to be effective for Federal FY 1989 will apply to the January 1, 1988 hospital as of October 1, 1988.

In summary, we would make appropriate changes to §§ 412.82 and 412.84 to incorporate capital into the outlier criteria and payments in the final rule.

b. Payments for Indirect Medical Education. As we proposed in the June 1986 NPRM (51 FR 20027), we are proposing to adjust the average standardized amounts to account for indirect medical education payments. Hospitals that are eligible for indirect medical education payments under § 412.118 would receive an additional payment to their capital-related payments for indirect medical education costs to be calculated in the same manner as noncapital-related indirect medical education payments are determined.

c. Payments for Hospitals that Serve a Disproportionate Share of Low-Income Patients. Also, as we proposed in the June 1986 NPRM (51 FR 20014), we are proposing to adjust the average standardized amounts to account for the costs of hospitals that serve disproportionate shares of low-income patients. Hospitals that meet the disproportionate share criteria under § 412.106 would receive an additional payment to their capital-related payments for disproportionate share costs to be calculated in the same manner as noncapital-related disproportionate share payments are determined.

4. Total Capital Payment

The total capital payment to a hospital for any particular cost reporting period would be a total of the following components:

• The total of the hospital-specific amounts for discharges occurring in a period according to the following formula:

Medicare's Share of Allowable Cost for Plant and Fixed Equipment.	×	Applicable Percentage Reduction Factor [1]	×	Hospital-Specific Portion Transition Blend Percentage
		— Plus —		
Medicare's Share of Allowable Cost for Moveable Equipment.	×	Applicable Percentage Reduction Factor [1] ..	×	Hospital-Specific Portion Transition Blend Percentage

[1] Represents the reduction applicable for FYs 1988 and 1989 as provided under section 1886(g)(3) of the Act.

• The aggregate Federal portion payment amounts for plant/fixed equipment and for moveable equipment, for discharges occurring during the pertinent cost reporting period based on the following formula:

Total of Plant and Fixed Equipment Federal Rate Per Discharge [1].	×	Area Construction Index.	×	DRG Weight.....	×	Any Applicable Adjustment [2].	×	Federal Transition Blend Percentage

— Plus—

Moveable Equipment Federal Rate Per Discharge [1].	×	DRG Weight.....	×	Any Applicable Adjustment [2].	×	Federal Transition Blend Percentage		

— Plus —

Any Applicable Outlier Payments

[1] Includes the reductions and budget neutrality adjustments applicable for FYs 1988 and 1989 as provided under section 1886(g)(3) of the Act.

[2] For example, indirect medical education, disproportionate share.

5. New Hospitals

As a result of using a rolling base to determine the hospital-specific portion of the capital payment during the transition period, no special provision would be made for new hospitals that become subject to the prospective payment system upon entering the Medicare program. A new hospital is subject to the capital payment transition blends in effect at the beginning of its cost reporting period when it enters the program. Thus a hospital entering the program (that is, newly participating in the Medicare program, under present or previous ownership) on January l, 1993 would be paid at 70 percent of its hospital-specific costs and 30 percent of its Federal rate for plant/fixed equipment and 100 percent of its Federal rate for moveable equipment.

6. Sole Community Hospitals

As prescribed in section 1886(g)(3)(C)(i) of the Act, sole community hospitals would continue to be paid under the reasonable cost methodology described in section 1861(v)(1) of the Act with respect to capital-related costs for cost reporting periods beginning before October 1, 1990.

7. Capital Expenditure Agreements

Section 1886(g)(1) of the Act provides that, if legislation concerning payment for capital-related costs for inpatient hospital services is not enacted before October 1, 1987, no payment may be made for capital-related costs of capital expenditures (as defined in section 1122(g) and except as provided in section 1122(j) of the Act) for inpatient hospital services in a State (including the District of Columbia and Puerto Rico as defined in sections 210(h) and 1861(x) of the Act) if such expenditures are obligated after September 30, 1987, unless the State or jurisdiction has an agreement with the Secretary under section 1122(b) of the Act and under such agreement the State recommended approval of the capital expenditure.

The deadline in section 1886(g)(1) of the Act for legislation to avoid invocation of the section 1122 requirements was extended to October 1, 1987, by section 206 of Pub. L. 99–349, enacted July 2, 1986. Subsequently, under section 9303 of Pub. L. 99–509, Congress enacted section 1886(g)(3) of the Act, which requires certain reductions in the payments for capital-related costs for inpatient hospital services. We believe that section 1886(g)(3) constitutes the necessary legislation required under section 1886(g)(1) "respecting the payment . . . for capital related costs for inpatient hospital services," thus nullifying the requirement of section 1886(g)(1).

8. Interest Expense

Interest expense, as described in § 413.153 is an integral part of capital-related costs. Under the current Medicare capital payment system (reasonable costs), it is important for hospitals to distinguish operatin9 interest from capital interest appropriately since interest on funds borrowed for operating expenditures is included under the inpatient hospital prospective payment system, and therefore are not a pass-through, while interest on funds borrowed for capital expenditures is paid for on a reasonable cost pass-through basis. We propose to continue the application of this principle without change throughout the transition period.

The allocation of interest between fixed and moveable capital assets has not been as important to Medicare payment determinations as the allocation between inpatient operating and capital-related interest expense, since both are paid on a cost pass-through basis and, in general, there is little effect on Medicare reasonable cost reimbursement resulting from misallocation of capital expenditures. Under the proposed rule, because of the different transition periods for plant/fixed equipment and moveable equipment, properly classifying capital-related interest expenses between plant/fixed equipment and moveable equipment becomes very important in order to pay hospitals appropriately for the interest portion of the hospital-specific pass-through payment. As a result, we intend to place increased emphasis on the cost finding and allocation procedures employed by hospitals. We are, however, considering further refinements to the cost finding procedures that currently apply to the interest expense determination.

In general, capital-related costs can be readily identified and classified as related to either plant/fixed equipment or moveable equipment, based on the financial, statistical, and accounting records of the hospital. However, there are capital-related interest costs that, due to their nature, may relate to both categories of equipment. We believe interest expense on funds borrowed for capital purposes needs to be addressed specifically because it is an integral part of overall capital costs and is incurred through various types of loans. Since it may be difficult to readily identify interest expenses related to moveable versus fixed equipment, we are considering some additional approaches for allocating interest expenses under the proposed rule. Because these approaches are different from current cost finding methods, we are soliciting public comments on them or other approaches that may be appropriate.

a. Treatment of interest expense. Under current regulations (§ 413.153) and program guidelines (see section 3202.1 of the Provider Reimbursement

Manual (HCFA Pub. 15–1)), to be allowable as a Medicare expense, interest must be—

- Supported by evidence of an agreement that funds were borrowed and that payment of interest and repayment of funds are required;
- Identifiable in the hospital's records;
- Related to the reporting period in which the costs are incurred; and
- Necessary and proper for the operation, maintenance, or acquisition of the hospital's facilities.

To support the existence of a loan, the hospital must have available a signed copy of the loan contract, which should contain the pertinent terms of the loan. If the lender does not customarily furnish a copy of the loan contract, correspondence from the lender stating the pertinent terms of the loan would be acceptable. If interest expense has been determined to be allowable and the interest expense records are maintained physically away from the hospital's premises, such as a county treasurer's office, these records would be deemed to be those of the hospital. This would be applicable when bond issues have been specifically designated for the construction or acquisition of hospital facilities and the financial records relative to the bond issue are maintained by some governmental body.

We propose that, once the allowable interest expense on capital indebtedness is determined, the interest expense be classified to plant/fixed equipment or to moveable equipment using the current Medicare procedures for classifying interest. These procedures and two other approaches are shown below. We are continuing to examine these approaches or some combinations of certain features of the three approaches (the Federal capital rates stated in Appendix A of this proposed rule reflect the fixed/moveable interest allocation from the FY 1984 cost report):

- Interest Expense Classified to the Account Related to the Indebtedness Using Current Medicare Principles of Reasonable Cost Reimbursement

If a loan is obtained to finance the purchase of a facility or moveable equipment, the interest expense would be classified to plant/fixed equipment or to moveable equipment, as appropriate.

If a loan is obtained to finance the purchase of facilities and various equipment items, the interest expense must be distributed among the assets the loan covers based on the purchase price of the acquisitions.

Example:

Assets purchased	Purchase cost
Buildings & Fixtures	$240,000
Moveable Equipment	$60,000
Total	300,000

Of the $300,000 purchase price, assume the hospital borrowed $270,000 for buildings, fixtures, capital improvements and moveable equipment at 10 percent annual interest. Thus, annual interest on the loan is equal to $27,000. The allocation to plant/fixed equipment and to moveable equipment is shown below:

Buildings	$240,000	× $270,000 × 10% =	$21,600
Fixtures	$300,000		
Moveable	$ 60,000	× $270,000 × 10% =	5,400
Equipment	$300,000		
Total Interest Expense			$27,000

If a loan is obtained to finance the purchase of a facility and equipment and the loan exceeds the asset value of the acquisitions, the interest expense on that portion of the loan in excess of the asset value of the acquisitions is not considered capital-related. The portion of the interest expense on the asset value of the acquisitions must be distributed among the assets of the loan as described in the example above.

There are some cases in which a hospital may, for a variety of reasons, undertake advance refunding (that is, to replace existing debt prior to its scheduled maturity with new debt). The revenues and expenses associated with the advance refunding are treated in accordance with the principles set forth in section 233 of the Provider Reimbursement Manual. The allocation of interest expense on the new debt would be dependent upon the allocation used under the old debt.

If a hospital has consolidated various individual debts through advance refunding, the interest expense on the new debt would be allocated to the appropriate accounts based on the old debt balances that were refinanced.

- Fixed Formula.

It may be reasonable to allocate interest expenses on funds borrowed for capital assets based on a formula that reflects the asset values of plant/fixed equipment from moveable equipment. We would propose to classify capital interest to plant/fixed equipment or to moveable equipment using the respective gross book values (value of assets prior to depreciation) as described in the cost report. The rationale for gross book value is similar to that contained in the current guidelines for commingled assets in which interest on a bond used to finance moveable and fixed equipment is allocated based on the proportion of the gross book values of the fixed and moveable equipment (see section 2338 of the Provider Reimbursement Manual). Under the gross book value formula, interest for plant/fixed equipment would be allocated based on the ratio of the gross book value of plant/fixed equipment to the total gross book value for all capital assets. Moveable equipment interest would be allocated based on the ratio of gross book value of moveable equipment to the total gross book value for all capital assets. To maintain consistency under this alternative, we would use the FY 1984 gross book values for fixed and moveable capital equipment to determine the appropriate classification of plant/fixed equipment and moveable equipment costs. For example, if the approach results in a shift of interest from fixed to moveable assets, then the FY 1984 capital cost allocation between fixed and moveable assets would be altered to reflect the shift. While this approach is a departure from the current rules used to classify interest, it has the advantage that it may be simpler to administer We invite comments on this formula or other formula approaches that may be appropriate.

We note that we are in the process of collecting information on interest expense on funds borrowed for capital assets and information on gross book values for plant/fixed equipment and moveable equipment in order to recalculate the Federal capital rates if the fixed formula approach is to be utilized.

- Modifications of current guidelines

Since close attention may not have been given to the allocation between interest for plant/fixed equipment and interest for moveable equipment, we are soliciting suggestions from the public for simplifying administration of the current system. For example, the current policy procedures for allocating interest could be simplified by applying proceeds from a bond to the first capital items purchased after the bond is obtained. More specifically, if bond revenues were

available for more than one project, proceeds from the bond would be allocated to the capital assets purchased by the hospital in the order the assets were acquired. We would use hospital purchase records to identify the plant/fixed equipment and moveable equipment assets necessary to make the proper allocation. With this approach ("first-in, first-assigned"), we would eliminate the need for allocating commingled assets based on their gross book or fair market values.

b. Treatment of Interest Income from Funded Depreciation. In the June 1986 NPRM, we proposed to adjust the Federal capital rates to reflect an offset to interest expense for income earned on funded depreciation accounts. To minimize the disruption in a hospital's cash flow during the initial part of the transition period, we are proposing not to offset the interest expense for income earned on funded depreciation. We will, however, continue to examine the appropriateness of the funded depreciation offset.

9. Revaluation of Assets

Under section 1861(v)(1) of the Act, for hospital acquisitions which involve revaluation of assets, the new depreciation value of the purchased asset is limited to the lesser of the purchase price or original book value of the asset. When the sale price of the asset exceeds the net book value, Medicare recaptures its proportion of previous depreciation payments from the seller.

Under the proposed rule, fixed and moveable capital expenses would be phased-in using different transition schedules. For fixed assets, the amount of the capital-related expenses after adjustments for gains and losses due to changes of ownership would be equal to the percentage of fixed assets (as provided in the proposed transition period) that are subject to the hospital-specific portion of capital related costs. Similarly, for moveable assets, the capital related expenses after adjustment for gains and losses due to changes of ownership would be the percentage of moveable equipment (as provided in the proposed transition period) subject to the hospital-specific capital-related payment.

10. Hospitals and Units Not Subject to the Prospective Payment System

Capital-related costs for hospitals and units excluded from the prospective payment system would continue to be paid on a reasonable cost basis for future periods as described above and in the June 1986 NPRM (51 FR 19979).

VI. April 1, 1987 ProPAC Recommendations

In its April 1, 1987 Report to the Secretary (to be included as Appendix C in a separate proposed rule regarding changes to the inpatient hospital prospective payment system to be published shortly in the **Federal Register**), ProPAC made further recommendations related to the incorporation of capital-related costs into the prospective payment system. The recommendations on capital, and the actions we are proposing to take with regard to them (when an action is required), are discussed below.

A. All-Inclusive Rate (Recommendation 7)

Recommendation: ProPAC recommends that the Secretary should initiate a transition to a new capital payment method beginning in FY 1988. This method should combine inpatient operating and capital cost components in a single prospective payment per case.

Response: We agree that a transition to a new capital payment method for inpatient hospital services should be initiated in the Medicare program beginning in Federal FY 1988. Although we would prefer that the new method combine inpatient operating and capital payments into a single prospective payment per case, this result cannot be attained due to the special treatment that must be accorded in computing capital payments that is not applicable to other inpatient operating costs. These factors include the distinction between plant/fixed equipment expenses and moveable equipment expenses, application of an area construction cost index, updating factor differences between operating and capital cost components, budget neutrality adjustments required by law, and the necessity to blend the capital rates with the hospital-specific payment during the transition period.

B. Level of Federal Capital Payment (Recommendation 8)

Recommendation: ProPAC recommends that capital payments should be added to the Federal portion of prospective payments for hospital cost reporting years beginning in FY 1988 at a spending level to be consistent with that established by section 9303(a) of Pub L. 99-509 (budget neutrality provisions) and that the level for FYs 1988 and 1989 should be based on official Medicare inpatient capital spending projections in FY 1987. The projections should include all capital components as presently determined on a reasonable cost basis.

Response: We concur with this recommendation that capital payments under the prospective payment system be set at a spending level that is consistent with the budget neutrality requirements of section 1886(g)(3) of the Act, as amended by section 9303(a) of Pub. L. 99-509 That section provides that if capital payments are incorporated into the prospective payment system, the aggregate payments made under such a system must approximate the payments in Federal FYs 1988 and 1989 that would have been made under the reasonable cost reimbursement rules, subject to the seven percent and ten percent reductions applicable to capital-related costs in FYs 1988 and 1989, respectively. The Federal prospective capital payment rates will be budget neutral to the spending levels established under section 9303(a) of Pub. L. 99-509 as discussed elsewhere in this document. During the transition period, the hospital-specific portion would be determined based on the actual reasonable cost of all components of capital-related costs on a reasonable cost basis and would be fully adjusted pursuant to section 1886(g)(3) of the Act.

C. Capital Payment Transition (Recommendation 9)

Recommendation: ProPAC recommends that the transition to Federal capital payments under the prospective payment system should begin in FY 1988 in the following manner:

- Payments for fixed capital should be phased in over a ten year period on a straight-line basis.
- Payments for moveable capital should be phased in over a three-year period on a straight-line basis.
- Hospital-specific fixed and moveable capital payment portions should be based on the actual capital costs incurred during each year of the transition.

Response: Our proposal to incorporate capital payments for inpatient hospital services conforms generally to the ProPAC recommendations for the structure of the transition period except for their recommendation on the phasing-in of plant/fixed equipment on a straight-line basis. We would phase-in the standardized rates covering plant and fixed equipment with a blending schedule that weighs the proportion paid on the basis of hospitals' actual allowable capital-related costs more heavily in the early years of transition than a straight-line declining proportion would allow. We are proposing these

higher hospital-specific blend percentages in the early phase-in years to allow hospitals more flexibility to modify their capital expense obligations. As noted below, we are responding to similar concerns expressed by comment on the June 1986 NPRM.

D. Institutional Neutrality (Recommendation 10)

Recommendation: Until the start of the transition to an all-inclusive prospective payment rate, the Secretary should provide supplemental payments to hospitals that have contracts with other facilities for capital costs incurred at such other facilities (for example, other hospitals, clinics, and so forth). These costs are not currently paid under Medicare.

Response: In light of the "rebundling" provisions under sections 1862(a)(14) and 1861(w)(1) of the Act, as amended by sections 602 (e) and (h) of Pub. L. 98–21, we are not accepting ProPAC s recommendation. These sections require that all nonphysician services and items for hospital inpatients must be furnished by hospitals either directly or under arrangement. (Arrangement is limited to arrangements under which receipt of payment by the hospital, with respect to services for which an individual is entitled to have payment made by Medicare, discharges the liability of such individual or any other person to pay for the services.) Thus, hospitals bear the financial liability for all items and services furnished under arrangements provided to their inpatients. (We note that section 9343(c)(1) of Pub. L. 99–509 further amended section 1862(a)(14) of the Act to extend the rebundling provisions to outpatient services.)

In the development of the prospective payment rates for inpatient operating services, the rates were adjusted to account for items and services that were not previously the financial liability of the hospital. The adjustment was based on 1980 and 1981 charge data related to inpatient services previously billed under Part B of Medicare. No distinction was made in this adjustment between operating and capital costs of such items and services as the costs of purchased services has historically been defined and treated as operating costs. Therefore, the Federal standardized amounts for inpatient operating services already reflect an estimate of the full costs, including capital-related costs, of items and services furnished by outside suppliers or institutions. As a result, we believe that there is no need to make supplemental payments for capital-related costs to any outside suppliers or institutions since such costs have been reflected in the rates.

E. Capital Exceptions Process (Recommendation 11)

Recommendation: ProPAC recommends that the Secretary should develop an exceptions policy to assist hospitals that are vulnerable to financial hardship when capital payment is included under the prospective payment system. Hospital eligibility criteria should emphasize the goal of ensuring the continued access of Medicare beneficiaries to high-quality hospital services. The exceptions policy should not be used to protect hospitals simply because they are in financial difficulty. Therefore, a limited dollar pool should be made available with strict criteria to be used in determining which hospitals would be eligible for a capital payment adjustment.

Response: Although ProPAC recommends that an exceptions policy be established as capital payments are incorporated into the prospective payment system, we believe the cost outlier portion of the proposed capital policy obviates the need for a distinct exceptions approach in this proposed rule for the reasons discussed below. We would, of course, evaluate the impact of any new capital payment system that we implement to determine whether such a modification should be added to the program. Moreover, since our proposal is weighted heavily toward the hospital-specific portion of the blended rate during the early transition years (as the bulk of the capital payment), the possibility for financial hardship as a result of the new capital payment policy would be substantially reduced. We would consider adopting a distinct exceptions policy, as necessary, if, during the transition years, the standardized capital payments cause financial difficulties for hospitals that result in reduced access to high-quality hospital services for Medicare beneficiaries.

One of the most prevalent concerns expressed in communications received from public and private sources is the need to address the nature of long-term debt for plant and high-cost fixed equipment. The chief criticism of the transition period and hospital-specific portions of the June 1986 NPRM was that they gave inadequate attention to the long-term nature of such capital costs, and that they did not exhibit sensitivity to dealing with "old capital" as opposed to future capital expenditures; that is, the high outstanding debt of some hospitals that had invested in significant plant renovation or replacement. In order to lessen the need for special provisions (for example, an exceptions process) for seriously impacted hospitals, we are proposing to split the incorporation of moveable equipment from that of plant/fixed equipment during the phase-in of prospective capital payments in the manner discussed above. We believe that this recognizes the need to treat long term "old capital" in a special manner that takes into consideration a hospital's cash flow situation from previously committed obligations. We agree that prospective capital payments can be applied more readily by hospitals when "new capital" expenditures are being considered in light of the standardized payment levels available, but that this may not have occurred when, prior to this proposed rule, hospital managers had decided whether to increase routine expense or capitalize for future services. In addition, since moveable equipment has a shorter lifespan than plant/fixed equipment, we believe that a shorter transition period is appropriate for moveable equipment, and therefore, we are proposing a two year transition period for that component of capital costs.

VII. Other Required Information

A. Impact Statement

See Appendix D for the Regulatory Impact Analysis.

B. Paperwork Reduction Act

Section 412.65(b) of this rule contains information collection requirements subject to approval by the Executive Office of Management and Budget under section 3507 of the Paperwork Reduction Act (44 U.S.C. 3507). Organizations and individuals desiring to submit comments on the information collection requirements should direct them to the Office of Information and Regulatory Affairs, OMB New Executive Office Building (Room 3208), Washington, DC, 20503, Attn: Desk Officer for HCFA.

List of Subjects in 42 CFR Part 412

Health facilities, Medicare.

42 CFR Chapter IV is amended as follows:

CHAPTER IV—HEALTH CARE FINANCING ADMINISTRATION, DEPARTMENT OF HEALTH AND HUMAN SERVICES

SUBCHAPTER B—MEDICARE PROGRAMS

PART 412—PROSPECTIVE PAYMENT SYSTEM FOR INPATIENT HOSPITAL SERVICES

I. Part 412 is amended as follows:

A. The authority citation for Part 412 continues to read as follows:

Authority: Secs. 1102, 1122, 1871, and 1886 of the Social Security Act, as amended (42 U.S.C. 1302, 1320a–1, 1395hh, and 1395ww).

B. The Table of Contents of Part 412 is amended by adding the titles of new §§ 412.65 through 412.67 to Subpart D, and by adding Subpart K consisting of § 412.214 to read as follows:

Subpart D—Basic Methodology for Determining Federal Prospective Payment Rates

Sec.

* * * * *

412.65 Incorporation of capital payments into the prospective payment system.
412.66 Federal capital-related rates beginning during and after Federal fiscal year 1988.
412.67 Phase-in period and methodology for capital payments.

* * * * *

Subpart K—Prospective Payment System for Hospitals Located in Puerto Rico

Sec.
412.214 Capital payments.

C. Subpart A is amended as follows:

Subpart A—General Provisions

1. Section 412.1 is amended by revising paragraph (a) to read as follows:

§ 412.1 Scope of part.

(a) *Purpose.* This part implements section 1886(d) of the Act by establishing a prospective payment system for inpatient hospital services furnished to Medicare beneficiaries in cost reporting periods beginning on or after October 1, 1983. Under the prospective payment system, payment for the operating costs of inpatient hospital services furnished by hospitals subject to the system (generally, short-term, acute-care hospitals) is made on the basis of prospectively determined rates and applied on a per discharge basis. Payment for other costs related to inpatient hospital services (capital-related costs for cost reporting periods beginning on or after October 1, 1983 and before October 1, 1987, kidney acquisition costs incurred by hospitals with approved renal transplantation centers, direct costs of medical education, and, for cost reporting periods beginning on or after October 1, 1984 and before October 1, 1987, the costs of qualified nonphysician anesthetists' services) is made on a reasonable cost basis. Additional payments are made for outlier cases, bad debts, and indirect medical education costs. Under the prospective payment system, a hospital may keep the difference between its prospective payment rate and its operating costs incurred in furnishing inpatient services, and is at risk for operating costs that exceed its payment rate.

* * * * *

2. In section 412.2, the introductory language of paragraphs (c) and (d) is republished; a new paragraph (c)(5) is added; and paragraph (d)(1) is revised to read as follows:

§ 412.2 Basis of payment.

* * * * *

(c) *Inpatient operating costs.* The prospective payment system provides a payment amount for inpatient operating costs, including—

* * * * *

(5) For cost reporting periods beginning on or after October 1, 1987, capital-related costs as described in Subpart D of this part.

(d) *Excluded costs.* The following inpatient hospital costs are excluded from the prospective payment amounts and paid for on a reasonable cost basis:

(1) For cost reporting periods beginning on or after October 1, 1983 and before October 1, 1987, capital-related costs as described in § 413.130 of this chapter; and an allowance for return on equity, as described in § 413.157 of this chapter.

* * * * *

D. Subpart D is amended as follows:

Subpart D—Basic Methodology for Determining Federal Prospective Payment Rates

1. Section 412.63 is amended by revising paragraph (a)(1) to read as follows:

§ 412.63 Federal rates for fiscal years after Federal fiscal year 1984.

(a) *General rule.* (1) HCFA determines a national adjusted prospective payment rate for each inpatient hospital discharge in a Federal fiscal year after fiscal year 1984 (including an additional payment, effective with cost reporting periods beginning on or after October 1, 1987, for the incorporation of capital payments as described in § 412.64) involving inpatient hospital services of a hospital in the United States subject to the prospective payment system, and determines a regional adjusted prospective payment rate for such discharges in each region, for which payment may be made under Medicare Part A.

* * * * *

2. New §§ 412.65 through 412.67 are added to read as follows:

§ 412.65 Incorporation of capital payments into the prospective payment system.

(a) *General rule.* As described in §§ 412.66 and 412.67, effective with cost reporting periods beginning on or after October 1, 1987, HCFA pays an amount for capital-related costs for each inpatient hospital discharge, in addition to the Federal rates as determined under § 412.63.

(b) *Cost reporting periods beginning on or after October 1, 1987 through September 30, 1997.* For cost reporting periods beginning during the period October 1, 1987 through September 30, 1997, the capital payment amount is based on a combination of a hospital-specific capital-related portion and a Federal capital-related rate as determined under §§ 412.66 and 412.67.

(c) *Cost reporting periods beginning after the transition periods end.* For cost reporting periods beginning on or after October 1, 1989, the capital payment amount for moveable equipment is based solely on a Federal capital-related rate as determined under § 412.66(h). For cost reporting periods beginning on or after October 1, 1997, the capital payment amount for plant and fixed equipment is based solely on a Federal capital-related payment as determined under § 412.66(h).

§ 412.66 Federal capital-related rates beginning during and after Federal fiscal year 1988.

(a) *Determining allowable base-year capital-related costs.* HCFA determines the Federal capital-related rate on the basis of hospitals Medicare capital-related costs per discharge, as described in § 413.130 of this chapter, using hospital cost reports from fiscal year 1984 for hospitals in the fifty States and the District of Columbia subject to the prospective payment system, and from short-term acute care hospitals in Puerto Rico.

(b) *Separating moveable equipment from plant and fixed equipment.* For purposes of the phase-in period, as described in § 412.67, HCFA separates portions of each hospital's inpatient capital-related costs determined under paragraph (a) of this section that are attributable to moveable equipment from those portions attributable to plant/fixed equipment.

(c) *Standardizing the amounts.* (1) HCFA standardizes each portion of plant/fixed equipment and of moveable equipment, determined under paragraph (b) of this section for each hospital as follows:

(i) For both moveable equipment and plant/fixed equipment, by—

(A) Adjusting for resource intensity in case mix among hospitals;

(B) Excluding an estimated amount of indirect medical education payments;

(C) Excluding an estimated amount of the payments for hospitals that serve a disproportionate share of low-income patients; and

(D) Adjusting for the reductions to capital-related payments under § 413.64(k)(6) of this chapter.

(ii) For moveable equipment, by adjusting for the effects of higher cost of living payments to hospitals located in Alaska and Hawaii.

(iii) For plant/fixed equipment, by adjusting for the effects of a capital construction cost index.

(2) Based on the standardizations calculated in paragraphs (c)(1)(i) through (c)(1)(iii) of this section, HCFA determines standardized rates for plant/fixed equipment and for moveable equipment, for hospitals in the fifty States and the District of Columbia subject to the prospective payment system, and for hospitals in Puerto Rico subject to the prospective payment system.

(d) *Updating the capital-related costs.* HCFA updates each hospital's adjusted plant/fixed and moveable costs per case determined under paragraph (c) of this section by—

(1) Updating from fiscal year 1984 through fiscal year 1987 using estimated increases in actual capital costs per case;

(2) Updating for fiscal years 1988 and 1989 using the respective annual estimated increase in actual capital costs per case, as adjusted in accordance with § 413.64(k)(6); and

(3) Projecting for fiscal year 1990 onward the applicable percentage change under § 412.63(e).

(e) *Computing urban and rural averages.* HCFA computes a discharge-weighted average of the standardized amounts determined under paragraph (d) of this section for all urban hospitals and for all rural hospitals, as defined in § 412.62(f), in the fifty States and the District of Columbia, and for urban hospitals and rural hospitals in Puerto Rico. HCFA also computes a discharge-weighted average of the urban capital payment rate and the rural capital payment rate for hospitals in Puerto Rico.

(f) *Reducing for value of outlier payments.* HCFA reduces each of the average standardized amounts determined under paragraph (e) of this section by the proportion (estimated by HCFA) of the amount of payments that, based on the total amount of the Federal capital-related payments for urban hospitals and the total amount of the Federal capital-related payments for rural hospitals, are additional payments for outlier cases, as provided under Subpart F of this part.

(g) *Application of blending percentages during the phase-in period.* For cost reporting periods beginning during the period October 1, 1987 through September 30, 1997, the amounts for plant/fixed equipment and for moveable equipment determined separately under paragraphs (b) through (f) of this section are multiplied by the appropriate phase-in period percentages, respectively, as described in § 412.67(b).

(h) *Federal capital-related payment.* (1) Except for sole community hospitals as described in paragraph (h)(2) of this section, the Federal capital-related payment equals the product of—

(i) The national capital-related rates as determined under paragraphs (a) through (g) of this section and § 412.67(b) including an adjustment to the plant/fixed equipment standardized amounts for the construction cost index and an adjustment to the moveable equipment standardized amounts for the higher cost of living for hospitals located in Alaska and Hawaii; and

(ii) The DRG weighting factor determined under § 412.60(b) for each discharge.

(2) For cost reporting periods beginning before October 1, 1990, sole community hospitals are paid on a reasonable cost basis, as provided under Part 413 of this chapter, for their capital related costs.

(i) *Additional capital-related payments.* HCFA makes additional capital-related payments to hospitals—

(1) That serve a disproportionate share of low-income patients, as described in § 412.106; and

(2) For indirect medical education costs, as described in § 412.118.

§ 412.67 Phase-in period and methodology for capital payments.

(a) *Phase-in period.* Except for new hospitals and sole community hospitals as described in paragraphs (e) and (f) of this section respectively, inclusion of payments for capital for plant/fixed equipment and for moveable equipment in the prospective payment rates is to be phased-in over a ten-year period and a two-year period, respectively, as described in paragraph (b) of this section. During this period, the capital payment amount is based on a combination of a hospital-specific capital-related portion and a Federal capital-related rate as determined in § 412.66. At the end of the transition periods (that is, for discharges occurring in a cost reporting period beginning on or after October 1, 1989, for moveable equipment, and on or after October 1, 1997, for plant and fixed equipment), payment amounts are based entirely on a Federal capital-related rate.

(b) *Blended percentages for capital-related rates.* The blends of the hospital-specific capital-related portions and the Federal capital-related rates, for plant/fixed equipment and for moveable equipment, are described in the following tables:

TABLE.—HOSPITAL-SPECIFIC AND FEDERAL RATE PERCENTAGES FOR DETERMINING PHASE-IN PERIOD CAPITAL-RELATED RATES FOR PLANT AND FIXED EQUIPMENT

Cost reporting related period beginning on or after	Hospital-specific capital-related percentage	Federal capital-related percentage
Oct. 1, 1987	95	5
Oct. 1, 1988	90	10
Oct. 1, 1989	85	15
Oct. 1, 1990	80	20
Oct. 1, 1991	75	25
Oct. 1, 1992	70	30
Oct. 1, 1993	60	40
Oct. 1, 1994	50	50
Oct. 1, 1995	35	65
Oct. 1, 1996	20	80
Oct. 1, 1997		100

TABLE.—HOSPITAL-SPECIFIC AND FEDERAL RATE PERCENTAGES FOR DETERMINING PHASE-IN PERIOD CAPITAL-RELATED RATES FOR MOVEABLE EQUIPMENT

Cost reporting period beginning on or after	Hospital-specific capital-related percentage	Federal capital-related percentage
Oct. 1, 1987	67	33
Oct. 1, 1988	33	67
Oct. 1, 1989		100

(c) *Hospital-specific capital-related portion.* The hospital-specific capital-related portion is the hospital's actual allowable Medicare inpatient hospital costs attributed to plant/fixed equipment and to moveable equipment, determined separately, for the applicable phase-in year multiplied by the appropriate phase-in period percentages described in paragraph (b) of this section.

(d) *Classification of capital assets as plant/fixed or moveable equipment*—(1) *General rule.* For purposes of receiving payment for capital expenditures under the prospective payment system, hospitals must classify their capital assets as plant/fixed equipment or as moveable equipment as specified in this paragraph.

(2) *Procedure for classifying assets.* (i) HCFA establishes a list under which HCFA assigns capital-related assets to a plant/fixed equipment category or a moveable equipment category and

updates the list periodically as necessary in notices published in the **Federal Register.**

(ii) Capital-related assets not specified on the list are assigned to the plant/fixed or moveable equipment categories under the definitions provided in paragraph (d)(3) of this section.

(3) *Definitions.* The following definitions apply for purposes of classifying assets not specified on the HCFA list.

(i) "Plant/fixed equipment" means—

(A) A building, which includes, in a restrictive sense, the basic structure or shell and additions thereto (with the remainder being identified as building equipment); and

(B) Building equipment, the general characteristics of which are that it is affixed to the building, and not subject to transfer; and that it has a fairly long useful life, but one that is shorter than the useful life of the building to which it is affixed.

(ii) "Moveable equipment" means equipment that has the following general characteristics:

(A) A relatively fixed location in the building;

(B) Capability of being moved as distinguished from building equipment;

(C) A unit cost sufficient to justify ledger control;

(D) Sufficient size and identity to make control feasible by means of identification tags; and

(E) A minimum useful life of approximately three years.

(e) *Payment rate for newly-participating hospitals.* (1) If a hospital meets the criteria in paragraph (e)(2) or (e)(3) of this section, it is paid on the basis of the Federal capital-related portion, as determined in § 412.66, and the hospital-specific capital-related portion, as determined in paragraph (c) of this section, using the blending percentages applicable for the Federal fiscal year in which it initially participates in the Medicare program.

(2) The hospital—

(i) Is newly participating in the Medicare program (under previous and present ownership); and

(ii) Does not have a 12-month cost reporting period ending on or before September 30, 1987.

(3) The hospital is under new ownership and documents to the satisfaction of its intermediary that the ownership and occupancy rate requirements described in § 412.74(a)(2) are met.

(f) *Payment rate for sole community hospitals.* For cost reporting periods beginning before October 1, 1990, a hospital that meets the criteria in § 412.92(a) for classification as a sole community hospital is paid on a reasonable cost basis, as provided under Part 413 of this chapter, for its capital-related costs.

E. Subpart F is amended as follows:

Subpart F—Payment for Outlier Cases

1. In § 412.82, paragraph (c) is revised to read as follows:

§ 412.82 Payment for extended length-of-stay cases (day outliers).

* * * * *

(c) The per diem payment made under paragraph (a) of this section is derived by first taking 60 percent of the average per diem payment for the applicable DRG, as calculated by dividing the Federal prospective payment rates (noncapital-related, and effective with cost reporting periods beginning on or after October 1, 1987, capital-related) determined under Subpart D of this part by the geometric mean length-of-stay for that DRG. The resulting amounts are then multiplied by the applicable Federal portions (capital-related and noncapital-related) of the blend as follows:

FEDERAL NONCAPITAL-RELATED PORTIONS

Cost reporting periods beginning on or after	Federal portion (percent)
October 1, 1983	25
October 1, 1984	50
October 1, 1985	
The first seven months of the cost reporting period	50
The remaining five months of the cost reporting period	55
October 1, 1986	75
October 1, 1987	100

FEDERAL CAPITAL-RELATED PORTIONS

Cost reporting periods beginning on or after	Plant and fixed equipment (percent)	Movable equipment (percent)
Oct. 1, 1987	5	33
Oct. 1, 1988	10	67
Oct. 1, 1989	15	100
Oct. 1, 1990	20	100
Oct. 1, 1991	25	100
Oct. 1, 1992	30	100
Oct. 1, 1993	40	100
Oct. 1, 1994	50	100
Oct. 1, 1995	65	100
Oct. 1, 1996	80	100
Oct. 1, 1997	100	100

* * * * *

2. In § 412.84, paragraph (i) is revised to read as follows:

§ 412.84 Payment for extraordinarily high-cost cases (cost outliers).

* * * * *

(i) The additional payment amount is derived by first taking 60 percent of the difference between the hospital's adjusted cost for the discharge (as determined under paragraph (g) of this section) and the threshold criteria established under § 412.80(a)(2). The resulting amounts are then multiplied by the applicable Federal portions (noncapital-related, and effective with cost reporting periods beginning on or after October 1, 1987, capital-related) of the blend as indicated in § 412.82(c).

F. Subpart G is amended as follows:

Subpart G—Special Treatment of Certain Facilities

1. In § 412.92, paragraph (d) is revised to read as follows:

§ 412.92 Special treatment: Sole community hospitals.

* * * * *

(d) *Determining prospective payment rates for sole community hospitals.* For all cost reporting periods beginning on or after October 1, 1983, the prospective payment rates for sole community hospitals equal the sum total of the following payment rates:

(1) 75 percent of the hospital-specific base payment rate as determined under § 412.73;

(2) 25 percent of the appropriate regional prospective payment rate as determined under Subpart D of this part; and

(3) The capital-related payment as determined under § 412.67(f).

* * * * *

2. In § 412.96, paragraphs (d) and (e) are revised to read as follows:

§ 412.96 Special treatment: Referral centers.

* * * * *

(d) *Payment to rural referral centers with 500 or more beds.* A hospital that meets the criteria of § 412.96(b)(1) is paid prospective payments per discharge based on the applicable urban payment rates as determined in accordance with § 412.62(j) or § 412.63(f), as adjusted by the hospital's area wage index, and § 412.66(h), as adjusted by the capital construction cost index adopted by HCFA and applicable to the hospital.

(e) *Payment to all other rural referral centers.* For cost reporting periods beginning on or after October 1, 1984, a hospital that is located in a rural area and meets the criteria of § 412.96(b)(2) or (c) is paid prospective payments per discharge based on the applicable urban payment rates as determined in accordance with § 412.62(j) or § 412.63(f), as adjusted by the hospital's

area wage index, and § 412.66(h), as adjusted by the capital construction cost index adopted by HCFA and applicable to the hospital.

G. Subpart H is amended as follows:

Subpart H—Payments to Hospitals Under the Prospective Payment System

1. Section § 412.113 is amended by revising paragraph (a) to read as follows:

§ 412.113 Payments determined on a reasonable cost basis.

(a) *Capital-related costs.* Payment for capital-related costs (as described in § 413.130 of this chapter) is determined on a reasonable cost basis for cost reporting periods beginning on or after October 1, 1983 and before October 1, 1987. During that period, the capital-related costs for each hospital must be determined consistently with the treatment of such costs for purposes of determining the hospital-specific portion of the hospital's prospective payment rate under §§ 412.70 through 412.73. For cost reporting periods beginning on or after October 1, 1987, capital-related costs are paid on a prospective basis as described in §§ 412.65 through 412.67.

* * * * *

2. In section 412.125, the introductory language of the section is republished and paragraph (b) is revised to read as follows:

§ 412.125 Effect of change of ownership on payments under the prospective payment system.

When a hospital's ownership changes, as described in § 489.18 of this chapter, the following rules apply:

* * * * *

(b) Payment for capital-related costs (for reporting periods beginning before October 1, 1987) and bad debts, as described in §§ 412.113(a) and 412.115(a), respectively, is made to each owner or operator of the hospital (buyer and seller) in accordance with the principles of reasonable cost reimbursement.

H. Subpart K consisting of § 412.214, is added to read as follows:

Subpart K—Prospective Payment System for Hospitals Located in Puerto Rico

* * * * *

§ 412.214 Capital payments.

Subject to the blending percentages for the Federal rates described in § 412.204, capital payments for hospitals located in Puerto Rico are determined in the same manner, as described in §§ 412.65 through 412.67, as for other hospitals subject to the prospective payment system.

(Catalog of Federal Domestic Assistance Programs No. 13.773, Medicare-Hospital Insurance Program)

Dated: April 30, 1987.

William L. Roper,

Administrator, Health Care Financing Administration.

Approved: May 1, 1987.

Otis R. Bowen,

Secretary.

Appendix A—Federal Capital-Related Rates[1]

TABLE 1—FIFTY STATES AND DISTRICT OF COLUMBIA

Plant/fixed equipment		Movable equipment	
Urban	Rural	Urban	Rural
171.83	160.59	108.53	87.11

TABLE 2—PUERTO RICO [1]

	Plant/fixed equipment		Movable equipment	
	Urban	Rural	Urban	Rural
Puerto Rico	137.38	139.71	46.92	7.72
National	168.97		103.08	

[1] For hospitals located in Puerto Rico, the Federal rate is comprised of 75 percent of the Puerto Rico-specific adjusted capital prospective payment rate and 25 percent of the discharge-weighted average of the national urban and rural adjusted capital prospective payment rates.

Appendix B—Construction Cost Indexes

Table I.—Construction Cost Index for Urban Areas

Urban area (constituent counties or county equivalents)	Construction cost index
Abilene, TX	.899
Taylor, TX	
Akron, OH	1.053
Portage, OH	
Summit, OH	
Albany, GA	.814
Dougherty, GA	
Lee, GA	
Albany-Schenectady-Troy, NY	1.190
Albany, NY	
Greene, NY	
Montgomery, NY	
Rensselaer, NY	
Saratoga, NY	
Schenectady, NY	
Albuquerque, NM	.987
Bernalillo, NM	
Alexandria, LA	1.049
Rapides, LA	
Allentown-Bethlehem, PA-NJ	1.114
Warren, NJ	
Carbon, PA	
Lehigh, PA	
Northampton, PA	
Altoona, PA	1.464
Blair, PA	
Amarillo, TX	.917
Potter, TX	
Randall, TX	
Anaheim-Santa Ana-Garden Grove, CA	.965
Orange, CA	
Anchorage, AK	1.717
Anchorage, AK	
Anderson, IN	.921
Madison, IN	
Anderson, SC	.800
Anderson, SC	
Ann Arbor, MI	1.166
Washtenaw, MI	
Anniston, AL	.830
Calhoun, AL	
Appleton-Oshkosh, WI	.925
Calumet, WI	
Outagamie, WI	
Winnebago, WI	
Asheville, NC	.827
Buncombe, NC	
Athens, GA	.879
Clarke, GA	
Jackson, GA	
Madison, GA	

[1] The rates reflect the reduction for capital-related costs of seven percent for cost reporting periods or discharges (as the case may be) occurring during FY 1988, as required under section 1886(g)(3)(A)(ii) of the Act, and an offset for budget neutrality as required under section 1886(g)(3)(C)(ii) of the Act for cost reporting periods occurring during FY 1988.

Urban area (constituent counties or county equivalents)	Construction cost index
Oconee, GA	
Atlanta, GA	.844
Barrow, GA	
Butts, GA	
Cherokee, GA	
Clayton, GA	
Cobb, GA	
Coweta, GA	
De Kalb, GA	
Douglas, GA	
Fayette, GA	
Forsyth, GA	
Fulton, GA	
Gwinnett, GA	
Henry, GA	
Newton, GA	
Paulding, GA	
Rockdale, GA	
Spalding, GA	
Walton, GA	
Atlantic City, NJ	1.188
Atlantic, NJ	
Cape May, NJ	
Augusta, GA-SC	.830
Columbia, GA	
McDuffie, GA	
Richmond, GA	
Aiken, SC	
Aurora-Elgin, IL	.917
Kane, IL	
Kendall, IL	
Austin, TX	.888
Hays, TX	
Travis, TX	
Williamson, TX	
Bakersfield, CA	1.082
Kern, CA	
Baltimore, MD	1.125
Anne Arundel, MD	
Baltimore, MD	
Baltimore City, MD	
Carroll, MD	
Harford, MD	
Howard, MD	
Queen Annes, MD	
Bangor, ME	1.067
Penobscot, ME	
Baton Rouge, LA	.924
Ascension, LA	
East Baton Rouge, LA	
Livingston, LA	
West Baton Rouge, LA	
Battle Creek, MI	.985
Calhoun, MI	
Beaumont-Port Arthur-Orange, TX	.900
Hardin, TX	
Jefferson, TX	
Orange, TX	
Beaver County, PA	1.356
Beaver, PA	
Bellingham, WA	1.029
Whatcom, WA	
Benton Harbor, MI	1.002
Berrien, MI	
Bergen-Passaic, NJ	1.353
Bergen, NJ	
Passaic, NJ	
Billings, MT	1.056
Yellowstone, MT	
Biloxi-Gulfport, MS	.958
Hancock, MS	
Harrison, MS	
Binghamton, NY-PA	1.268
Broome, NY	
Tioga, NY	
Birmingham, AL	.876
Blount, AL	
Jefferson, AL	
Saint Clair, AL	
Shelby, AL	
Walker, AL	
Bismarck, ND	.957
Burleigh, ND	
Morton, ND	
Bloomington, IN	1.396
Monroe, IN	
Bloomington-Normal, IL	.970
McLean, IL	
Boise City, ID	.793
Ada, ID	
Boston, MA	1.338
Essex, MA	
Middlesex, MA	
Norfolk, MA	
Plymouth, MA	
Suffolk, MA	
Boulder-Longmont, CO	.882
Boulder, CO	
Bradenton, FL	.760
Manatee, FL	
Brazoria, TX	.832
Brazoria, TX	
Bremerton, WA	1.069
Kitsap, WA	
Bridgeport, CT	1.290
Fairfield, CT	
Brownsville-Harlingen-San Benito, TX	.739
Cameron, TX	
Bryan-College Station, TX	1.012
Brazos, TX	
Buffalo, NY	1.352
Erie, NY	
Burlington, NC	.824
Alamance, NC	
Burlington, VT	.984
Chittenden, VT	
Grand Isle, VT	
Canton, OH	.902
Carroll, OH	
Stark, OH	
Casper, WY	.784
Natrona, WY	
Cedar Rapids, IA	.858
Linn, IA	
Champaign-Urbana-Rantoul, IL	1.243
Champaign, IL	
Charleston-North Charleston, SC	.921
Berkeley, SC	
Charleston, SC	
Dorchester, SC	
Charleston, WV	1.155
Kanawha, WV	
Putnam, WV	
Charlotte-Gastonia, NC	.803
Cabarrus, NC	
Gaston, NC	
Lincoln, NC	
Mecklenburg, NC	
Rowan, NC	
Union, NC	
York, SC	
Charlottesville, VA	1.343
Albermarle, VA	
Charlottesville City, VA	
Fluvanna, VA	
Greene, VA	
Chattanooga, TN-GA	.868
Catoosa, GA	
Dade, GA	
Walker, GA	
Hamilton, TN	
Marion, TN	
Sequatchie, TN	
Cheyenne, WY	.976
Laramie, WY	
Chicago, IL	1.108
Cook, IL	
Du Page, IL	
McHenry, IL	
Chico, CA	.970
Butte, CA	
Cincinnati, OH-KY-IN	1.039
Dearborn, IN	
Boone, KY	
Campbell, KY	
Kenton, KY	
Clermont, OH	
Hamilton, OH	
Warren, OH	
Clarksville-Hopkinsville, TN-KY	.904
Christian, KY	
Montgomery, TN	
Cleveland, OH	1.190
Cuyahoga, OH	
Geauga, OH	
Lake, OH	
Medina, OH	
Colorado Springs, CO	.847
El Paso, CO	
Columbia, MO	1.197
Boone, MO	
Columbia, SC	.844
Lexington, SC	
Richland, SC	
Columbus, GA-AL	.940
Russell, AL	
Chattanoochee, GA	
Muscogee, GA	
Columbus, OH	.978
Delaware, OH	
Fairfield, OH	
Franklin, OH	
Licking, OH	
Madison, OH	
Pickaway, OH	
Union, OH	
Corpus Christi, TX	.904
Nueces, TX	
San Patricio, TX	
Cumberland, MD-WV	1.183
Allegany, MD	
Mineral, WV	
Dallas-Fort Worth, TX	.861
Collin, TX	
Dallas, TX	
Denton, TX	
Ellis, TX	
Kaufman, TX	
Rockwall, TX	

Urban area (constituent counties or county equivalents)	Construction cost index
Danville, VA	.924
Danville, VA	
Pittsylvania, VA	
Davenport-Rock Island-Moline, IA-IL	1.016
Scott, IA	
Henry, IL	
Rock Island, IL	
Dayton, OH	1.081
Clark, OH	
Greene, OH	
Miami, OH	
Montgomery, OH	
Daytona Beach, FL	.903
Volusia, FL	
Decatur, IL	1.111
Macon, IL	
Denver-Boulder, CO	.932
Adams, CO	
Arapahoe, CO	
Denver, CO	
Douglas, CO	
Jefferson, CO	
Des Moines, IA	1.081
Dallas, IA	
Polk, IA	
Warren, IA	
Detroit, MI	1.135
Lapeer, MI	
Livingston, MI	
Macomb, MI	
Monroe, MI	
Oakland, MI	
Saint Clair, MI	
Wayne, MI	
Dothan, AL	.805
Dale, AL	
Houston, AL	
Dubuque, IA	.982
Dubuque, IA	
Duluth-Superior, MN-WI	1.063
St. Louis, MN	
Douglas, WI	
Eau Claire, WI	.839
Chappewa, WI	
Eau Claire, WI	
El Paso, TX	.858
El Paso, TX	
Elkhart, IN	.959
Elkhart, IN	
Elmira, NY	1.121
Chemung, NY	
Enid, OK	.955
Garfield, OK	
Erie, PA	1.223
Erie, PA	
Eugene-Springfield, OR	1.028
Lane, OR	
Evansville, IN-KY	1.081
Posey, IN	
Vanderburgh, IN	
Warrick, IN	
Henderson, KY	
Fargo-Moorhead, ND-MN	.940
Clay, MN	
Cass, ND	
Fayetteville, NC	.785
Cumberland, NC	
Fayetteville-Springdale, AR	.947
Washington, AR	
Flint, MI	.987
Genesee, MI	
Shiawassee, MI	
Florence, AL	.861
Colbert, AL	
Lauderdale, AL	
Florence, SC	.840
Florence, SC	
Fort Collins, CO	.926
Larimor, CO	
Fort Lauderdale-Hollywood, FL	.878
Broward, FL	
Fort Myers, FL	.761
Lee, FL	
Fort Pierce, FL	.900
Martin, FL	
St. Lucie, FL	
Fort Smith, AR-OK	.770
Crawford, AR	
Sebastian, AR	
Sequoyah, OK	
Fort Walton Beach, FL	1.008
Okaloosa, FL	
Fort Wayne, IN	.964
Allen, IN	
De Kalb, IN	
Whitley, IN	
Fort Worth-Arlington, TX	.883
Johnson, TX	
Parker, TX	
Tarrant, TX	
Fresno, CA	1.057
Fresno, CA	
Gadsden, AL	.813
Etowah, AL	
Gainesville, FL	.989
Alachua, FL	
Bradford, FL	
Galveston-Texas City, TX	1.047
Galveston, TX	
Gary-Hammond-East Chicago, IN	1.050
Lake, IN	
Porter, IN	
Glens Falls, NY	1.377
Warren, NY	
Washington, NY	
Grand Forks, ND-MN	.943
Grand Forks, ND	
Grand Rapids, MI	.912
Kent, MI	
Ottawa, MI	
Great Falls, MT	1.069
Cascade, MT	
Greeley, CO	.880
Weld, CO	
Green Bay, WI	.859
Brown, WI	
Greensboro-Winston-Salem-High Point, NC	.850
Davidson, NC	
Davie, NC	
Forsyth, NC	
Guilford, NC	
Randolph, NC	
Stokes, NC	
Yadkin, NC	
Greenville-Spartanburg, SC	.804
Greenville, SC	
Pickens, SC	
Spartanburg, SC	
Hagerstown, MD	.988
Washington, MD	
Hamilton-Middletown, OH	.937
Butler, OH	
Harrisburg, PA	1.109
Cumberland, PA	
Dauphin, PA	
Lebanon, PA	
Perry, PA	
Hartford, CT	1.220
Hartford, CT	
Middlesex, CT	
Tolland, CT	
Hickory, NC	.826
Alexander, NC	
Burke, NC	
Catawba, NC	
Honolulu, HI	1.023
Honolulu, HI	
Houma-Thibodaux, LA	1.201
Lafourche, LA	
Terrebonne, LA	
Houston, TX	.858
Fort Bend, TX	
Harris, TX	
Liberty, TX	
Montgomery, TX	
Waller, TX	
Huntington-Ashland, WV-KY-OH	1.029
Boyd, KY	
Carter, KY	
Greenup, KY	
Lawrence, OH	
Cabell, WV	
Wayne, WV	
Huntsville, AL	.806
Madison, AL	
Indianapolis, IN	.988
Boone, IN	
Hamilton, IN	
Hancock, IN	
Hendricks, IN	
Johnson, IN	
Marion, IN	
Morgan, IN	
Shelby, IN	
Iowa City, IA	1.370
Johnson, IA	
Jackson, MI	1.096
Jackson, MI	
Jackson, MS	.930
Hinds, MS	
Madison, MS	
Rankin, MS	
Jackson, TN	.937
Madison, TN	
Jacksonville, FL	.874
Clay, FL	
Duval, FL	
Nassau, FL	
St. Johns, FL	
Jacksonville, NC	1.115
Onslow, NC	
Janesville-Beloit, WI	.932
Rock, WI	
Jersey City, NJ	1.400
Hudson, NJ	

Urban area (constituent counties or county equivalents)	Construction cost index
Johnson City-Kingsport-Bristol, TN-VA	1.004
Carter, TN	
Hawkins, TN	
Sullivan, TN	
Unicoi, TN	
Washington, TN	
Bristol City, VA	
Scott, VA	
Washington, VA	
Johnstown, PA	1.199
Cambria, PA	
Somerset, PA	
Joliet, IL	.877
Grundy, IL	
Will, IL	
Joplin, MO	.941
Jasper, MO	
Newton, MO	
Kalamazoo, MI	1.117
Kalamazoo, MI	
Kankakee, IL	1.119
Kankakee, IL	
Kansas City, KS-MO	.913
Johnson, KS	
Leavenworth, KS	
Miami, KS	
Wyandotte, KS	
Cass, MO	
Clay, MO	
Jackson, MO	
Lafayette, MO	
Platte, MO	
Ray, MO	
Kenosha, WI	.872
Kenosha, WI	
Killeen-Temple, TX	.910
Bell, TX	
Coryell, TX	
Knoxville, TN	.873
Anderson, TN	
Blount, TN	
Grainger, TN	
Jefferson, TN	
Knox, TN	
Sevier, TN	
Union, TN	
Kokomo, IN	.885
Howard, IN	
Tipton, IN	
LaCrosse, WI	.970
LaCrosse, WI	
Lafayette, LA	.958
Lafayette, LA	
St. Martin, LA	
Lafayette, IN	1.116
Tippecanoe, IN	
Lake Charles, LA	.929
Calcasieu, LA	
Lake County, IL	1.035
Lake, IL	
Lakeland-Winter Haven, FL	.788
Polk, FL	
Lancaster, PA	.977
Lancaster, PA	
Lansing-East Lansing, MI	1.108
Clinton, MI	
Eaton, MI	
Ingham, MI	
Laredo, TX	.728
Webb, TX	
Las Cruces, NM	.845
Dona Ana, NM	
Las Vegas, NV	.949
Clark, NV	
Lawrence, KS	1.118
Douglas, KS	
Lawton, OK	.997
Comanche, OK	
Lewiston-Auburn, ME	.952
Androscoggin, ME	
Lexington-Fayette, KY	1.063
Bourbon, KY	
Clark, KY	
Fayette, KY	
Jessamine, KY	
Scott, KY	
Woodford, KY	
Lima, OH	.943
Allen, OH	
Auglaize, OH	
Lincoln, NE	1.066
Lancaster, NE	
Little Rock-North Little Rock, AR	.925
Faulkner, AR	
Lonoke, AR	
Pulaski, AR	
Saline, AR	
Longview-Marshall, TX	.746
Gregg, TX	
Harrison, TX	
Lorain-Elyria, OH	1.048
Lorain, OH	
Los Angeles-Long Beach, CA	1.065
Los Angeles, CA	
Louisville, KY-IN	.983
Clark, IN	
Floyd, IN	
Harrison, IN	
Bullitt, KY	
Jefferson, KY	
Oldham, KY	
Shelby, KY	
Lubbock, TX	.911
Lubbock, TX	
Lynchburg, VA	.900
Amherst, VA	
Campbell, VA	
Lynchburg City, VA	
Macon-Warner Robins, GA	.809
Bibb, GA	
Houston, GA	
Jones, GA	
Peach, GA	
Madison, WI	1.044
Dane, WI	
Manchester-Nashua, NH	1.084
Hillsborough, NH	
Mansfield, OH	.875
Richland, OH	
McAllen-Edinburg-Mission, TX	.762
Hidalgo, TX	
Medford, OR	.975
Jackson, OR	
Melbourne-Titusville, FL	.839
Brevard, FL	
Memphis, TN-AR-MS	.877
Crittenden, AR	
De Soto, MS	
Shelby, TN	
Tipton, TN	
Merced, CA	1.092
Merced, CA	
Miami-Hialeah, FL	.961
Dade, FL	
Middlesex-Somerset-Hunterdon, NJ	1.191
Hunterdon, NJ	
Middlesex, NJ	
Somerset, NJ	
Midland, TX	.862
Midland, TX	
Milwaukee, WI	1.069
Milwaukee, WI	
Ozaukee, WI,	
Washington, WI	
Waukesha, WI	
Minneapolis-St Paul, MN-WI	.943
Anoka, MN	
Carver, MN	
Chisago, MN	
Dakota, MN	
Hennepin, MN	
Isanti, MN	
Ramsey, MN	
Scott, MN	
Washington, MN	
Wright, MN	
St. Croix, WI	
Mobile, AL	.906
Baldwin, AL	
Mobile, AL	
Modesto, CA	1.058
Stanislaus, CA	
Monmouth-Ocean, NJ	1.093
Monmouth, NJ	
Ocean, NJ	
Monroe, LA	.934
Ouachita, LA	
Montgomery, AL	.824
Autauga, AL	
Elmore, AL	
Montgomery, AL	
Muncie, IN	1.006
Delaware, IN	
Muskegon, MI	.970
Muskegon, MI	
Naples, FL	.879
Collier, FL	
Nashville, TN	.875
Cheatham, TN	
Davidson, TN	
Dickson, TN	
Robertson, TN	
Rutherford, TN	
Sumner, TN	
Williamson, TN	
Wilson, TN	
Nassau Suffolk, NY	1.382
Nassau, NY	
Suffolk, NY	
New Bedford-Fall River-Attleboro, MA	1.248
Bristol, MA	
New Haven-Waterbury-Meriden, CT	1.199
New Haven, CT	
New London-Norwich, CT	1.185
New London, CT	
New Orleans, LA	1.052
Jefferson, LA	
Orleans, LA	

Urban area (constituent counties or county equivalents)	Construction cost index
St. Bernard, LA	
St. Charles, LA	
St. John The Baptist, LA	
St. Tammany, LA	
New York, NY	1.495
Bronx, NY	
Kings, NY	
New York City, NY	
Putnam, NY	
Queens, NY	
Richmond, NY	
Rockland, NY	
Westchester, NY	
Newark, NJ	1.421
Essex, NJ	
Morris, NJ	
Sussex, NJ	
Union, NJ	
Niagara Falls, NY	1.190
Niagara, NY	
Norfolk-Virginia Beach-Newport News, VA	.957
Chesapeake City, VA	
Gloucester, VA	
Hampton City, VA	
James City Co., VA	
Newport News City, VA	
Norfolk City, VA	
Poguoson, VA	
Portsmouth City, VA	
Suffolk City, VA	
Virginia Beach City, VA	
Williamsburg City, VA	
York, VA	
Oakland, CA	1.069
Alameda, CA	
Contra Costa, CA	
Ocala, FL	.755
Marion, FL	
Odessa, TX	.969
Ector, TX	
Oklahoma City, OK	.865
Canadian, OK	
Cleveland, OK	
Logan, OK	
McClain, OK	
Oklahoma, OK	
Pottawatomie, OK	
Olympia, WA	1.045
Thurston, WA	
Omaha, NE-IA	.958
Pottawattamie, IA	
Douglas, NE	
Sarpy, NE	
Washington, NE	
Orange County, NY	1.382
Orange, NY	
Orlando, FL	.858
Orange, FL	
Osceola, FL	
Seminole, FL	
Owensboro, KY	.959
Daviess, KY	
Oxnard-Ventura, CA	1.148
Ventura, CA	
Panama City, FL	.876
Bay, FL	
Parkersburg-Marietta, WV-OH	1.075
Washington, OH	
Wood, WV	
Pascagoula, MS	.757
Jackson, MS	
Pensacola, FL	.842
Escambia, FL	
Santa Rosa, FL	
Peoria, IL	.968
Peoria, IL	
Tazewell, IL	
Woodford, IL	
Philadelphia, PA-NJ	1.169
Burlington, NJ	
Camden, NJ	
Gloucester, NJ	
Bucks, PA	
Chester, PA	
Delaware, PA	
Montgomery, PA	
Philadelphia, PA	
Phoenix, AZ	.959
Maricopa, AZ	
Pine Bluff, AR	.943
Jefferson, AR	
Pittsburgh, PA	1.311
Allegheny, PA	
Fayette, PA	
Washington, PA	
Westmoreland, PA	
Pittsfield, MA	1.502
Berkshire, MA	
Portland, ME	.992
Cumberland, ME	
Portland, OR	.989
Clackamas, OR	
Multnomah, OR	
Washington, OR	
Yamhill, OR	
Portsmouth-Dover Rochester, NH	1.050
Rockingham, NH	
Strafford, NH	
Poughkeepsie, NY	1.193
Dutchess, NY	
Providence-Pawtucket-Woonsocket, RI	1.101
Bristol, RI	
Kent, RI	
Providence, RI	
Washington, RI	
Provo-Orem, UT	.827
Utah, UT	
Pueblo, CO	.949
Pueblo, CO	
Puerto Rico [1]	
Racine, WI	1.088
Racine, WI	
Raleigh Durham, NC	.990
Durham, NC	
Franklin, NC	
Orange, NC	
Wake, NC	
Rapid City, SD	1.112
Pennington, SD	
Reading, PA	1.104
Berks, PA	
Redding, CA	.944
Shasta, CA	
Reno, NV	1.021
Washoe, NV	
Richland-Kennewick, WA	1.002
Benton, WA	
Franklin, WA	
Richmond-Petersburg, VA	1.011
Charles City Co., VA	
Chesterfield, VA	
Colonial Heights City, VA	
Dinwiddie, VA	
Goochland, VA	
Hanover, VA	
Henrico, VA	
Hopewell City, VA	
New Kent, VA	
Petersburg City, VA	
Powhatan, VA	
Prince George, VA	
Richmond City, VA	
Riverside-San Bernardino, CA	1.073
Riverside, CA	
San Bernardino, CA	
Roanoke, VA	.983
Botetourt, VA	
Roanoke, VA	
Roanoke City, VA	
Salem City, VA	
Rochester, MN	1.358
Olmsted, MN	
Rochester, NY	1.250
Livingston, NY	
Monroe, NY	
Ontario, NY	
Orleans, NY	
Wayne, NY	
Rockford, IL	.899
Boone, IL	
Winnebago, IL	
Sacramento, CA	1.202
Eldorado, CA	
Placer, CA	
Sacramento, CA	
Yolo, CA	
Saginaw-Bay City-Midland, MI	1.013
Bay, MI	
Midland, MI	
Saginaw, MI	
St. Cloud, MN	.964
Benton, MN	
Sherburne, MN	
Stearns, MN	
St. Joseph, MO	1.035
Buchanan, MO	
St. Louis, MO-IL	1.143
Clinton, IL	
Jersey, IL	
Madison, IL	
Monroe, IL	
St. Clair, IL	
Franklin, MO	
Jefferson, MO	
St. Charles, MO	
St. Louis, MO	
St. Louis City, MO	
Salem, OR	.868
Marion, OR	
Polk, OR	
Salinas-Seaside-Monterey, CA	1.091
Monterey, CA	
Salt Lake City-Ogden, UT	.871
Davis, UT	
Salt Lake, UT	
Weber, UT	
San Angelo, TX	.909
Tom Green, TX	

Urban area (constituent counties or county equivalents)	Construction cost index
San Antonio, TX	.921
Bexar, TX	
Comal, TX	
Guadalupe, TX	
San Diego, CA	1.043
San Diego, CA	
San Francisco, CA	1.043
Marin, CA	
San Francisco, CA	
San Mateo, CA	
San Jose, CA	1.028
Santa Clara, CA	
Santa Barbara-Santa Maria-Lompoc, CA	1.036
Santa Barbara, CA	
Santa Cruz, CA	.950
Santa Cruz, CA	
Santa Fe, NM	1.086
Los Alamos, NM	
Santa Fe, NM	
Santa Rosa-Petaluma, CA	1.134
Sonoma, CA	
Sarasota, FL	.804
Sarasota, FL	
Savannah, GA	1.028
Chatham, GA	
Effingham, GA	
Scranton-Wilkes Barre, PA	1.110
Columbia, PA	
Lackawanna, PA	
Luzerne, PA	
Monroe, PA	
Wyoming, PA	
Seattle, WA	1.085
King, WA	
Snohomish, WA	
Sharon, PA	1.144
Mercer, PA	
Sheboygan, WI	1.040
Sheboygan, WI	
Sherman-Denison, TX	.949
Grayson, TX	
Shreveport, LA	.936
Bossier, LA	
Caddo, LA	
Sioux City, IA-NE	1.020
Woodbury, IA	
Dakota, NE	
Sioux Falls, SD	1.202
Minnehaha, SD	
South Bend-Mishawaka, IN	1.143
St. Joseph, IN	
Spokane, WA	.971
Spokane, WA	
Springfield, IL	1.011
Menard, IL	
Sangamon, IL	
Springfield, MO	.912
Christian, MO	
Greene, MO	
Springfield, MA	1.233
Hampden, MA	
Hampshire, MA	
State College, PA	1.035
Centre, PA	
Steubenville-Weirton, OH-WV	1.167
Jefferson, OH	
Brooke, WV	
Hancock, WV	
Stockton, CA	1.060
San Joaquin, CA	
Syracuse, NY	1.312
Madison, NY	
Onondaga, NY	
Oswego, NY	
Tacoma, WA	1.038
Pierce, WA	
Tallahassee, FL	.989
Gadsden, FL	
Leon, FL	
Tampa-St. Petersburg-Clearwater, FL	.890
Hernando, FL	
Hillsborough, FL	
Pasco, FL	
Pinellas, FL	
Terre Haute, IN	1.040
Clay, IN	
Vigo, IN	
Texarkana-TX-Texarkana, AR	.754
Miller, AR	
Bowie, TX	
Toledo, OH	1.044
Fulton, OH	
Lucas, OH	
Wood, OH	
Topeka, KS	.996
Shawnee, KS	
Trenton, NJ	1.226
Mercer, NJ	
Tucson, AZ	.931
Pima, AZ	
Tulsa, OK	.911
Creeks, OK	
Osage, OK	
Rogers, OK	
Tulsa, OK	
Wagoner, OK	
Tuscaloosa, AL	1.003
Tuscaloosa, AL	
Tyler, TX	.922
Smith, TX	
Utica-Rome, NY	1.256
Herkimer, NY	
Oneida, NY	
Vallejo-Fairfield-Napa, CA	1.118
Napa, CA	
Solano, CA	
Vancouver, WA	.819
Clark, WA	
Victoria, TX	.842
Victoria, TX	
Vineland-Millville-Bridgeton, NJ	1.099
Cumberland, NJ	
Visalia-Tulare-Porterville, CA	1.017
Tulare, CA	
Waco, TX	.840
McLennan, TX	
Washington, D.C.-MD-VA	1.155
District of Columbia, DC	
Calvert, MD	
Charles, MD	
Frederick, MD	
Montgomery, MD	
Prince Georges, MD	
Alexandria City, VA	
Arlington, VA	
Fairfax, VA	
Fairfax City, VA	
Falls Church City, VA	
Loudoun, VA	
Manassas City, VA	
Manassas Park City, VA	
Prince William, VA	
Stafford, VA	
Waterloo-Cedar Falls, IA	.911
Black Hawk, IA	
Bremer, IA	
Wausau, WI	.889
Marathon, WI	
West Palm Beach-Boca Raton-Delray Beach, FL	.944
Palm Beach, FL	
Wheeling, WV-OH	1.052
Belmont, OH	
Marshall, WV	
Ohio, WV	
Wichita, KS	.872
Butler, KS	
Harvey, KS	
Sedgwick, KS	
Wichita Falls, TX	.929
Wichita, TX	
Williamsport, PA	1.063
Lycoming, PA	
Wilmington, DE-NJ-MD	1.231
New Castle, DE	
Cecil, MD	
Salem, NJ	
Wilmington, NC	.851
New Hanover, NC	
Worcester-Fitchburg-Leominster, MA	1.252
Worcester, MA	
Yakima, WA	.975
Yakima, WA	
York, PA	.984
Adams, PA	
York, PA	
Youngstown-Warren, OH	.981
Mahoning, OH	
Trumbull, OH	
Yuba City, CA	.910
Sutter, CA	
Yuba, CA	

[1] To be developed.

TABLE II.—CONSTRUCTION COST INDEX FOR RURAL AREAS

Non-Urban area	Construction cost index
Alabama	.787
Alaska	1.582
Arizona	1.000
Arkansas	.749
California	1.034
Colorado	.939
Connecticut	1.183
Delaware	1.040
Florida	.777
Georgia	.817
Hawaii	.907
Idaho	.930
Illinois	.978
Indiana	.919
Iowa	.880

TABLE II.—CONSTRUCTION COST INDEX FOR RURAL AREAS—Continued

Non-Urban area	Construction cost index
Kansas	.814
Kentucky	.921
Louisiana	.941
Maine	1.037
Maryland	1.180
Massachusetts	1.169
Michigan	.962
Minnesota	.918
Mississippi	.834
Missouri	.847
Montana	.917
Nebraska	.772
Nevada	.966
New Hampshire	1.069
New Jersey [1]	
New Mexico	.893
New York	1.224
North Carolina	.788
North Dakota	.942
Ohio	.884
Oklahoma	.828
Oregon	.931
Pennsylvania	1.177
Puerto Rico [2]	
Rhode Island [1]	
South Carolina	.774
South Dakota	.898
Tennessee	.766
Texas	.783
Utah	.869
Vermont	1.038
Virginia	.912
Washington	1.072
West Virginia	1.031
Wisconsin	.864
Wyoming	.958

[1] All counties within the State are classified urban.
[2] To be developed.

Appendix C—American Hospital Association List of Plant and Fixed Equipment, and Moveable Equipment

I. Plant

A. Land Movements

Bumpers
Culverts
Fencing
  a. Brick or stone
  b. Chain link
  c. Wire
  d. Wood
Flagpole
Heated pavement
Lawn sprinkler system
Parking lot gate
Parking lot, open walls
Paving (including roadways, walks, and parking)
  a. Asphalt
  b. Concrete
  c. Gravel
Retaining wall
Shrubs, lawns, trees
Sign
Snow melting system
Turf, artificial
Underground sewer and water lines
Yard lighting

B. Buildings

Boiler house
Garage
  a. Masonry
  b. Wood frame
Masonry, reinforced concrete frame
Masonry, steel frame, fireproofed
Masonry, steel frame, not fireproofed
Masonry, wood frame
Reinforced concrete, common design
Residence
  a. Masonry
  b. Wood frame
Storage building
  a. Masonry
  b. Wood frame
Building, componentized parts
  a. Automatic door
  b. Canopies
  c. Ceiling finishes
  d. Computer flooring
  e. Cubicle track
  f. Designation signs
  g. Drapery track
  h. Floor finishes
  i. Folding partitions
  j. Interior finish
  k. Loading docks
  l. Overhead door
  m. Partitions, interior
  n. Roof covering
  o. Storefront construction
  p. Toilet partitions
  q. Wall paint
  r. Wallpaper
Multilevel parking structure, masonry

II. Fixed Equipment

A. Building Services Equipment

Boiler smokestack, metal
Clean air equipment
Clock system, central
Doctors' in and-out register
Electric lighting and power
  a. Feed wiring
  b. Conduit and wiring
  c. Fixtures
  d. Transformer
  e. Switch gear
Elevator
  a. Dumbwaiter
  b. Freight
  c. Passenger, high-speed automatic
  d. Passenger, other
Emergency light system
Escalator
Fire alarm system, door closing devices
Heating, ventilating, and air conditioning system
Air conditioning system, all equipment and units
  a. Large—over 20 tons
  b. Medium—5–15 tons
  c. Small—under 5 tons
  d. Boiler
  e. Compressor, air
  f. Condensate tank
  g. Condenser
  h. Controls
  i. Cooler and dehumidifier
  j. Cooling tower
    (1) Metal
    (2) Wood
  k. Duct work
  l. Fan, air handling and ventilating
  m. Furnace, domestic type
  n. Incinerator, indoor
  o. Oil storage tank
  p. Piping
  q. Precipitator
  r. Pump
  s. Radiator, cast iron
  t. Radiator, finned tube
  u. Solar heat equipment
  v. Unit heater
Intercom system
Laboratory plumbing, piping
Magnetic door holders
Nurse call system
Oxygen, gas, air piping
Paging system
Plumbing, composite
  a. Fixtures
  b. Piping
  c. Pump
  d. Water heater, commercial
  e. Water storage tank
Pneumatic tube system
Sprinkler and fire protection system
  a. Fire alarm system
  b. Fire pump
  c. Smoke and heat detectors
  d. Sprinkler system
  e. Tank and tower
Sewerage, composite
  a. Piping
  b. Sump pump and sewerage ejector
Telephone system
Television antenna system
Vacuum cleaning system
Water wells

B. Other Fixed Equipment

Bench, bin, cabinet, counter, shelving, built-in
Cabinet, biological safety
Carpentry work
Caulking
Ceramic tile
Conveying system
Drilled piers
Fire protection in hoods
Generator set
Hood, fume
ICU–CCU counters
Lockers, built-in
Mailboxes, built-in
Millwork
Nurses' counter
Painting

Pass-through boxes
Patients' wardrobes and vanities
Sink and drainboard
Sterilizer, built-in
X-ray protection

III. Moveable Equipment

Accelerator
Accounting/bookkeeping machine
Acculab
Adding machine
Air conditioner, window
Alternating pressure pad
Ambulance
Amplifier
Analyzer
  a. Amino acid
  b. Autos
  c. Biochromatic
  d. Clinical
  e. Gas
  f. Oxygen
  g. pH gas
  h. Peripheral
  i. Pulmonary function
Anesthesia unit
Ankle exerciser
Apparatus
  a. Anesthesia
  b. Blood transfusion
  c. Bone surgery
  d. Resuscitating
Arthroscopy instrumentation
Aspirator
Audiometer
Autoclave
Automobile
  a. Delivery
  b. Passenger
Autoscaler, ionic
Auto suture stapler
Balance
  a. Analytical
  b. Electronic
  c. Precision mechanical
Basal metabolism unit
Bassinet
Bassinet, heated
Bath
  a. Paraffin
  b. Serological
  c. Sitz
  d. Water, laboratory
  e. Whirlpool
Battery charger
Bed
  a. Electric
  b. Flotation therapy
  c. Hydraulic
  d. Labor
  e. Manual
  f. Orthopedic
Bedpan washer
Beepers, paging
Bench, metal or wood
Bilirubin lamps
Bin, metal or wood
Binder, punch machine
Biochemical analysis unit, micro
Biofeedback machine
Bipolar coagulator
Blanket drier
Blanket warmer
Blood chemistry analyzer, automated
Blood cell counter
Blood gas analyzer
Blood gas apparatus, volumetrics
Blood warmer
Blood warmer coil
Boiler, copper
Bookcase, metal
Bottle washer
Bovie unit
Breathing unit, positive pressure
Broiler
Bronchoscope
  a. Flexible
  b. Rigid
Buffer, electric
Bulletin board
Burnisher, silverware
Cabinet
  a. Bedside
  b. File
  c. Instrument
  d. Metal or wood
  e. Pharmacy
  f. Solution
  g. X-ray
Cage, animal
Camera
Camera, surgical
Camera, TV monitoring, color or black and white
Camera, videotape color or black and white
Can opener, electric
Canopy, ventilating, ironer
Capsule machine
Carbon monoxide recorder/detector
Cardioscope
Carpeting
Cart
  a. Food/tray, heat-refrig
  b. Maid
  c. Medicine
  d. Supply
  e. Utility
Cash register
Cassette changer
Cautery unit
  a. Dermatology
  b. Gynecology
Central processing unit
Centrifuge
Centrifuge, refrigerated
Chair
  a. Dental
  b. Executive
  c. Hydraulic, surgeon's
  d. Kinetron
  e. Podiatric
  f. Specialist
Chart rack
Chart recorder
Check signer
Child immobilizer
Chloridiometer
Chromatograph, gas
Cidematic washer
Clock
Clopay wrapping machine
Clothes locker
  a. Fiberglass or metal
  b. Laminate or wood
Cobalt unit
Coffee maker
Cold pack unit, floor
Collator, electric
Collector, silver, automatic
Colonoscope
Colorimeter
Colposcope with floorstand
Compactor, waste
Compresser, air
Computer assisted system for exercise
Computer
  a. Cardiac output
  b. Clinical
  c. Large
  d. Micro
  e. Mini
Computer terminal
Conductivity tester
Conveyor system, laundry
Conveyor, tray
Cooker, pressure, food
Cooler
  a. Walk-in, freestanding
  b. Water
CO-oximeter
Copier
Coulter counter
Credenza
Crib
Croupette
Cryo-ophthalmic unit with probes
Cryostat
Cryosurgical unit
Cutter
  a. Cloth, electric
  b. Food
Cystic fibrosis system
Cystometer
Cystoscope
Data card processing unit, including keypunch, verifier, reader, sorter
Data printing unit
Data storage unit
  a. Mechanical
  b. Nonmechanical
Data tape processing unit, including controller, drive, tape deck
Decalcifier
Defibrillator
Densitometer, recording
Dental drill with syringe
Dermatome
Desk, metal or wood
Diagnostic set
Diathermy unit
Dictating equipment
Digital fluoroscopy unit
Digital radiography unit
Dilutor
Dish Sterilizer

Dishwasher
Disinfector
Dispenser
  a. Alcohol
  b. Butter, refrigerated
  c. Milk or cream
Distilling apparatus
Dopplers
Dose calibrator
Dresser
Drier
  a. Clothes
  b. Hair
  c. Sonic
Drill press
Drying oven, paint shop
Duplicator
Echocardiograph system
Echoview system
Electrocardioscanner
Electrocardiograph
Electroencephalograph
Electromyograph
Electronic blood pressure device
Electrophoresis unit
Electrosurgical unit
Emission computer tomography (ECT) scanner
Enlarger
Ergometer
Ether-suction unit
Evacuator
Evoked potential unit
Exercise apparatus
Extracorporeal shock-wave lithotripters
Extractor, laundry
Facsimile transmitter
Fiber optic equipment
Fiberometer
Film changer
Flame photometer
Floor scrubbing machine
Floor waxing machine
Fluorimeter
Fluoroscope
Folder, flatwork
Food chopper
Frame, turning
Freezer, ultra cold
Fryer, deep fat
Furnace, laboratory
Furniture
  a. Central supply
  b. Dietary
  c. Housekeeping
  d. ICU–CCU
  e. In-service education
  f. Labor-delivery
  g. Laboratory
  h. Lobby or public areas
  i. Nursing services
  j. Office
  k. Operating room
  l. Patient
  m. X-ray
Gamma camera
Gamma counter
Gamma wall system
Garbage disposal
Graphotype
Griddle
Grinder, food waste
Hand dynamometer
Heart-lung system
Hemoglobinometer
Hemodialysis unit
Hemophotometer
Hoist, chain or cable
Holter electrocardiograph
Holter electroencephalograph
Homogenizer
Hood, exhaust or Bacti
Hot-food box
Hotplate
Humidifier
Hyperbaric chamber
Hydrocollator
Hydrotherapy equipment
Hyfrecator
Hypothermia apparatus
Ice-cream freezer
Ice-cream storage cabinet
Ice-cube making equipment
Illuminator unit, multifilm
Illuminator unit, single
Image intensifier
IMI infant care center
Immuno-diffusion equipment
Imprinter, addresser
Imprinter, embossed plate
Incubator
  a. Laboratory
  b. Nursery
Indicator, remote
Infusion pump
Inhalator
Instruments, ortho-urological
Insufflator
Integrator
Intercom
Iontophoresis unit
Ironer, flatwork
Isodensitometer
Isolation chamber
Isotope equipment
Kettle, steam-jacketed
Kiln
K-pads
Kymograph
Laminar air-flow unit
  a. Cabinet
  b. Wall
Lamp
  a. Deep therapy
  b. Emergency
  c. Infrared
  d. Mercury quartz
  e. Microscope
Laparoscope
Laryngoscope
Lathe
Lawn mower, power
Library furnishings
Lifter, patient
Light
  a. Delivery
  b. Examining
  c. Operating
  d. Portable, emergency
Linear accelerator
Linen cart
Linen drier
Linen press
Linen table
Linen washer
Loom
Lowerator
Magnetic resonance imaging
Mailing machine
Mannequin
Marking machine
Meat chopper
Medi-prep
Meter, pH
Microfilm unit
Microgasometer
Microphone
Microscope
Microprojector
Microtome
Mirror, therapy
Mixer, commercial type
Model, anatomical
Monitor
  a. Apnea
  b. Cardiac
  c. Cerebral function
  d. Patient
  e. TV
Narcotic safe
Natural childbirth backrest
Nebulizer
  a. Pneumatic
  b. Ultrasonic
Nephroscope
Neurological surgical table headrest
Nourishment ice station
Nuclear magnetic resonance scanner
Operating stool
Opthalmoscope
Optical readers
Orthotron system
Oscilloscope
Osmometer
Otoscope
Ottoman
Oven
  a. Baking
  b. Microwave
  c. Paraffin
  d. Roasting
  e. Sterilizing
Oximeter
Oxygen tank, motor, and truck
Pacemaker, cardiac
Pacing system analyzer
Packaging machine
Paint spray booth
Paint spraying machine
Panendoscope
Paper baler
Parallel bars
Parking lot sweeper
Patient monitoring equipment
Peeler, vegetable, electric
Percussor

Perforator
Phonocardiograph
Photocoagulator
Photocopier
Photography apparatus, gross pathology
Photometer
Phototherapy unit
Physician's in-and-out register, portable
Physiological monitor
Physioscope
Piano
Pipe cutter-threader
Pipette, automatic
Planer and shaper, electric
Plasma freezer
Plate bending press
Polisher, floor
Polishing and buffing machine
Power supply
Press, laundry
Proctoscope
Projection machine
Projector, slide
Prothrombin timer, automated
Pulmonary function equipment
Pulsed oxygen chamber
Pump
  a. Breast
  b. Stomach
  c. Surgical
  d. Vacuum
Radiation meter
Radioactive source, cobalt
Radiographic duplicating printer
Radiographic fluoroscopic combination
Radiographic head unit
Range, household
Ratemeter, dual
Recorder
  a. Laboratory
  b. Tape
Refractometer
Refrigerator
  a. Blood bank
  b. Commercial
  c. Domestic
  d. Undercounter
Remote control receiver
Respirator
Resuscitator
Retractor
Rhinoscope
Rinser, sonic
Rotary tiller
Roto-osteotome unit
Safe
Sanitizer
Saw
  a. Autopsy
  b. Band
  c. Bench, electric
  d. Meat cutting
  e. Surgical, electric
  f. Neurosurgery
Scale
  a. Baby
  b. Bed
  c. Chair
  d. Clinical
  e. Laundry, platform
  f. Laundry, movable
  g. Metabolic
  h. Patient
  i. Postal
Scanner
  a. Body-CT
  b. Isotope
  c. Rectilinear
  d. Ultrasonic
Scintillation scaler
Sectocardiograph
Sensitometer
Seriograph, automatic
Settee
Sewing Machine
Shaking machine
Sharpener, microtome knife
Shears, squaring, floor
Shelving, portable, steel
Shoulder wheel
Sigmoidoscope
Silver recovery unit
Simulator
Skeleton
Slicer
  a. Bread
  b. Meat
Slide projector
Slide strainer, laboratory
Slit lamp
Snow blower
Sofa
Spectroscope
Spectrophotometer
Sphygmomanometer
Spirometer
Stall bars
Stamp machine
Stand
  a. Basin
  b. Irrigating
  c. IV
  d. Mayo
Stapler, electric or air
Steam pack equipment
Steamer, vegetable
Stencil machine
Stereo equipment
Sterilizer, movable
Stethophone
Still, water
Station system
Stimulator, muscle
Stretcher
Suction pump
Table
  a. Anesthetic
  b. Autopsy
  c. Electrohydraulic tilt
  d. Examining
  e. Fracture
  f. Food preparation
  g. Instrument
  h. Light
  i. Metal
  j. Obstetrical
  k. Operating
  l. Orthopedic
  m. Overbed
  n. Pool
  o. Refrigerated
  p. Therapy
  q. Traction
  r. Urological
  s. Wood
Tank
  a. Cleaning
  b. Full body
  c. Hot water
  d. Paraffin
  e. Therapy
Telemetry unit
Telescope, microlens
Telescopic shoulder wheel
Telethermometer
Television receiver
Tent
  a. Aerosol
  b. Oxygen
Test equipment
Thermometer, electronic
Thyroid testing equipment
Time recording equipment
Tissue embedding center
Tissue processor
Titrator, automatic
Toaster, commercial type
Tonometer
Totalap
Traction unit
Tractor
Transcribing equipment
Transcutaneous nerve simulator system
Treadmill, electric
Truck, hot food
Truck
  a. Forklift
  b. Multipurpose filling
  c. Van, pickup
Trunk
  a. Platform
  b. Tray
Tube dryer
Tube tester
Tumbler
Typewriter
  a. Electric
  b. Manual
Ultrasonic cleaner
Ultrasonic fetal heart detector
Urn, coffee
Vacuum cleaner
Vacuvette
Valet, office
Vectorcardiograph
Vending machine
Ventilator, respiratory
Vial filler
Vibrator
Victoreens meter
Vise, large bench
Walkie-talkie
Warmer
  a. Dish
  b. Food
Washer, glassware

Washing machine
a. Commercial
b. Domestic
Water cooler, bottle or fountain type
Water purifier or softener
Welder
Wheelchair
Wire tightener-twister
Word processor
a. Large
b. Small
X-ray
a. Developing tank
b. Film drier
c. Film processor
d. Image intensifier
e. Intensifying screens
f. Wiring
g. Unit, deep therapy
h. Unit, fluoroscopic
i. Unit, mobile
j. Unit, radiographic
k. Unit, superficial therapy

Appendix D—Regulatory Impact Analysis

A. Introduction

Executive Order (E.O.) 12291 requires us to prepare and publish an initial regulatory impact analysis for any proposed regulation that meets one of the E.O. criteria for a "major rule"; that is, that would be likely to result in: an annual effect on the economy of $100 million or more; a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States based enterprises to compete with foreign-based enterprises in domestic or export markets.

In addition, we generally prepare an initial regulatory flexibility analysis that is consistent with the Regulatory Flexibility Act (RFA)(5 U.S.C 601 through 612), unless the Secretary certifies that a proposed regulation would not have a significant economic impact on a substantial number of small entities. For purposes of the RFA, we treat all hospitals as small entities.

The following discussion, in combination with the rest of this proposed rule, constitutes a combined regulatory impact analysis and regulatory flexibility analysis.

B. Summary of the Initial Analysis Published June 3, 1986

For the proposal published last June to incorporate capital-related cost into the prospective payment system, we prepared an initial regulatory impact analysis that compared projected payments under the proposed phase-in of prospective payments for capital-related cost over the four-year transition period to projected payments under current reasonable cost principles. The comparison used FY 1983 hospital cost data that were inflated by the capital component of the hospital market basket through FY 1987. We displayed the effects of implementing the proposed payment system over the proposed four-year transition period in terms of the percent change in payment levels between payment amounts approximating what hospitals would have received under the current system for FY 1987 compared to what they could have expected under proposed capital-related prospective payment system.

As a result of both the relatively short transition period of four years and the proposal to inflate the base year costs by the capital component of the hospital market basket, most hospitals would have experienced substantial reductions in their payments for capital-related costs. Many commenters, in responding to the June 3 NPRM, indicated concern with the proposed system. We are now presenting a new proposal that we believe addresses many of the commenters' concerns.

C. Objectives

In our June 3, 1986 proposal we discussed the objectives we hoped to achieve through the proposed capital related prospective payment system. Although we have eliminated certain features of the original proposal that we believe could have imposed considerable hardship on some providers—in particular, the four-year transition period—our objectives for this proposal generally are the same as those we presented in the June 3 document.

By incorporating capital-related costs into the prospective payment system, we are extending the objectives underlying the current system to this area of hospital inpatient costs. Because we have continued to reimburse hospital capital-related costs on a pass-through basis, hospital administrators have had less incentive to bring their capital-related spending in line compared to inpatient hospital operations under the prospective payment system. Under the present system of capital-related payments, access to financial markets may be a more important factor in determining a hospital's capital investments than the overall contribution of such assets to the effective or efficient operation of the facility. For example, under cost-based reimbursement, a hospital with low utilization could borrow funds for expansion of its plant even though it may have surplus capacity, and Medicare will still reimburse those capital costs.

The chief objective we hope to achieve through integrating payments for inpatient capital-related costs into the prospective payment system is to establish the same kind of economic relationship between hospital operational characteristics and market conditions on the one hand, and capital investment decisions, on the other hand, as exists in a price-competitive market The retrospective payment system now in effect does not constrain hospital capital related spending sufficiently to bring these costs under control. This proposal to establish prospective payment rates for inpatient hospital capital related costs, therefore, would establish a payment system that would result in hospitals accepting a greater degree of risk for their investment decisions. Incorporating payments for capital-related costs into the prospective payment system would subject these costs to the same financial and economic incentives to which operating costs are now subject.

D. Analytical Methodology

1. General Considerations

Our approach for displaying the effects of the proposed payment system is similar to the one we adopted in the June 3, 1986 impact analysis. We will compare FY 1988 payment levels under the proposed payment system with projected payments under the present system using three different FY 1988 payment blends. Hospital groupings that would, on average, receive higher payments under the proposed system will have positive values in our analysis while hospital groupings that would, on average, receive lower payments under the proposed system will have negative values. These positive and negative values represent the percent increase or reduction in payments compared to projected payments under the present system.

Similarly to the June 3, 1986 proposal, we computed projected payments under reasonable cost principles by inflating each hospital's FY 1984 costs through FY 1988, using an estimate of the actual rate of inflation for capital-related costs. While we used these projected FY 1988 costs to compare payments under reasonable costs with FY 1988 prospective payments, we warn the reader that the cyclical nature of capital investments actually produces different increases on the Medicare capital cost per case for each hospital. Because

section 1886(g)(3) of the Act (added by section 9303(a) of Pub. L. 99-509) requires payments for capital-related costs to be reduced by seven percent for portions of cost reporting periods or discharges occurring in FY 1988, regardless of the method of payment, we reduced our projected costs by seven percent. A similar reduction has already been made in the Federal prospective payment rates, so we are maintaining comparability between reasonable cost payments and prospective payments. As a result, the impact analysis in this document assumes that the Federal payment rates and projected payment rates already have the seven percent removed from them.

Since the hospital-specific portion of the prospective payments for capital is, under these regulations, the hospital's actual allowable costs, we need not compute it separately from the reasonable costs used to simulate payments under the current system. That is, to compute the hospital-specific portion for a given year of the transition, all we need do is multiply the hospital's reasonable costs by the applicable blend factor in effect for that year of the transition. For example, applying the third year blend in FY 1988, hospital-specific payments would equal the product of the same capital-related reasonable costs for fixed plant and fixed equipment (Federal payments for moveable equipment are 100 percent phased in) used to compute reasonable cost payments, multiplied by the applicable blend factor of .85.

In interpreting the results of this comparison, readers should keep in mind the following points:

- First, the following comparisons are not directly comparable to the analyses presented in the June 3 NPRM. We are now using different data both for rate determination and cost projection. Further, the rates we are comparing to projected costs are computed differently from the earlier proposed rates, and the factors used to inflate the available cost data have been revised and updated. Thus, though the following discussion has analytic similarities to the previous impact analysis, the actual quantitative assessments presented below should not be compared to the earlier values.
- Second, is the static nature of the analysis. Hospitals and other interested parties should interpret the following analysis as indicating the direction and magnitude of changes in payment amounts based on the capital costs for hospitals in FY 1984. Since hospitals have continued to invest in new existing facilities, the changes that have occurred since FY 1984 may well result in our proposal having different effects on hospitals than the ones presented in Tables, I, II, and III. Although the cyclical nature of hospital investment would result in projected rates of growth in Medicare capital costs per case which are different for each hospital, we did not have the hospital-specific data to incorporate these different growth rates in projecting FY 1988 hospital capital costs. Thus, for all of the impact analyses, we increased each hospital's FY 1984 capital costs per case by our projections of the national average increase in Medicare capital costs per case between FY 1984 and FY 1988. As a result, we warn the reader that, in assessing the following tables, the impact results for each group of hospitals assumes FY 1984 conditions which may not exist in FY 1988.
- Third, we are presenting the effects of this proposal on hospital payments using the Federal blends for the first, second, and third years of the transition based on the assumption that these blends would be adopted for all hospitals on October 1, 1987. That is, we are displaying the effects of this proposal using three different blends of Federal and hospital-specific payments for fixed plant/equipment and moveable equipment: a five percent Federal payment blend, a 10 percent Federal payment blend, and a 15 percent Federal payment blend for fixed plant/equipment, and a corresponding Federal blend of 33, 67, and 100 percent for moveable equipment.
- A positive or negative value associated with a specific hospital grouping does not necessarily mean that hospitals in that group would experience either accounting or economic profits or losses for all inpatient care services. Our results show only decreases or increases of Medicare payments for capital-related costs under the proposed system, relative to payments under the present system. At present, Medicare covers, on average, approximately 41 percent of all inpatient hospital costs (based on estimated FY 1986 Medicare data compared to total hospital inpatient revenues as reported by the American Hospital Association), and capital expenditures account for about ten percent of all hospital inpatient expenditures. Thus, a five percent reduction in Medicare capital-related payments for an average hospital would result in a payment reduction of about .2 percent in inpatient expenses. A hospital could receive lower payments under the proposed system, but overall, it could still be profitable because of operating gains earned from noncapital-related services to Medicare patients as well as to other patients. The converse may also occur; hospitals earning surpluses under the capital payment system may be suffering operating losses.
- The final point is that the impact values shown in Table I are single point estimates for different groups of hospitals rather than a range. Since a range of impact values allows one to better understand variations in capital payments among individual hospitals, we are including an analysis of range data for urban and rural hospitals, showing the distribution of hospitals using the blended Federal payment share effective for the first year of the phase-in. We are not, however, presenting detailed data on each and every hospital, as some commenters on the June 3, 1986 NPRM would have had us do. Our data at the individual hospital level will not support this kind of analysis because our current data do not reflect present hospital capital-related costs. As explained earlier, the cyclical nature of capital investments can produce wide fluctuations in capital-related spending within a short period of time which we are unable to model. For an individual hospital, our FY 1988 projection of capital-related costs could be inaccurate, and an impact analysis for individual hospitals that relied on these data also would be inaccurate.

The analysis showing the range of impacts on all hospitals is presented in section D.3., and a discussion of the impact on hospitals if we assume no transition policy is presented in section D.4.. In section D.5. we discuss the effects on hospitals of removing the indirect medical education and disproportionate share factors from the standardization of the capital rates.

2. Projected differences between current and proposed payment methods

The following table displays effects of the proposed prospective payment system compared to the present system. The table combines payments for plant and fixed equipment, and movable equipment since we felt it was more appropriate to show the impact of this proposal on total inpatient capital-related payments rather than on each portion separately Also, as previously explained, the results are based on FY 1984 costs inflated to FY 1988 and incorporate both the seven percent reduction mandated under section 1886(g)(3) of the Act and the budget neutrality factor for FY 1988. It should be noted that, since we have no data on the investment patterns for each hospital between FY 1984 and FY 1988, the impact values for various groups may not be representative of the profits

or losses resulting from our prospective payment proposal; that is, hospital groups with higher than average capital costs in FY 1984, which would indicate losses in the impact analysis in Table I, could actually have lower than average capital costs in FY 1988, and therefore, they would obtain a profit in FY 1988; the reverse situation could also occur.

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TABLE I--ESTIMATED IMPACT OF THE PROPOSED PROSPECTIVE PAYMENT SYSTEM FOR CAPITAL-RELATED COSTS BASED ON IMPLEMENTATION OF FIRST, SECOND AND THIRD YEAR PAYMENT BLENDS OF FEDERAL AND HOSPITAL-SPECIFIC PAYMENTS FOR FIXED AND MOVEABLE CAPITAL-RELATED COST IN FY 1988 [1/]

	Number of Hospitals [2/]	Percent Change in payments assuming implementation in FY 1988 [3/]		
		Fixed - 5% Federal Moveable - 33% Federal [4/] (FY 1988 Implementation)	Fixed - 10% Federal Moveable - 67% Federal [5/] (FY 1988 Implementation)	Fixed - 15% Federal Moveable - 100% Federal [6/] (FY 1988 Implementation)
All Hospitals	4624 [7/]	0.0	0.0	0.0
Urban by Region				
New England	174	4.6	9.3	13.9
Mid Atlantic	257	2.6	5.2	7.8
South Atlantic	367	-1.0	-2.1	-3.1
East North Central	488	0.1	0.2	0.3
East South Central	151	-2.0	-4.1	-6.1
West North Central	172	-0.9	-1.8	-2.7
West South Central	331	-2.1	-4.1	-6.2
Mountain	83	-2.8	-5.6	-8.4
Pacific	446	-0.5	-1.1	-1.7
Rural by Region				
New England	30	4.9	9.9	14.8
Mid Atlantic	82	4.1	8.4	12.5
South Atlantic	293	1.1	2.2	3.3
East North Central	346	0.5	1.1	1.6
East South Central	285	0.4	0.8	1.2
West North Central	504	0.8	1.6	2.4
West South Central	395	0.4	0.8	1.2
Mountain	133	-0.5	-0.9	-1.4
Pacific	87	2.1	4.2	6.2
Urban Hospitals	2469	-0.2	-0.5	-0.7
0-99 Beds	603	0.5	1.0	1.5
100-404 Beds	1506	-0.9	-1.9	-2.9
405-684 Beds	302	1.3	2.6	3.9
685 + Beds	58	0.2	0.3	0.4
Rural Hospitals	2155	1.0	2.0	3.0
0-99 Beds	1645	2.5	5.0	7.5
100-169 Beds	342	-0.2	-0.3	-0.5
170 + Beds	168	0.3	0.5	0.8
Teaching Status				
Non-Teaching	3767	-0.5	-1.0	-1.5
Resident/Bed Ratio Less than 0.25	712	0.1	0.1	0.2
Resident/Bed Ratio 0.25 or Greater	145	3.0	6.0	9.0

Table I - continued

	Number of Hospitals 2/	Percent Change in payments assuming implementation in FY 1988 3/		
		Fixed - 5% Federal Moveable - 33% Federal 4/ (FY 1988 Implementation)	Fixed - 10% Federal Moveable - 67% Federal 5/ (FY 1988 Implementation)	Fixed - 15% Federal Moveable - 100% Federal 6/ (FY 1988 Implementation)
Disproportionate Share Hospitals (DSH)				
No Additional Payments	3652	-0.3	-0.6	-0.9
Urban DSH 100 Beds or More	740	0.5	1.1	1.6
Urban DSH fewer than 100 Beds	64	1.9	3.8	5.7
Rural DSH	168	4.7	8.5	14.2
Other Special Status				
Rural Referral Centers (RRCs)	191	1.3	2.5	3.8
Rural fewer than 50 beds	953	5.1	10.4	15.6
Type of Ownership				
Voluntary	2788	0.4	0.8	1.2
Proprietary	681	-4.1	-8.3	-12.4
Government	1138	2.9	5.8	8.7

1/ This table represents estimated Medicare margins if the Federal/hospital-specific payment blend for fixed and moveable capital costs for the first, second, and third years of the proposal were implemented in FY 1988. All three comparison years reflect a budget neutrality factor based on projected FY 1988 payments and the exclusion of sole community hospitals from the proposed payment system.

2/ This column shows the number of hospitals in each cell of the FY 1984 hospital cost data base used to compute both the proposed payment rates and the estimated impact. Puerto Rican hospitals are not included.

3/ These margins result from a comparison of proposed payments to payments under the current system, based on 1984 data inflated through FY 1988, and assumes all hospitals have cost reporting periods corresponding to the beginning and end dates of the phase-in year.

4/ 95 percent hospital-specific for plant/fixed equipment, and 67 percent hospital-specific portion for the moveable equipment.

5/ 90 percent hospital-specific portion for plant/fixed equipment, and 67 percent hospital-specific for moveable equipment.

6/ 85 percent hospital-specific for plant/fixed equipment rate, and no hospital-specific portion for moveable equipment. End of phase-in for moveable equipment.

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In the aggregate, our analysis shows no change in payments from the present method of paying for hospital capital-related costs. This is to be expected because we have maintained throughout this analysis the budget neutrality requirement imposed on payments for the first year. Nevertheless, the impact varies among geographic regions. Based on the first year Federal blend the impact ranges from a high of a 4.6 percent increase for urban hospitals in the New England region to a low of a 2.8 percent decrease for urban hospitals in the Mountain census division.

Among categories of hospitals there is also a wide range of projected impacts. Rural hospitals, overall, fare better than urban hospitals, with rural hospitals that have fewer than 50 beds doing especially well, showing, on average, a 5.1 percent increase in payments. All rural hospitals, in the aggregate, show a 1.0 percent average increase as compared to the average decrease of 0.2 percent for all urban hospitals. Because we lack adequate data we cannot be completely certain of the reason for the better performance of rural hospitals under the proposed payment system compared to urban hospitals. Nevertheless it appears that the gains made by small rural hospitals are, in part attributable to our computing the standardized payment rates on a case weighted basis in accordance with section 1886(d)(3)(A) of the Act (as amended by section 9302(c) of Pub. L. 99–509).

Similarly, teaching hospitals with "heavy" graduate teaching programs (defined as hospitals with resident to bed ratios of 0.25 or greater) show an average increase in their capital-related payments of approximately 3.0 percent when projected payments are based on a first year Federal payment blend. Other categories of hospitals that would receive higher payments under the proposed system are large urban hospitals (with 405 beds or more) and government controlled facilities. The latter group is shown to benefit by a 2.9 percent increase based on the first year blend.

Among hospitals that would likely experience a drop in payments are proprietary facilities, with a projected payment decrease, under the first year Federal payment blend, of 4.1 percent. We cannot determine with certainty the reason for this decline without specific data on the age of their facilities, but we suspect that proprietary hospitals have recently invested in capital, and as a result, they have incurred higher interest and depreciation expenses. In fact, if the FY 1984 cost data for proprietary hospitals are indicative of new major investments, the losses in the impact analyses may be overstated. It is quite possible that with major new investments, the capital costs for proprietary hospitals remained fairly level between FY 1984 and FY 1988. Thus, the assumption that FY 1984 capital costs for proprietary hospitals were inflated at the same rate as all other hospitals would be incorrect, and the reduction of the FY 1988 payments to these hospitals would probably be less than 4.1 percent.

In general, any observed reductions in FY 1988 payments do not necessarily imply losses for hospitals. A noncash expense, such as depreciation, may cause a hospital to show an accounting loss, but does not affect cash flow. Also, principal payments, which Medicare does not reimburse, would not significantly affect cash flow, since these are usually low during the initial years after investment. Finally, hospitals that incur a loss in capital payments in FY 1988 due to a major recent investment will have fairly level capital expenses over the next ten years. Since the capital payments for all hospitals will be increased each year by the prospective payment system update factor, we would expect that a number of these hospitals will obtain capital surpluses during the transition. For hospitals with projected losses in the first year of the transition, there are a number of actions they can take to adapt their operations and spending. For example, hospitals could purchase less costly assets or refinance debt at lower interest rates. Also, since the present payment system may encourage hospitals to purchase assets prematurely, construction projects or acquisitions could be postponed until a more appropriate time.

3. Projected Distributional Effects of This Proposal

Recognizing that the previous analysis only provides a measure of central tendency, and fails to give an indication of the range of possible effects, we have examined the range of possible effects the proposed payment system may have on all hospitals subject to the prospective payment system, and hospitals grouped by their location in either urban or rural areas for the first year of the transition. In presenting this analysis, we must point out again that our analysis does not reflect any investment changes for hospitals since FY 1984. Table II displays both the absolute number of hospitals in our data base groups and the percent they comprise of the number of hospitals in the group under analysis.

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TABLE II DISTRIBUTION OF HOSPITALS

Percentage Increases or Decreases in Proposed Payments Compared to Projected Cost-Basis Payments[1/]

First Year Payment Blend

	Hospitals in data base[3/]	Percent Decreases[2/]					Percent Increases[2/]				
		Less than 20 percent	-20 to -15	-15 to -10	-10 to -5	-5 to 0	0 to +5	+5 to +10	+10 to +15	+15 to +20	Greater than 20 percent
All Hospitals	4624	0.6	1.3	3.2	10.8	20.9	17.7	15.1	9.0	6.6	14.7
Urban Hospitals	2469	0.5	1.2	3.8	13.2	24.7	19.6	14.0	7.2	5.2	10.6
Rural Hospitals	2155	0.8	1.3	2.5	8.1	16.7	15.6	16.5	11.0	8.1	19.4

1/ Analysis based on FY 1984 hospital data inflated by an estimate of the actual rate of inflation used in calculating both a projection of payments under current reasonable cost principles and hospital-specific payments under the proposed system. Proposed payments used in this analysis are based on FY 1988 proposed blend of five percent Federal for plant/fixed equipment and 33 percent Federal blend for moveable equipment to simulate payments during the first transition year.

2/ Increases and decreases are relative to 1984 payments projected to 1988 levels under current reimbursement principles. The rates used for comparison purposes assume that all hospitals in the data base have an October 1 to September 30 cost reporting period.

3/ Excludes Puerto Rican and sole community hospitals.

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At the national level, for the first year of the proposed system approximately 39 percent of all hospitals in the data base would either lose or gain between zero and five percent compared to current payments for capital-related costs. The breakdown between those hospitals that would lose between zero and five percent is almost identical to the percent of hospitals that would gain between zero and five percent. The percent of gaining hospitals is about 18 percent, while hospitals losing payments equals 21 percent. Over 64 percent of hospitals would receive payment increases or decreases during the first year between the −10 percent and +10 percent interval.

A similar clustering around the −5 percent and +5 percent interval is also evident among hospitals grouped by urban and rural locations. Approximately 32 percent of all rural hospitals fall within this interval, while 44 percent of all urban hospitals will either lose or gain between zero and five percent. Of all rural hospitals in the data base, nearly 16 percent are projected to receive between zero and five percent higher payments under the proposed payment system for the first year compared to their current payment levels while about 17 percent of rural hospitals would stand to lose between zero and five percent of their current payments. Similarly, among urban hospitals, approximately 20 percent of the hospitals are projected to receive increases of between zero and five percent while about 25 percent of urban hospitals are expected to receive between zero and five percent lower payments.

During FY 1988, nearly one fifth of all rural hospitals would receive increases in their payments for capital-related expenses of 20 percent or more, while only .8 percent of all rural hospitals would receive payment decreases of 20 percent or greater. Slightly more than 10 percent of urban hospitals would get payments of 20 percent or greater, while only about .5 percent would see decreases in their payments of 20 percent or more. Of all hospitals under the prospective payment system, almost 15 percent would have their payments go up by 20 percent or more, with slightly more than .6 percent of all hospitals receiving reductions of 20 percent or more.

On the whole, based on policies and payment rates we are proposing for FY 1988, more hospitals would receive increases in payments over current levels than hospitals receiving decreases in their payments. Nationally, about 63 percent of all hospitals in the data base (71 percent of rural hospitals and 56 percent of all urban hospitals) would receive increases in their capital-related payments in the first year.

4. Effects of Eliminating Transition for Capital Costs

If we were to eliminate the transition and immediately incorporate capital costs into the prospective payment system, a number of hospitals would probably have difficulty quickly adapting their operations to the lower payment levels. For example, assuming the projected increase in the average Medicare cost per case between FY 1984 and FY 1988 is appropriate, urban hospitals in the East South Central region would experience an 11.6 percent reduction in their FY 1988 capital payments if our policy did not have a transition (compared to a 2.0 percent reduction under our policy of a ten-year transition). Thus, since some hospitals may face major capital reductions if all capital were incorporated immediately into the prospective payment system, we believe it is critical to provide hospitals a ten-year transition period to give them adequate time to adjust their operations and spending to the new payment levels.

As stated previously, the long transition allows hospitals to adapt their operations and spending in a number of ways. Hospitals may seek to purchase less costly assets or refinance debt at lower interest rates. Also, since the present payment system may encourage hospitals to purchase or construct assets earlier than necessary, hospitals could postpone construction projects or acquisitions of assets until a more appropriate time. Finally, hospitals that incur a loss in capital payments in FY 1988 due to a major recent investment will have fairly level capital expenses over the next ten years. Since the capital payment for all hospitals will be increased each year by the prospective payment system update factor, we would expect that a number of these hospitals will obtain capital surpluses during the transition.

Table III, below, indicates the FY 1988 impact of a policy with no transition for capital expenditures. We note that this table reflects FY 1984 capital costs and does not reflect changes in hospital investment behavior between FY 1984 and FY 1988. It should be noted that hospitals with increases in payments may not reflect major investments (capital costs) made between FY 1984 and FY 1988, thereby overstating gains for these hospitals. Similarly, hospitals that made major investments prior to FY 1984 may have their losses overstated, since the increase in these hospitals' FY 1984 Medicare capital costs per case from FY 1984 to FY 1988 was probably overstated.

We want to emphasize that the table *does not* reflect our projections of hospital capital profits or losses in FY 1997, when the proposed capital prospective system would be fully phased in. Given the numerous changes that the hospital industry will undergo in the next ten years, it would be highly speculative and inappropriate to attempt to project long-run impact on hospitals resulting from our capital proposal.

TABLE III.—ESTIMATED IMPACT OF IMMEDIATE IMPLEMENTATION OF THE PROSPECTIVE PAYMENT SYSTEM FOR CAPITAL-RELATED COSTS [1]

	Number of hospitals [2]	Percent impact [3]
All Hospitals	4624	0.0
Urban by Region:		
New England	174	33.0
Mid Atlantic	257	17.7
South Atlantic	367	−3.3
East North Central	488	−1.3
East South Central	151	−11.6
West North Central	172	−8.1
West South Central	331	−14.1
Mountain	83	−16.8
Pacific	446	−0.9
Rural by Region:		
New England	30	45.6
Mid Atlantic	82	27.4
South Atlantic	293	1.1
East North Central	346	−0.1
East South Central	285	0.2
West North Central	504	4.2
West South Central	395	−3.3
Mountain	133	−7.9
Pacific	87	9.9
Urban Hospitals	2464	−0.7
0–99 Beds	603	−5.8
100–404 Beds	1506	−8.1
405–684 Beds	302	12.1
685 + Beds	58	21.2
Rural Hospitals	2155	3.3
0–99 Beds	1645	10.2
100–169 Beds	342	−5.2
170 + Beds	168	3.2
Teaching Status:		
Non-Teaching	3767	−7.1
Resident/Bed Ratio, Less than 0.25	712	5.2
Resident/Bed Ratio, 0.25 or Greater	145	28.0

TABLE III.—ESTIMATED IMPACT OF IMMEDIATE IMPLEMENTATION OF THE PROSPECTIVE PAYMENT SYSTEM FOR CAPITAL-RELATED COSTS [1]—Continued

	Number of hospitals [2]	Percent impact [3]
Disproportionate Share Hospitals (DSH):		
No Additional Payments	3652	−2.7
Urban DSH 100 Beds or More	740	6.1
Urban DSH fewer than 100 Beds	64	7.5
Rural DSH	168	28.2
Other Special Status:		
Rural Referral Centers (RRCs)	191	4.7
Rural fewer than 50 Beds	953	26.3
Type of Ownership:		
Voluntary	2788	2.6
Proprietary	681	−30.6
Government	1138	24.0

[1]These estimated Medicare impacts are based on the assumption that there is no transition, and proposed capital-related payments would be incorporated into the present prospective payment system effective October 1, 1987. This impact reflects the budget neutrality factor for FY 1988 and the exclusion of sole community hospitals.

[2]This column shows the number of hospitals in each cell of the FY 1984 hospital cost data base used to compute both the proposed payment rates and the estimated impact.

[3]These margins are shown as a percent difference between payments under the proposed system compared to payments under the current system, based on each hospital's FY 1984 data inflated by the estimated growth in Medicare capital costs per case through FY 1988, and assumes all hospitals have cost reporting periods corresponding to the beginning and end dates of the phase-in year.

5. Effects of Standardizing the Federal Payment Rates by the Indirect Medical Education Factor and the Factor for Disproportionate Share Hospitals

This final section briefly examines the effects on hospital payments of standardizing by the indirect medical education factor and the factor for disproportionate share utilization. As discussed in section II of this preamble, sections 1886(a)(4) and (d)(1)(A) of the Act treat the exclusion or inclusion of capital-related costs in the prospective payment system, as either excluding or including these costs in the definition of inpatient operating costs. Since we are proposing to incorporate the payment of capital-related costs into the existing framework of the prospective payment system for hospital inpatient operating costs, under sections 1886 (a)(4) and (d)(1)(A) of the Act, we must standardize these costs for case-mix variations, indirect cost of medical education and disproportionate share, unless there is an appropriate reason for not standardizing capital-related costs by one or more of these factors. A preliminary statistical analysis indicates that there is reasonable analytical support for standardizing capital-related costs by the hospital case-mix index. The evidence, however, for standardizing for the indirect costs of medical education and disproportionate share is inconclusive.

Since we have no strong evidence to suggest that it is inappropriate to standardize capital-related costs by the same factors used in standardizing hospital inpatient operating costs, we propose to standardize capital related costs by the indirect teaching factor, disproportionate share, and the case-mix index. We will continue to examine the appropriateness of standardizing capital-related costs by these three factors. Below, we present rates that have not been standardized for indirect medical education and disproportionate share factors along with the prospective payment rates we are proposing for FY 1988 in Tables 1 and 2 in Appendix A.

TABLE IV.—COMPARISON OF CAPITAL-RELATED FEDERAL PAYMENT RATES NOT STANDARDIZED FOR DISPROPORTIONATE SHARE AND INDIRECT COSTS OF MEDICAL EDUCATION COMPARED WITH PROPOSED FY 1988 FEDERAL RATES

	Nonstandardized rates		Standardized rates	
	Urban	Rural	Urban	Rural
Plant/Fixed Equipment	$181.89	$160.35	$171.83	$160.59
Moveable Equipment	115.99	87.09	108.53	87.11

Without standardizing for indirect teaching and disproportionate share, the urban Federal payment rate for plant/fixed equipment would increase from $171.83 to $181.89 (a 5.9 percent increase). Similarly, the urban national Federal rate for moveable equipment would increase from $108.53 to $115.99 (a 6.9 percent increase). Rural rates for fixed and moveable are affected only slightly, since most teaching and disproportionate share hospitals are located in urban areas. The rural Federal rate for plant/fixed equipment would actually decrease slightly, going from $160.59 to $160.35 (a 0.1 percent decrease). The rural rate for moveable equipment would remain virtually unchanged, going from $87.11 to $87.09.

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[BERC-410-PN]

Medicare Program; Changes to the DRG Classification System

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

ACTION: Proposed notice.

SUMMARY: The regulations governing the prospective payment system for inpatient hospital services provide that we will periodically publish notices addressing changes to the Diagnosis-Related Group (DRG) classification system. We first did this in 1985, and are continuing that practice with this proposed notice.

As in previous notices, we are responding to comments received on the DRG classification system, listing diagnoses and procedures for which new identifying codes (in the coding system of the International Classification of Diseases—9th Edition—Clinical Modification (ICD–9–CM) on which DRG assignments are based) have been approved, and proposing certain changes in the DRG classification system to resolve some of the problems identified by outside comments and our own analysis.

DATE: Comments will be considered if we receive them at the appropriate address, as provided below, no later than 5:00 p.m. on July 20, 1987.

ADDRESS: Mail comments to the following address: Health Care Financing Administration, Department of Health and Human Services, Attention: BERC–410–PN, P.O. Box 26676, Baltimore, Maryland 21207.

If you prefer, you may deliver your comments to one of the following addresses:

Room 309 G, Hubert H. Humphrey Building, 200 Independence Ave., SW., Washington, DC, or

Room 132, East High Rise Building, 6325 Security Boulevard, Baltimore, Maryland.

In commenting, please refer to file code BERC–410 PN. Comments received timely will be available for public inspection as they are received, generally beginning approximately three weeks after publication of a document, in Room 309–G of the Department's offices at 200 Independence Ave., SW., Washington, DC, on Monday through Friday of each week from 8:30 a.m to 5:00 p.m. (phone: 202–245–7890)

FOR FURTHER INFORMATION, CONTACT: Linda Magno, (301) 594–9343.

SUPPLEMENTARY INFORMATION:

I. Background

A. Prospective Payment System—General

Under section 1886(d) of the Social Security Act (the Act), enacted by the Social Security Amendments of 1983 (Pub. L. 98–21) on April 20, 1983, a prospective payment system (PPS) for Medicare payment for inpatient hospital services was established effective with hospital cost reporting periods beginning on or after October 1, 1983. Under this system, Medicare payment is made at a predetermined, specific rate for each discharge; that payment varies by the diagnosis-related group (DRG) to which a beneficiary's stay is assigned. The list of DRGs currently contains 473 specific categories. All but 3 DRGs are categorized into 23 major diagnostic categories (MDCs). Most MDCs are based on a particular organ system of the body. Some, such as MDC 18 (Infections and Parasitic Diseases; Systemic or Unspecified Sites) and MDC 22 (Burns), are not, because they involve multiple organ systems.

The formula used to calculate payment for a specific case takes a hospital's payment rate per case and multiplies it by the weight of the DRG to which the case is assigned. Each DRG weight represents the average resources required to care for cases in that particular DRG relative to the national average resources consumed per case by the average hospital. Thus, cases in a DRG with a weight of 2.0 would, on average, require twice as many resources as the average case for the average hospital.

B. Basic DRG Classification System

The method of classifying cases into DRGs for payment under the prospective payment system involves a number of steps. First, the physician enters into a patient's medical record the principal diagnosis, any additional diagnoses, and any procedures performed during the stay. This information is expressed by the hospital using codes from the International Classification of Diseases, Ninth Edition, Clinical Modification (ICD–9–CM). The principal diagnosis, as many as four additional diagnoses, and up to three procedures are reported, along with a patient's age, sex, and discharge status, to the hospital's fiscal intermediary on the hospital's request for payment.

The intermediary then enters the information into its claims system and subjects it to a series of automated screens called the Medicare Code Editor (MCE). These screens are designed to identify cases that require further review before classification into a DRG can be accomplished

After screening through the MCE and any further development of the claims, cases are classified by the GROUPER software program into the appropriate DRG. The GROUPER program was developed as a means of classifying each case into a DRG on the basis of the diagnoses and procedure codes and demographic information (that is, sex, age, and discharge status). It is used to classify past cases in order to measure relative hospital resource consumption to establish the DRG weights, and to classify current cases for purposes of determining payment.

Principal diagnosis determines MDC assignment Within most MDCs, cases are then divided into surgical DRGs (based on a surgical hierarchy that orders individual procedures or groups of procedures by resource intensity) and medical DRGs. Medical DRGs generally are differentiated on the basis of diagnosis, age, and presence or absence of complications or comorbidities (hereafter CC) only. Generally, GROUPER does not consider other procedures; that is, non-surgical procedures or minor surgical procedures generally not done in an operating room are not listed as operating room (OR) procedures in the GROUPER decision tables. However, there are a few non-OR procedures that do affect DRG assignment for certain principal diagnoses, such as extracorporeal shock wave lithotripsy (ESWL) for patients with a principal diagnosis of urinary stones.

C. Changes to the DRG Classifications and Weighting Factors

1. General.

Congress recognized that it would be necessary to recalculate the DRG relative weights periodically to account for changes in resource consumption In addition, Congress provided the Secretary with authority to reclassify diagnoses and procedures within the DRG system to take into account changes in medical technology and treatment patterns. Initially, section 1886(d)(4)(C) of the Act required the Secretary to adjust the DRG classifications and weighting factors effective for discharges occurring in FY 1986 and at least every four fiscal years thereafter. Subsequently, Congress amended section 1886(d)(4)(C), through section 9302(e) of the Omnibus Budget Reconciliation Act of 1986 (Pub. L. 99–509; October 21, 1986), requiring the Secretary to adjust the classifications

and weighting factors for discharges in FY 1988 and at least annually thereafter. These adjustments are made to reflect changes in treatment patterns, technology, and any other factors that may change the relative use of hospital resources. The intention of Congress is that we make changes as often as needed to achieve the objectives of the prospective payment system, including the need to keep current with developments in the areas of coverage and medical technology.

2. Changes to the ICD–9–CM Coding System.

The International Classification of Diseases, Ninth Revision (ICD–9) is a classification system developed by the World Health Organization for recording morbidity and mortality information for statistical purposes, for indexing hospital records by diseases, and for storing and retrieving data. The International Classification of Diseases, Ninth Revision, Clinical Modification (ICD–9–CM) is a system for reporting diagnostic information and procedures performed in hospitals and other types of health care delivery systems.

The clinical modification to ICD–9 (that is, ICD–9–CM), was developed under the guidance of the National Center for Health Statistics (NCHS) to adapt the ICD–9 classification system to the needs of hospitals in North America. The modifications were intended to provide a mechanism to present a clinical picture of the patient. Thus, ICD–9–CM codes are more precise than those included in ICD–9 since greater precision is needed to describe the clinical picture of a patient than for statistical groupings and trend analysis.

Effective January 1979, after nearly two years of development by numerous national experts on clinical technical matters, the ICD–9–CM became the single classification system intended for use by hospitals in the United States. This system replaced several earlier related but somewhat dissimilar classification systems. Once the ICD–9–CM classification system was in place, several errors and omissions were noted. Consequently, in September 1980 a second edition of ICD–9–CM was published. The preface to the second edition noted that the continuous maintenance of ICD–9–CM is the responsibility of the Federal government. The preface also stated that no future modifications to ICD–9–CM would be made by the Federal government without considering the opinions of representatives of major users of the classification system.

In September 1985, the ICD–9–CM Coordination and Maintenance Committee was formed. This is a Federal inter-departmental committee charged with the mission of maintaining and updating the ICD–9–CM. This includes approving new coding changes, developing errata, addenda, and other modifications to the ICD–9–CM to reflect newly developed procedures and technologies and newly identified diseases. The Committee is also responsible for promoting the use of Federal and non-Federal educational programs and other communication techniques with a view toward standardizing coding applications and upgrading the quality of the classification system.

The Committee encourages participation in the above process by major health-related organizations. In this regard the Committee holds public meetings for discussion of educational issues and proposed coding changes. These meetings provide an opportunity for input into coding matters from representatives from recognized organizations in the coding fields, such as the American Medical Record Association, The American Hospital Association, and the Commission on Professional and Hospital Activities, as well as physicians, medical record administrators, and other members of the public. Considering the opinions expressed at the public meeting, the Committee formulates recommendations, which then must be approved by the co-chair agency heads (that, is, the Administrator of HCFA and the Director of NCHS) before adoption for general use.

Coding changes approved by the Committee and agency heads are published in the **Federal Register** and made available through the Government Printing Office (GPO). On August 29, 1986, a notice was published (51 FR 30914) that set forth all changes approved before July 1, 1986. (If needed, a comparable notice will be published this year.) A correction document was published on October 7, 1986 (51 FR 35693).

3. The Role of ProPAC in the Analysis of DRGs

The Prospective Payment Assessment Commission (ProPAC) is directed by section 1886(d)(4)(D) of the Act to make recommendations to the Secretary with respect to adjustments to the DRG classification weighting factors and to report to Congress with respect to its evaluation of any adjustments made by the Secretary. (ProPAC is also directed, by the provisions of section 1886 (e)(2) and (e)(3) of the Act, to make recommendations to the Secretary on the appropriate percentage change factor to be used in updating the average standardized amounts beginning with Federal FY 1986 and thereafter.) These recommendations are due to the Secretary no later than the first day of April before the beginning of each fiscal year. (Beginning in 1989, they will be due no later than the first day of March.) The statute requires that ProPAC, in making its recommendations, take into account changes in the hospital market basket, hospital productivity, technological and scientific advances, the quality of health care provided in hospitals, and long-term cost effectiveness in the provision of inpatient hospital services.

Under section 1886(e)(5) of the Act we are required to publish the annual report of ProPAC recommendations in conjunction with the statutorily mandated proposed rule setting forth the proposed update to standardized amounts and other changes to the prospective payment system for inpatient hospital services. In the preamble to that proposed rule, we discuss our responses to ProPAC's recommendations in detail. However, certain recommendations of the April 1, 1987 ProPAC report are specifically relevant to the changes in the DRG classification system proposed in this notice. In those cases, our primary responses are set forth in this notice (See section III, below) rather than in the separate proposed rule. See that rule for a reprint of ProPAC's recommendations and our other responses.

4. Publication of Notices on DRG Classification Changes

On June 10, 1985, we published a notice of proposed rulemaking (NPRM or proposed rule) in the **Federal Register** (50 FR 24366) to update the prospective payment system in general. As part of that NPRM, and as required by section 1886(d)(4)(C) of the Act, we proposed to adjust the DRG classifications and weighting factors for discharges beginning with Federal fiscal year (FY) 1986.

On September 3, 1985, we published a final rule in the **Federal Register** (50 FR 35646) concerning the prospective payment system. We included in that rule the classification changes proposed in the June 10 proposed rule as we had modified them in response to comments and suggestions we received on the NPRM. In that final rule, we also established by regulation, now codified as 42 CFR 412.10, that we would publish the proposed changes (except for new coverage decisions) in the DRG classification system for public comment

before implementing them. We also included some additional changes that followed the principles discussed in the proposed rule or that were similar to them. We indicated in the final rule that we could not address certain classification issues that were raised in the NPRM comment period for various reasons; we also noted that those comments would be analyzed and reviewed during the several months after publication of the September 3 final rule and that actions on them would be published in a notice early in 1986. Also, we solicited comments on any other proposed classification changes, and provided an address for such comments.

In keeping with that commitment, and in accordance with our regulations at § 412.10, the following year we published a proposed notice in the **Federal Register** on March 13, 1986 (51 FR 8762) and a final notice on June 3, 1986 (51 FR 20192). In those notices, we responded to comments received on the DRG classification system, discussed Medicare coverage changes affecting the DRG system, listed procedures for which new ICD–9–CM codes had been proposed, and proposed certain changes in the DRG classification system to resolve some of the problems identified by comments and our analysis up to that time.

Further classification changes, principally arising from recommendations made by ProPAC, were proposed on June 3, 1986 (51 FR 19970). A correction document was published on June 4, 1986 (51 FR 20435). These changes, as modified by comments and additional analysis, were finalized on September 3, 1986 (51 FR 31454). A correction document was published on October 1, 1986 (51 FR 34980).

5. Basic References on ICD–9–CM Coding and the DRG Classification System

ICD–9–CM is published as a three volume set:

Volume 1—Diseases: Tabular List
Volume 2—Diseases: Alphabetic Index
Volume 3—Procedures: Tabular List and Alphabetic Index

The three-volume set can be purchased from the GPO at a cost of $29.00 in paper, and $40.00 in hardback. In addition, the ICD–9–CM coding changes published August 29, 1986 are also available from the GPO. Copies can be obtained from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402. The ICD–9–CM revisions to become effective October 1, 1987, summarized later in this document, also will be available from the GPO this fall.

Health Systems International (HSI), under contract with HCFA, is responsible for updating and maintaining the GROUPER program and related documentation used in processing Medicare claims under the prospective payment system. The current DRG Definitions Manual may be purchased for $150.00 from HSI by writing to their office at 100 Broadway, New Haven, Connecticut 06511. The DRG Definitions Manual for FY 1988, which will include the changes proposed in this document as finalized in response to public comment, will be available in September, 1987 at a yet-to-be determined price.

The most recent list of DRGs, including their titles, relative weights, mean length of stay, and outlier thresholds, is that published in September 3, 1986 at 51 FR 31561. Due to the length and detail of that list, it is not feasible to reprint it here. However, for the convenience of the reader, we are providing the following list of the MDCs. By reference to this list, we are also able to simplify the later discussion by referring to each MDC by number alone.

Table I.—Major Diagnostic Categories

1	Diseases and Disorders of the Nervous System.
2	Diseases and Disorders of the Eye.
3	Diseases and Disorders of the Ear, Nose, and Throat.
4	Diseases and Disorders of the Respiratory System.
5	Diseases and Disorders of the Circulatory System.
6	Diseases and Disorders of the Digestive System.
7	Diseases and Disorders of the Hepatobiliary System and Pancreas.
8	Diseases and Disorders of the Musculoskeletal System and Connective Tissue.
9	Diseases and Disorders of the Skin, Subcutaneous Tissue and Breast.
10	Endocrine, Nutritional and Metabolic Diseases and Disorders.
11	Diseases and Disorders of the Kidney and Urinary Tract.
12	Diseases and Disorders of the Male Reproductive System.
13	Diseases and Disorders of the Female Reproductive System.
14	Pregnancy, Childbirth and Puerperium.
15	Newborns and Other Neonates With Conditions Originating in the Perinatal Period.
16	Diseases and Disorders of Blood and Blood Forming Organs and Immunological Disorders.
17	Myeloproliferative Diseases and Disorders, and Poorly Differentiated Neoplasms.
18	Infections and Parasitic Diseases (Systemic and Unspecified Sites).
19	Mental Diseases and Disorders.
20	Alcohol/Drug Use and Alcohol/Drug Induced Organic Mental Disorders.
21	Injuries, Poisonings and Toxic Effects of Drugs.
22	Burns.
23	Factors Influencing Health Status and Other Contacts With Health Services.

II. Public Comments

In addition to the opportunity for public comment afforded by publications of notices such as this, we maintain an address for public comments and suggestions year-round. Specific questions concerning the DRG classification system and suggestions for DRG changes should be addressed to: HCFA, Grouper Changes, P.O. Box 26681, Baltimore, Maryland 21207.

Comments that we have received through this address since publication of the June 3, 1986 notice have been considered in analyzing the issues discussed below.

III. 1987 ProPAC Recommendations Discussed in this Notice

On April 1, 1987, ProPAC issued its third annual Report and Recommendations to the Secretary of the U.S. Department of Health and Human Services. Certain recommendations of that report dealt with issues of patient and DRG classification that are relevant to this notice. Although our responses to ProPAC's recommendations generally may be found in the separately published proposed rule on changes to the prospective payment system, these particular recommendations are more appropriately responded to in this document.

A summary of these ProPAC recommendations follows, with an indication after each summary of the section of this notice in which our response to that recommendation may be found.

• Recommendation 21: The Use of Patient Age in Defining DRGs.

DRGs should not be defined based on the current variable of age greater than 69 and/or presence of a complication or comorbidity (CC). The commission believes that the resource use for Medicare patients 70 years or older without a CC is significantly lower than for cases with CCs. DRGs should be defined on the basis of the presence or absence of a CC, regardless of age. The Secretary should implement this change for DRGs that currently split on age and

CC, and should determine whether other DRGs should also be split on CC.

—See section V.A. for how we propose to implement this recommendation.

• *Recommendation 22: Improving the Use of Complications and Comorbidities in Defining DRGs.*

The Secretary should revise the current list of complications and comorbidities, and its use in defining DRGs, to ensure more appropriate grouping of Medicare cases for payment under the prospective payment system. The Secretary should evaluate several possible approaches, including the development of Major Diagnostic Category (MDC)- or DRG-specific CCs on the basis of resource intensity, and the specification of levels of complexity among the CCs.

—See section V.B. for our initial proposals to improve the use of CCs.

• *Recommendation 24: Improving GROUPER Logic and ICD–9–CM Coding.*

The Secretary should develop and implement changes to ICD–9–CM and the use of these codes by the DRG GROUPER. Specifically, the Secretary should evaluate how the GROUPER recognizes ICD–9–CM guidelines and make revisions where necessary to ensure more accurate DRG assignment. More consistant coding guidelines should be developed for the selection of principal diagnosis and sequencing of other diagnoses. Further, noted deficiencies in the ICD–9–CM coding system should be addressed in the next revision (ICD–10). Finally, the Secretary should review all the codes in Chapter 16 of the coding system to establish consistent coding rules and guidelines and help ensure more appropriate DRG assignment.

—We agree that consistent and appropriate ICD–9–CM coding is essential for accurate DRG classification of cases, and believe the ICD–9–CM Coordination and Maintenance Committee should address the particular concerns raised by ProPAC. To date, however, development and dissemination of coding guidelines have been handled by the hospital industry. We have been striving to improve the quality of coding in the health care system through the Coordination and Maintenance Committee, review of bills by PROs, and liaison with the coding industry.

A number of the proposals discussed below, such as refinement of the treatment of CCs, would improve the GROUPER logic with respect to coding practices. However, the level of refinement apparently contemplated in the ProPAC recommendation will not be easily or quickly achieved, dependent as it is on developing consensus on associated guidelines, conventions, and practices among experts, the industry and payers such as us. Nonetheless, we continue to devote resources to making needed improvement, and we encourage specific suggestions for improvements. Those suggestions may be submitted to the address in section II, above, or to both of the following addresses:

Ms. Sue Meads, National Center for Health Statistics, Room 2–19 Center Building, 3700 East-West Highway, Hyattsville, Maryland 20782

Ms Patricia Brooks, Health Care Financing Administration, Bureau of Data Management and Strategy, Room G–A–2 Meadows East Building, 6325 Security Boulevard, Baltimore, Maryland 21207

• *Recommendation 25: Temporary DRG for the Implantable Defibrillator*

Implantable defibrillator cases should be assigned to a new, temporary, device-specific DRG.

—See sections IV.C.6. for our alternative proposal for temporary assignment of these cases.

• *Recommendation 26: Temporary DRG for the Cochlear Implant*

Cochlear implant cases should be assigned to a temporary, device-specific DRG.

—See section IV.A. for our reasons for not accepting this recommendation.

IV. Discussion of Comments Affecting a Particular MDC

A. MDC 3

As noted in Recommendation 26, ProPAC is concerned that classification of cochlear implant cases into DRG 49 (Major Head and Neck Procedures) is inappropriate, both in terms of resource consumption and clinical coherence. ProPAC believes that assigning cochlear implant cases to a new, temporary DRG for 3 years would allow HCFA and ProPAC to better evaluate the costs of cochlear implants and payments to hospitals.

We agree that cochlear implant cases are not clinically coherent with other cases assigned to DRG 49. As ProPAC correctly reported, the kinds of resource use associated with major head and neck procedures is significantly different from cochlear implant cases. However, based on the only Medicare data available to date, there would be no material difference in the weighting factors for a new cochlear implant DRG and for the existing DRG 49. That is, the FY 87 early PATBILL data showed less than a six hundred dollar difference (5 percent) in the average standardized charges (hereafter referred to simply as average charges) between cochlear implant cases and the other cases in DRG 49. In addition, we find no merit to the allegation that the establishment of a new DRG would facilitate evaluation of the cochlear implant issue. Three unique ICD–9 CM codes for cochlear implant procedures were approved and became effective October 1, 1986. These procedure codes can be tracked and data evaluated just as easily, regardless of whether the case showing these codes are in DRG 49 or some other new DRG.

Finally, there have not as yet been enough Medicare claims to allow us to calculate a statistically meaningful weighting factor. Consequently, we are not adopting this ProPAC recommendation at this time. We will continue to evaluate the issue as more Medicare data become available. We will further consider ProPAC's recommendation for the FY 1989 classification changes.

B. MDC 4

We have received several comments that payments under the DRG classification system have failed to recognize the higher costs of patients that require mechanical ventilation. Further, there have been numerous comments that current coding guidelines for coding respiratory failure result in many severely ill patients requiring mechanical ventilation being classified into inappropriately low-weighted DRGs throughout MDC 4. This dispersion of such resource-intensive cases over several DRGs tends to dilute the impact of mechanical ventilation on the average resource utilization of patients with respiratory diseases.

In reviewing the FY 1985 PATBILL data, we found that cases involving mechanical ventilation had average charges that were 2 to 10 times the average charge for other patients in the same DRG for each DRG of MDC 4. Although there were substantial differences in the average charge of ventilator dependent patients between the DRGs evaluated, these differences are minimal in comparison to the differences between the average charge for ventilated patents as compared to non-ventilated patients in each DRG in MDC 4.

In further evaluating the cases requiring ventilation, we noted a significant difference in use of resources between those patients for whom ventilator access was achieved through endotrachial intubation as opposed to tracheostomy The average charge for cases involving tracheostomies was

three times the average charge for other ventilator cases. Our medical consultants speculate that this relates primarily to ventilator time as opposed to actual resource difference associated with creating access. That is, in patients expected to be ventilated for extended periods of time, tracheostomy is the preferred access due to irritations of the larynx frequently caused by prolonged endotracheal intubation.

We believe it is appropriate for the DRG classification system to recognize the higher resources associated with mechanical ventilation of patients with a principal diagnosis of diseases and disorders of the respiratory system. Further, we wish to recognize the significant difference in use of resources in ventilator cases related to access. Consequently, we are proposing to create two new DRGs for MDC 4. Cases presenting a principal diagnosis in MDC 4 and one of the tracheostomy procedure codes (31.1, Temporary tracheostomy, 31.21, Mediastinal tracheostomy, 31.29, Other permanent tracheostomy) would be assigned to new DRG 474. This DRG would be ordered above all other DRGs in MDC 4, including the surgical DRGs.

Procedure code 31.1, Temporary tracheostomy, would remain a non-OR procedure. We recognize this is somewhat inconsistent with the general framework of the DRG classification system with respect to the commingling of surgical and medical cases. However, in this instance the tracheostomy procedure codes serve as a proxy for data that are not currently available through the Medicare claim form; that is, time of ventilation. We believe it is appropriate, in this case, for the DRG classification system to recognize this highly resource-intensive procedure regardless of whether the patient was otherwise treated surgically or not.

We are also proposing to create a new DRG for cases involving mechanical ventilation through endotrachial intubation. A new medical DRG, 475, would be established for cases presenting a principal diagnosis assigned to MDC 4 and showing both of non-OR procedure codes 93.92, Other mechanical assistance to respiration, and 96.04, Insertion of endotrachial tube.

The majority of cases involving surgery for respiratory diagnosis are routinely intubated endotrachially, if only on a prophylactic basis. This procedure is considered a part of the surgery and is not normally coded. However, the weighting factor for surgical DRGs already account for the resources involved in intubating the patients. The new DRG 475 is intended to recognize the resources associated with mechanical ventilation of non surgical cases. Such ventilation is likely to be of a longer duration than surgical or post surgical intubation and therefore, may be more resource intensive. Consequently, the GROUPER logic will assign cases to DRG 475 only if no surgical procedure is performed.

We expect that the weighting factors for both of the new proposed DRGs would be quite high. We are somewhat concerned with the impact of this change on quality of care, physician practice patterns and medical coding. We intend that in the future Utilization and Quality Control Peer Review Organizations (PROs) will be targeting DRGs 474 and 475 for review to assure that no Medicare patients are subjected to unnecessary procedures in order for hospitals to obtain increased payment. Finally, we wish to emphasize that we view creation of these DRGs as an interim measure. We intend to continue to monitor this issue, consider necessary coding refinements, and further evaluate ventilator cases across other MDCs.

C. MDC 5

1. Major Vessel Resection with Replacement

Procedure codes 38.46, Abdominal artery resection with replacement, 38.47, Abdominal vein resection with replacement and 38.48, Lower limb artery resection with replacement, are currently classified to DRG 112, Vascular Procedures Except Major Reconstruction Without Pump, for patients with a principal diagnosis of circulatory disorders. Our medical consultants have advised us that these procedures are similar, from both clinical and resource perspectives, to procedures coded 38.36, Abdominal artery resection with anastomosis, 38.37 Abdominal vein resection with anastomosis, and 38.38, Lower limb artery resection with anastomosis. Therefore, these procedures should be treated similarly by the DRG classification system.

Data analysis supports our physician consultants recommendation and further shows that the resources associated with the procedure are more closely related to DRGs 110 and 111, Major Reconstruction Vascular Procedure Without Pump, Age 69 and/or CC and Age Under 70 without CC, respectively. Consequently, we propose to assign procedure codes 38.46, 38.47, and 38.48 to DRGs 110 and 111 and remove them from DRG 112.

2. Malignant Hypertension

One commenter noted that malignant and benign types of hypertension diseases are classified into a single DRG, 134, Hypertension. The commenter alleges that patients with malignant hypertension are more severely ill and require much more resources to treat.

To evaluate this commenter's hypothesis, we pulled all cases with a principal diagnosis of some form of malignant hypertension from DRG 134 (diagnosis codes 401.0, 402.00, 404.0, 405.01, and 405.09). We found 28 percent of the cases in DRG 134 involved malignant hypertension. However, the average charge for such cases was only slightly higher (7 percent) than the average charge for all cases in DRG 134. Based on such minimal differences in resources, we find no basis for reclassification of malignant hypertension.

3. Acute myocardial infarction

Two issues have been raised with respect to the acute myocardial infarction (AMI) DRGs (121, 122, and 123). First, several commenters noted that while other circulatory disorder DRGs have been split to recognize cardiac catheterization and angiography, the AMI cases are not. The commenters stated that this results in systematic underpayments on AMI cases involving cardiac catheterization. Other commenters noted that the organization of the AMI cases recognizes cardiovascular complications only. One commenter believes any secondary diagnosis on the list of CCs should affect classification of AMI cases.

In evaluating these issues, we used data from the 1985 PATBILL file for all cases assigned to DRGs 121, 122, and 123. With respect to the catheterization issue, we found that such cases were in fact more expensive than the mean charge for each of the AMI DRGs. However, the number of cardiac catheterization cases in each DRG is small, comprising only 5, 9, and 3 percent of DRGs 121, 122, and 123, respectively. Similarly, we found support for the commenter's hypothesis that presence of CCs, other than those diagnoses considered cardiovascular complications, increased use of hospital resources. The average charge for cases presenting non-cardiovascular complication were 11, 14, and 31 percent higher than the mean charges for DRGs 121, 122, and 123, respectively.

Although both comments have noted issues that merit further consideration, we are not proposing DRG classification changes at this time. We do not believe it is appropriate or necessary to maintain nine DRGs for AMI cases. Further, we note that due to the ICD-9-

CM guidelines, many cases reported with AMI diagnoses do not represent cases of current, documented myocardial infarction. That is, coding guidelines permit coding of AMI in cases in which a patient has had an infarction within eight weeks, or in which an AMI is the suspected diagnosis. Rather than act hastily in establishing a multitude of AMI DRGs to respond to co-occurrences that appear to influence use of resources in AMI cases, we believe the most justifiable action at this time is to work with the ICD–9–CM user community to develop more specific guidelines for use of AMI diagnoses codes. We also intend to continue our analysis of this issue with the expectation of developing a classification methodology that would capture the factors that significantly contribute to resource utilization in AMI cases without increasing the number of DRGs significantly.

4. Adding a CC to DRG 124

For assignment to DRG 124, Circulatory Disorders Except AMI with Cardiac Catheterization and Complex Diagnosis, patients must present one or more complex cardiac diagnoses. Presently, congestive heart failure and left heart failure are considered complex diagnoses. However, Heart failure, unspecified, diagnosis code 428.9, is not.

Our medical consultants have advised us that both specific and non-specific heart failure are complex diagnoses. In this regard, we note that Heart failure, not otherwise specified (NOS) is already considered a significant complication in MDC 5 with respect to AMI patients assigned to DRG 121. Thus, we propose to add diagnosis code 428.9 to the diagnoses included in DRG 124.

5. Pacemakers

In its April 1986 report, ProPAC had recommended that separate DRGs be created for single chamber pacemakers and dual chamber or functionally similar devices. In response to ProPAC's recommendation, we stated that ICD–9–CM procedure coding in use at that time did not permit implementation of the recommendation, nor did it provide enough information to allow for in-depth evaluation of the proposal. However, we did revise the classification scheme related to pacemaker pulse generator replacements. Further, we stated that we would be working toward modification of the ICD–9–CM procedure codes so that they may more accurately identify pacemaker procedures. We also promised to seek data to evaluate the need for classification changes in the pacemaker DRGs (115 through 118).

New ICD–9–CM procedure codes have been recommended by the ICD–9–CM Coordination and Maintenance Committee and approved for use effective October 1, 1987. These codes are presented in section VI. D. below. The use of these new codes will assure ongoing data collection on pacemakers by type of device and will allow for future modification of the DRG classification system, if necessary, to take into account significant differences in pacemaker devices.

With respect to data analysis, we were able to differentiate a sample of PATBILL claims data by type of pacemaker device through cross-matching with data on the pacemaker registry file. Like ProPAC, we found the average charge for dual chamber pacemaker implants was approximately $2,000 higher than single chamber cases. However, we found the percentage of the Medicare beneficiary population receiving dual chamber devices to be substantially smaller (14 percent) than that estimated by ProPAC (25 percent).

Although we found a substantial difference in the mean charges when we separated pacemaker cases by type of device, we noted little to no improvement in the coefficient of variation in the reconfigured DRGs. We believe this to be related to the fact that there is a broad continuum of pacemaker device charges. That is, there is a large range of charges for both single and dual chamber devices, with the charges for the more expensive single chamber devices being very similar to the less expensive dual chamber devices.

We also evaluated patient characteristic information available through Medicare claims forms to attempt to identify whether there were any indications that course of care differed materially between the two types of devices. We concluded that none of the variables studies (for example, complications, comorbidity, discharge status) differed significantly between the two groups of patients.

Consequently, we are not proposing classification changes in the pacemaker DRGs at this time. Given the broad continuum of charges for pacemaker devices, there would be little to no improvement in the coefficient of variation in the pacemaker DRGs if they were reconfigured. The concern that prompted ProPAC's past recommendation to sub-divide the pacemaker DRGs was the fear that the payment scheme would provide an incentive to utilize incentive to furnish substandard care; that is, use single chamber devices in lieu of dual chamber devices. Given that the amount of variation in charges is not materially different under the suggested reconfiguration, this same degree of incentive to provide substandard care, if it exists at all, would remain under the reclassification. That is, the reclassification could be viewed by some hospitals as an incentive to utilize inexpensive devices of presumably poorer quality. This could potentially result in increased program costs through more replacement procedures and present a hardship upon beneficiaries, if the less expensive devices proved to be of poorer quality.

We should point out that ProPAC also further evaluated the pacemaker DRGs. Upon further analysis, it also noted the broad continuum of charges for pacemaker devices, and that due to group purchasing, volume discounts, variable mark-up, etc., it was difficult to ascertain the cost of various pacemaker devices. ProPAC voted to continue analysis of the pacemaker issue and to temporarily delay further recommendations in this regard.

6. Defibrillators

In Recommendation 25 of its April 1987 report to the Secretary, ProPAC has restated its previous recommendation that automatic implantable cardioverter defibrillator (AICD) cases be assigned to a unique DRG. In its discussion concerning this issue, ProPAC again noted that cardioverter defibrillator implants were not clinically consistent with other cases assigned to DRG 104, Cardiac Valve Procedure With Pump and With Cardiac Catheterization. They also expressed some concerns that DRG 104 assignment of AICD cases may result in excessive payments to hospitals.

In addition, during 1986 "An Analysis of the Inpatient Hospital Costs and Charges Associated with Implantation of the Automatic Implantable Cardioverter Defibrillator" was conducted under contract by the AICD manufacturer. This study concluded that payment at DRG 104 for initial implants was appropriate, but that assignment to DRG 117 for replacement procedures results in inappropriately low payments. Further, the study concluded that a separate DRG may be indicated for cases involving other concurrent surgery or electrophysiologic studies.

New unique ICD–9–CM procedure codes for AICD implants became effective October 1, 1986. Consequently, we were able to search early PATBILL data for information pertaining to Medicare utilization and costs. We found a significant difference in charges

for AICD cases. AICD implants involving cardiac catheterization (and, presumably, electrophysiological studies) during the same admission as the implantation showed charges that were more than twice as high as charges for implants without catheterization. Moreover, AICD replacements showed charges 47 percent lower than initial implants without catheterization and 74 percent lower than initial implants involving catheterization.

There is merit to ProPAC's concern that AICD cases are not clinically consistent with other cases assigned to DRG 104. There also appears to be merit to their concern that DRG 104 results in excess payments for AICD total system implants. That is, the average charge for AICD initial implants in our PATBILL file was approximately 24 percent lower than the average charge for DRG 104. However, given the large degree of variation in charges for AICD implants, we do not believe it is appropriate to assign these cases to a single new DRG. Further, given the minimal number of AICD cases, we consider it inappropriate to create multiple new DRGs.

Instead, we propose to alter somewhat the current classification of AICD cases. Our data show that AICD total system implants with cardiac catheterization procedure codes were very similar in charges to DRG 104 cases. Thus, we propose to continue to assign such cases to this DRG. However, those AICD cases without catheterization, for which electrophysiological testing was presumably performed prior to the admission involving the implant, were significantly less expensive. We believe it is appropriate to allow the otherwise applicable GROUPER logic for the DRG pair 104/105 to take place. That is, AICD total system implants will be classified differently in recognition of cardiac catheterization procedures just as are all other surgical procedures assigned to DRG 104. Consequently, we propose to assign AICD total system implant cases without cardiac catheterization to DRG 105.

Further, we found that classification of AICD replacements to DRG 117 does, as the manufacturer's study alleges, result in significant underpayment. AICD replacement procedures were, on average, 98 percent higher than the average case assigned to DRG 117 in our data file. We believe DRG 120 is the most appropriate classification in MDC 5, from both clinical and resource use perspectives. Therefore, we propose to assign procedure codes 37.95 through 37.98, implant or replacement of cardiodefibrillator leads or generator, to DRG 120 and remove them from DRG 117.

We must emphasize that this proposed reclassification of AICD cases is solely an interim measure. The data used in evaluating this issue were minimal. We will continue to monitor Medicare payment for AICD implants and further evaluate the issue as more data become available.

D. MDC 6

1. Reassignment of Ulcer Diagnosis Code

Diagnosis code 531.70, Chronic gastric ulcer without mention of hemorrhage, perforation or obstruction, is presently assigned to DRG 176, Complicated Peptic Ulcer. However, all other diagnoses assigned to this DRG report findings of either perforation, obstruction, or both. Further, other types of peptic ulcer diagnoses presenting neither perforation nor obstruction have been assigned to DRGs 177 and 178, uncomplicated peptic ulcer.

Based on the advice of our medical consultants, we propose to remove diagnosis code 531.70 from DRG 176 and reassign it to DRGs 177 and 178. This change would improve the clinical consistency of the DRGs in MDC 6.

2. No Change in the Classification of Bowel Procedures

We received several letters alleging that there are problems in the classification of major small and large bowel procedures, DRGs 148 and 149. None of the commenters noted specific types of cases or procedures that seemed to be causing problems, nor did they recommend changes.

We began our evaluation of this issue by looking at general statistical data on the DRGs. Both of the DRGs showed a coefficient of variation similar to the mean for the DRG classification structure. In fact, DRG 149 presents substantially less variation than is typical of the DRGs generally. However, given the interest in this DRG pair, we decided to study the issue in more detail.

Noting that there are 57 different procedures assigned to this DRG, we suspected that there might be significant differences in resources associated by procedure types. We gathered data on freguency, mean charges, average length of stay, and statistical measures of variation for each procedure by patient sex. We found that 77 percent of the cases in DRG 148 were accounted for by only 13 different procedures. Further, 2 procedures, 45.73, Right hemicolectomy, and 45.76, Sigmoidectomy, accounted for 43 percent of the cases in this DRG. Thus, the mean charge for the DRG is substantially influenced by the resources associated with these procedures.

In further evaluating mean charges for the most frequently occurring procedures, we found all but 2 procedures fell within 20 percent of the mean charge for the DRG. Those two procedures accounted for only 11 percent of the cases in DRG 148 and only 7 percent of those in DRG 149. Without further specific information from commenters identifying more precisely what classification changes they believe are necessary, we can only conclude that the problems being experienced by the commenters are arising from isolated high cost cases or from practice patterns that are idiosyncratic to a particular area. National data indicate no significant classification problems in the major bowel procedures DRGs.

E. MDC 8

1. Hamartoma

Diagnosis code 759.6, Hamartoma, is a non-neoplastic tissue overgrowth. Presently, this code is assigned to MDC 17, Myeloproliferative and poorly differentiated neoplasms. Since hamartoma is non-neoplastic, we believe such classification is not clinically consistent. We propose to remove the code from MDC 17, DRGs 406, 407, 408, 413 and 414, and to add this diagnosis to MDC 8. When treated medically, hamartoma would be assigned to DRG 256, Other Musculoskeletal System and Connective Tissue Diagnoses. When surgical intervention is necessary for this diagnosis, we would expect procedure code 32.29, Other local excision or destruction of lesion or tissue of lung, to be reported. Thus, we are also proposing to add procedure code 32.29 to DRGs 233 and 234, Other musculoskeletal and connective tissue procedures, in order to avoid inappropriate assignment to DRG 468.

2. Certain femur procedures

Procedure code 79.95, Unspecified operation on femur bone injury, is currently assigned to DRGs 218 through 220. However, the titles of these DRGs specifically exclude hip, foot and femur procedures. Consequently, for clinical consistency, we are proposing to reassign the procedure to DRGs 210 through 212, Hip and Femur Procedures Except Major Joint. However, we should point out that code 79.95 is an extremely vague classification category. We

anticipate that it would be unusual for the medical record to fail to specify the procedure performed.

F. MDC 9

1. Cellulitis of finger, toe, and digit

DRGs 263 and 264 (Skin Grafts and/or Debridement of Ulcer or Cellulitis; Age Greater than 69 and/or CC, and Age Under 70 without CC, respectively) are assigned when a patient has a principal diagnosis of cellulitis or skin ulcer that is treated with wound debridement or skin graft. We noted that cellulitis of the finger, toe, and digit had inadvertently been omitted from the diagnoses assigned to DRGs 263 and 264. Further, our medical consultants have advised us that onychia of the finger and toe, as well as felon, are forms of cellulitis that may in certain situations appropriately be treated with debridement or skin graft. Consequently, we are proposing to add the following diagnoses to the list of principal diagnoses that may result in assignment to DRGs 263 and 264.

681.00 Cellulitis and abscess of finger, unspecified
681.01 Felon
681.02 Onychia and paronychia of finger
681.10 Cellulitis and abscess of toe, unspecified
681.11 Onychia and paronychia of toe
681.9 Cellulitis and abscess of unspecified digit

2. Infected abrasion or friction burn of face, neck, and scalp

Diagnosis code 910.1, Abrasion or friction burn of face, neck, and scalp except eye, infected, is currently assigned to DRGs 280 through 282 (Trauma to the Skin, Subcutaneous Tissue and Breast; Age Greater Than 69 and/or CC, Age 18–69 Without CC, and age 0–17, respectively). Other diagnosis codes for infected skin conditions have been assigned to DRGs 277 through 279 (Cellulitis, Age Greater Than 69 and/or CC, Age 18–69 Without CC, and Age 0–17, respectively). We believe it is appropriate to assign diagnosis code 910.1 to DRGs 277–279 along with other diagnoses for infections. We are proposing to remove the code from DRGs 280–283.

G. MDC 11

Diagnosis code 581.9, Nephrotic syndrome with unspecified pathological lesion in kidney, is currently assigned to DRGs 325 through 327, Kidney and Urinary Signs and Symptoms. However, all other diagnosis codes for nephrotic syndrome, 581.0 through 581.39, are assigned to DRGs 331 through 333, Other Kidney and Urinary Tract Diagnoses. Although code 581.9 is non-specific, we do not believe it is appropriately classified as a sign or symptom. Therefore, we propose to remove it from DRGs 325–327 and place it in DRGs 331–333.

H. MDC 18

Diagnosis code 785.59, Shock without mention of trauma, not elsewhere classified, is currently assigned to MDC 5 with unspecified shock and cardiogenic shock. However, based on ICD–9–CM coding guidelines and indexing, this code primarily is used to report shock arising from infectious diseases. For example, coding instructions provide for reporting of this code for endotoxic shock, gram negative shock, and septic shock. Given that most cases reporting this diagnosis do not present diseases and disorders of the circulatory system, we propose to remove code 785.59 from MDC 5 and reassign the condition to MDC 18. Non-surgical cases will be classified into DRGs 416 and 417, Septicemia.

I. MDC 20

1. Refinement of alcohol/drug DRGs

When the DRG classification system initially came into use under the prospective payment system, there was concern that the organization of the DRGs for alcohol and drug use was inappropriate. We agreed to temporarily exclude alcohol/drug hospitals and units while we studied the issue further. In the September 3, 1985 **Federal Register**, we modified the DRG classification of alcohol/drug cases.

Although there was general consensus that the revised alcohol/drug DRGs were an improvement over the original classification scheme, there remained concern with the classification. Commenters noted coding difficulties and questioned the completeness of the rehabilitation and detoxification procedure data used to set the weighting factors. The Alcohol, Drug Abuse and Mental Health Administration (ADAMHA) conducted an independent study of the DRG classification issue. The evaluation process involved selecting a sample of claims and reabstracting the data to assure claims were coded in accordance with current guidelines. Based on its analysis, ADAMHA recommended further refinement in the structure of the DRGs to distinguish between patients with CCs not related to MDC 20, and patients presenting only MDC 20 diagnoses. Using the FY 1985 and FY 1986 PATBILL files, we modeled the reconfigurations suggested by ADAMHA's research and have concluded that further DRG classification changes are appropriate. Alcohol/drug hospitals and units have been excluded from the prospective payment system while we and ADAMHA studied the appropriateness of the alcohol/drug DRGs. However, their exclusion is expected to expire at the end of this cycle of cost reporting periods. That is, under current regulations, formerly excluded alcohol/drug hospitals and units will begin to enter the prospective payment system, and be paid under the appropriate DRGs, effective with cost reporting periods beginning on or after October 1, 1987. Because of the importance of this change, details on the proposed reclassification of the DRGs in MDC 20 have been included in the separate proposed rule setting forth the FY 1988 changes for the prospective payment system, rather than this notice.

2 Addition of drug diagnoses to CC list

Most drug abuse and dependency diagnoses are currently included on the list of CCs. However, we noted that several diagnoses, such as those involving cocaine, hallucinogens, and unspecified drugs, have been omitted from the listing. We believe that abuse of or dependence on these drugs, as with those currently included on the CC list, would alter the course of care when present in a patient with a principal diagnosis not related to alcohol or drug abuse or dependency. Consequently, we propose to add the following diagnoses to the list of CCs.

304.20 Cocaine dependency, unspecified
304.21 Cocaine dependency, continuous
304.22 Cocaine dependency, episodic
304.50 Hallucinogen dependency, unspecified
304.51 Hallucinogen dependency, continuous
304.52 Hallucinogen dependency, episodic
304.60 Drug dependency, not elsewhere classified, unspecified
304.61 Drug dependency, not elsewhere classified, continuous
304.62 Drug dependency, not elsewhere classified, episodic
305.30 Hallucinogen abuse, unspecified
305.31 Hallucinogen abuse, continuous
305.32 Hallucinogen abuse, episodic
305.60 Cocaine abuse, unspecified
305.61 Cocaine abuse, continuous
305.62 Cocaine abuse, episodic
305.90 Drug abuse, not elsewhere classified, unspecified
305.91 Drug abuse, not elsewhere classified, continuous
305.92 Drug abuse, not elsewhere classified, episodic

V. Proposed Changes Affecting Multiple MDCs

A. Elimination of Age Over 69

As noted above, age is one of the demographic factors used to classify cases into DRGs. Presently there are 92 sets of paired DRGs that are distinquished by age greater than 69 and/or the presence of CCs. This distinction based on age was incorporated originally into the DRG classification system because, on average, relative resource use increases with patient age. It has since been suggested, however, that the age of the patient may not be a good indicator of resource utilization because the proportion of patients with complications or comorbidities rises with age group, and that it is the presence of CCs, rather than age, that explains the relatively greater resource intensity of older patients compared to younger ones.

Evidence to support this hypothesis just arose when we conducted an analysis in preparation for restructuring the leukemia/lymphoma DRGs (401–404), which was discussed in the June 3, 1986 proposed rule. Once we removed acute leukemia cases from other leukemias and lymphomas, we found that cases split into groups based only on the presence or absence of CCs, without regard to age, were more homogeneous than cases in groups based on age and/or CC. In addition, the two DRGs in each pair, when partitioned only on the basis of CCs, were more different from each other than were the two DRGs in each pair when split on age over 69 and/or CC. Accordingly, we eliminated age from consideration in the restructuring of DRGs 401–404, and decided to evaluate the effects of eliminating age from consideration in all other DRG pairs. (Note: references to elimination of age breaks are only to breaks of over or under age 70, and do not imply the elimination of pediatric DRGs for patients under age 18.)

We conducted an analysis of the effect of eliminating age over 69 as a determining factor in DRG classification using FY 85 PATBILL data. Overall, the results confirmed our findings with the leukemia/lymphoma DRGs. We found a substantial improvement in the homogeneity, as measured by the coefficient of variation, for a significant number of DRGs. Some DRG pairs showed more variation when age was eliminated. Overall, elimination of age, when weighted for case frequency, reduced the variation in the paired DRGs by 3 percent. Moreover, the difference between mean charges for the two DRGs in virtually every pair widened. Generally, the ratio of charges for each DRG with CCs to charges for the same DRG without CCs increased when age was eliminated. The average increase in the ratio was .13. These results suggest that it takes little or no more resources to treat an otherwise healthy person over age 69 than to treat a person under age 70; and, further, that commingling otherwise healthy patients over age 69 with patients presenting significant complications and comorbidities serves to depress the average charges for the DRGs involving CCs, resulting in underpayment for cases presenting CCs.

ProPAC also studied this issue as part of its systematic analysis of the DRGs conducted this year. Their study found that, in all but a few cases, grouping patients who are over 69 with the CC patients is inappropriate. They found the average length of stay and charges for patients who are over 69 without a CC are more similar to other patients without a CC than to patients with a CC. Overall, the average charges for patients who are over 69 without a CC, while only 4 percent higher than the other non-CC patients, are 30 percent lower than charges for all patients with a CC.

ProPAC concluded that, while both advanced age and the presence of a CC clearly are associated with higher resource use, the effect of having a CC is much greater. Their findings hold for both medical and surgical DRGs, but are especially dramatic for the surgical DRGs. Based on our findings and those of ProPAC, we propose to eliminate age over 69 as a criterion for DRG classification. We propose to continue to consider age under 18 in those pediatric DRGs that already have been established and to consider age 35 in the diabetic DRGs (294 and 295). Thus, this proposed change would not alter the total number of DRGs. We wish to point out that our analysis and conclusions regarding consideration of age over 69 in the DRG classification system is based solely on Medicare patient data. It is possible that age may be an appropriate demographic factor to consider for classification purposes on other populations.

B. Refinement of Complications and Comorbidities Listing

Currently, there is a standard list of diagnoses that are considered complications and comorbidities regardless of the patient's principal diagnosis. This list includes approximately 2,700 diagnoses that were considered to increase the length of stay by at least one day for at least 75 percent of the patients. However, there are a number of diagnoses that are appropriately included on the CC list in that they alter the course of care for 75 percent of the cases but will not have any effect on treatment of other cases. In fact, in some cases it is expected that a diagnosis which is on the CC listing will almost always co-exist with certain other diagnoses.

Despite the fact that in as many as 25 percent of the cases a particular diagnosis may not alter the course of care, the DRG classification system was developed with a single general CC listing. This principle of the classification system has received some criticism and is being studied by both ProPAC and HCFA. Both organizations believe some refinement of the CC listing is appropriate. (See ProPAC Recommendation 22.)

With the proposed elimination of age over 69 as a criterion for DRG classification, we are concerned that there may be an incentive for hospitals to inappropriately report secondary diagnoses in order to maximize payment. We do not wish the DRG classification system to adversely affect the quality of medical coding and data reported by providing an incentive to duplicatively code the same or very similar diagnosis.

For nearly every diagnosis there are a number of related signs and symptoms that frequently accompany that diagnosis. For example:

- A patient with a principal diagnosis of code 345.1, General convulsive epilepsy, could nearly always have diagnosis code 780.3, Convulsions;
- A patient with a principal diagnosis of code 852.06, Subarachnoid hematoma—deep coma, could also show code 780.0, Coma and stupor; and
- A patient with a diagnosis of 958.5, Traumatic anuria, could also present code 788.2, Retention of urine.

We are concerned that such duplicate coding would ultimately result in a vast majority of cases being classified into the higher paying DRG of each DRG pair. Such a practice would result in a masking of resource utilization with the treating of true complications and comorbidities. Upon annual recalibration of the DRGs, this would be likely to result in severe underpayments for more resource intensive cases.

Consequently, we propose to modify the GROUPER logic so that certain diagnoses generally included on the list of CCs would not be considered a valid CC in combination with a particular principal diagnosis. This is similar to the

changes we will be proposing in the alcohol/drug reclassification in MDC 20 (to be discussed in the separate proposed rule on prospective payment system changes), but on a much more restricted scale. With the assistance of our medical consultants, an individual determination has been made for each ICD–9–CM diagnosis code to identify those other diagnoses that should not be considered as a CC for a particular principal diagnosis. We believe this proposed logic change will not only ensure that combinations of codes will result in appropriate classification of cases between the complicated and uncomplicated DRGs in a pair, but will also act to improve the quality of medical coding.

Since a unique set of exclusionary codes has been developed for each ICD–9–CM diagnosis code, the list is extremely voluminous. Therefore, we have not printed the entire listing in this notice. We have, however, attempted to secure clinical input from sources outside of HCFA. Readers who feel the complete listing is essential in order to comment on the proposal may examine the document at our offices (see addresses above) or obtain the document for the cost of photocopying ($71.10), by writing to the address listed in section II of this notice.

We wish to make it clear that the exclusion of diagnoses from the CC list for a particular principal diagnosis is intended solely to limit duplicate coding of particular or related conditions or to act as an edit for erroneous coding by not considering codes for diagnoses that cannot co-exist as CCs, such as obstructed and unobstructed conditions. For the most part, existing coding guidelines have been followed in developing the exclusions. Further, it should be noted that hospitals are free to continue to report related diagnoses on the Medicare billing form regardless of the fact that those diagnoses would not be considered as a CC for a particular principal diagnosis. Generally, the excluded secondary diagnoses have been established using the following principles:

1. Chronic and acute manifestations of the same condition should not be coded in a single case. For example:

- Acute peptic ulcer would not be a CC for a principal diagnosis of chronic peptic ulcer;
- Acute pericarditis, not otherwise specified (NOS), would not be a CC for a principal diagnosis of chronic rheumatic pericarditis; and
- Acute gastritis would not be a CC for a principal diagnosis of alcoholic gastritis.

- 2. Specific and non-specific (that is, NOS) diagnosis codes for a condition should not be coded in a single case. For example:
- Vocal cord paralysis, NOS would not be a CC for vocal paralysis, unilateral, partial;
- Hernia, site NOS with gangrene, would not be a CC for umbilical hernia with obstruction; and
- Secondary cardiomyopathy, NOS, would not be a CC for cardiomyopathy in other diseases.

3. Conditions that may not co-exist, such as partial/total, unilateral/bilateral, obstructed/unobstructed, benign/malignant, should not be coded on a single case. For example:

- Acute epiglottitis with no obstruction would not be a CC for acute epiglottitis with obstruction;
- Benign hypertensive heart disease with congestive heart failure would not be a CC for malignant hypertensive heart disease; and
- Bilateral inquinal hernia with obstruction would not be a CC for unilateral inguinal hernia.

4. The same condition in anatomically proximal sites would not constitute a CC. For example:

- Chronic and acute stomach and duodenal ulcers would not be a CC of peptic ulcers;
- Acute epiglottitis with obstruction would not be a CC for acute tracheitis with obstruction; and
- Subarachnoid hemorrhage would not be a CC for subdural hemorrhage.

5. Closely related conditions would not constitute a CC. For example:

- Rheumatic mitral insufficiency would not be a CC for mitral stenosis;
- Asbestosis would not be a CC for bronchopneumonia organism, NOS; and
- Cellulitis of pharynx would not be a CC for parapharyngeal abscess.

As noted, ProPAC recommended in its 1987 report that the Secretary evaluate several possible approaches to revision of the CC listing in order to improve the ability of the DRGs to capture differences in case complexity. ProPAC further recommended that the GROUPER logic be modified to respond more appropriately to coding guidelines. We intend to further develop the ideas presented by ProPAC and may be proposing further revision in the classification system in the future, including further refinements of the CC listing. In the meantime, we believe this proposed refinement will help to assure appropriate classification of cases.

C. Surgical Hierarchies

We are proposing changes to the surgical hierarchies for FY 1988, similar to those changes made only for MDC 7 for FY 1987. However, since those changes would be based on recalibration of the DRGs, we are presenting those proposals in the separate NPRM setting forth the proposed changes in the prospective payment system for FY 1988.

VI. Proposed Changes to Reduce Inappropriate DRG 468 Assignment

A. Background

DRG 468, Unrelated OR procedures, is reserved specifically for those cases in which none of the surgical procedures furnished to a patient is related to the principal diagnosis. It was established as a means of identifying those cases that do not readily lend themselves to classifications within groups of clinically similar patients, because the cases themselves do not reflect typical treatment patterns. These include, for example, cases in which the patient develops pressing medical-surgical needs related to a secondary diagnosis or complication. DRG 468 is not a catch-all for cases that do not fit elsewhere. It is designed to preserve the utility of, rather than violate the principle of, diagnosis-related classifications.

B. Reassignment of Intra-abdominal Hemangioma to MDC 6

Intra-abdominal hemangioma, diagnosis code 228.04, is currently classified in MDC 5, Diseases and Disorders of the Circulatory System. However, when this procedure is treated surgically by excision of the lesion, the case is assigned to DRG 468 because the procedure codes for excision of lesions at intra-abdominal sites are not included in MDC 5.

We believe it is more appropriate to assign diagnosis code 228.04 to MDC 6, Diseases and Disorders of the Digestive System. This is consistent with classification of hemangioma of other specified sites. For example, intracranial hemangioma is in MDC 1, retinal hemangioma is in MDC 2 and skin hemangioma is in MDC 9. We propose to assign cases treated surgically to the appropriate surgical DRG based on the site of the lesion. Cases treated medically would be assigned to DRGs 182, 183, and 184, Esophagitis, Gastroenteritis, and Miscellaneous Digestive Disorders, with CC, without CC, and Age 0–17, respectively.

C. Removal of Codes for Minor Skin Procedures from Surgical List

Procedure codes 86.09, Other incision of skin and subcutaneous tissue, and 86.3, Other local excision or destruction of lesion or tissue of skin and subcutaneous tissue, are very

nonspecific codes used to describe a wide variety of procedures. Analysis of PATBILL data has shown that these two procedure codes are responsible for a significant number of DRG 468 cases. Moreover, we have received comments that often a very minor superficial skin procedure, such as wart or mole removal, is performed during an inpatient stay for an unrelated diagnosis, solely for the convenience of the patient. When this is the only procedure performed, the case is grouped to DRG 468. Therefore, given the wide variety of procedures that do not require use of an operating room reported under codes 86.09 and 86.3, we propose to remove these codes from the list of OR procedures.

Although the procedures coded 86.09 and 86.3 frequently do not require the use of an operating room, and therefore should be removed from the list of OR procedures, they are nonetheless the only available codes for some more severe subcutaneous skin procedures that utilize the resources of an operating room. We wish to continue to recognize these codes in a manner that will assign such cases to an appropriate DRG. Therefore, the presence of these codes on cases showing a principal diagnosis in MDC 9 (Diseases and Disorders of the Skin, Subcutanecus Tissue, and Breast) would continue to result in classification to DRGs 269 or 270.

D. Adding Lymphatic Structure Biopsy to MDC 1

Lymphatic structure biopsy, procedure code 40.11, is frequently performed on patients with a principal diagnosis of secondary malignant neoplasm of the brain and spinal cord. This diagnosis is assigned to MDC 1 but the procedure is not; consequently, their appearance together on a request for payment results in assignment of the case to DRG 468. Therefore, we propose to add procedure code 40.11 to MDC 1, DRGs 7 and 8 (Peripheral and Cranial Nerve and Other Procedures).

E. Adding Total Splenectomy to MDC 5

Total splenectomy, procedure code 41.5, is frequently performed on patients presenting a principal diagnosis of Splenic artery aneurysm, diagnosis code 442.83. The diagnosis is included in MDC 5 but the procedure is not, resulting in the assignment of cases to DRG 468. Thus, we propose to add procedure code 41.5 to MDC 5, DRG 120, Other Circulatory System OR Procedures.

F. Adding Certain Pancreas Procedure Codes to MDC 10

Diagnosis code 211.7, Benign neoplasm of the Islets of Langerhans, is a lesion of the pancreas and commonly is treated by excision of the lesion or part of the pancreas. While pancreatic diagnostic and transplant procedures are included in MDC 10 along with the diagnosis, excision procedures are not. Thus, DRG 468 assignment results. We propose to add the following procedure codes to MDC 10, DRGS 292 and 293 (Other Endocrine, Nutritional and Metabolic Procedures, With and Without CC, respectively).

52.2 Local destruction, pancreatic lesion
52.51 Proximal pancreatectomy
52.52 Distal pancreatectomy
52.53 Radical, subtotal pancreatectomy
52.59 Partial pancreatectomy, not elsewhere classified

G. MDC 11 Issues

In MDC 11, we have noted 3 situations that result in inappropriate assignment of cases to DRG 468. First, procedure code 70.77, Vaginal suspension and fixation, is sometimes performed on patients with a principal diagnosis of Urinary incontinence, diagnosis code 788.3. Further, Mechanical complication of genitourinary device, implant and graft, diagnosis codes 996.30 and 996.39, are used to code malfunction of a penile prosthesis. Yet the procedure codes for replacement and removal of penile prosthesis, procedure codes 64.95 through 64.97, are included in MDC 12 only. Moreover, procedure code 60.69, Other prostatectomy, has been omitted inadvertently from the list of prostatectomies included in DRGs 306 and 307.

We propose to add procedure code 70.77 to MDC 11, DRGs 308 and 309 (Minor Bladder Procedures). We also propose to add procedure codes 64.95, 64.96, and 65.97 to MDC 11, DRG 315 (Other Kidney and Urinary Tract OR Procedures). Finally, we propose to add procedure code 60.69 to DRGs 306 and 307 (Prostatectomy). These changes would prevent inappropriate DRG 468 assignment of cases in which the procedure is related to the principal diagnosis.

H. Adding a Urethral Repair Code to MDC 12

In MDC 12, patients with a principal diagnosis of Hypospadias and epispadias, diagnosis code 752.6, may be treated with a procedure coded 58.49, Urethral repair, not elsewhere classified. However, since the procedure code is not assigned to MDC 12, this treatment results in DRG 468 assignment. We propose to add procedure code 58.49 to MDC 12, DRG 341 (Penis Procedures) to prevent inappropriate assignment of cases to DRG 468 when the procedure is related to the principal diagnosis.

I. Deletion of Certain Codes from the OR List

Procedure codes 39.62, Hypothermia incidental to open heart surgery, 39.63, Cardioplegia, and 39.64 Intraoperative cardiac pacemaker, are on the list of OR procedures but have not been assigned to any surgical DRGs. Therefore, at present, they would result in assignment to DRG 468 of all cases for which they are the only surgical procedure reported. These procedures are auxiliary to open heart surgery and are not usually performed alone (similarly to non-OR procedure 39.61, Extracorporeal circulation). Therefore, we propose to delete them from the list of operating room procedures.

VII. Coding Issues

A. Background

In the final notice on changes to the DRG classification system, published June 3, 1986 (51 FR 20192), and the later final rule on the prospective payment system published September 3, 1986 (51 FR 31454), we published lists of new ICD–9–CM codes that became effective October 1, 1986. These new codes were adopted as a result of the recommendation of the ICD–9–CM Coordination and Maintenance Committee, and were also published by that committee on August 29, 1986 (51 FR 30914) in a notice announcing all codes approved before July 1, 1986, the availability of related instructional material, additions to the ICD–9–CM indexes, and errata for volumes 1, 2, and 3 of ICD–9–CM.

B. Proposed Removal of Certain Codes From the Surgical List

Because the new codes were not approved before publication on June 3, 1986 of the notice of proposed changes in the prospective payment system for FY 1987, we generally accommodated the new codes into the system without classification changes. That is, for purposes of assigning a case to a DRG, the new code was treated the same as the code that was previously used to identify the procedure or diagnosis. For example, procedure code 44.2, Pyloroplasty, was divided into 3 new subcategories: 44.21, Dilation of the pylorus by incision; 44.22, Endoscopic dilation of pylorus; and 44.29, Other pyloroplasty. All 3 new codes were

treated as code 44.2 had been under the DRG system.

While this policy had advantages in that it allowed the classification system to recognize timely all new codes, it did result in some inappropriate DRG classifications in that several new procedure codes were placed on the OR list despite the fact that they usually did not involve an operating room. Based on the advice of our medical consultants, the following procedures do not generally require an operating room and, therefore, are appropriately considered non-surgical procedures under the DRG classification system. Therefore, we propose to remove them from the list of surgical procedures.

—38.22, Percutaneous angioscopy
—44.22, Endoscopic dilation of pylorus
—44.93, Insertion of gastric bubble
—44.94, Removal of gastric bubble
—51.97, Therapeutic endoscopic procedures on biliary tract, oral route
—51.98, Other percutaneous procedures on biliary tract
—55.03, Percutaneous nephrostomy without fragmentation
—55.04, Percutaneous nephrostomy with fragmentation
—80.52, Intervertebral chemonucleolysis

Thus, the presence of any one of these procedure codes would not result in assignment of a case to a surgical DRG. This would affect DRGs 4, 112, 154, 155, 156, 193, 194, 214, 215, 288, 292, 293, 303, 304, 305, 400, 442, and 443.

C. Proposed Removal of a Code From the CC List

The new diagnosis code 795.8, Positive serological or viral culture finding for Human T-Cell Lymphotropic Virus—III/Lymphadenopathy—Associated Virus (HTLV–III/LAV), was included inadvertently in the list of complications and comorbidities in the FY 87 GROUPER program. Our medical consultants have advised us that a positive serological or viral culture finding, absent any symptoms or diagnosis of Acquired Immune Deficiency Syndrome (AIDS) or AIDS-related condition (ARC), would not significantly alter the course of patient care. Therefore, we are proposing to remove code 795.8 from the list of CCs. Thus, this code would not be considered in assigning a case to one of a pair of DRGs based on CC.

D. New Coding Changes

As discussed above, the ICD–9–CM Coordination and Maintenance Committee has been established to update and maintain the ICD–9–CM codes. The Committee formulates recommendations on ICD–9–CM changes and forwards them to the Administrator of HCFA and the Director of the National Center for Health Statistics (NCHS) for approval. At the time we published our proposed DRG classification changes for FY 1987 (March 13, 1986), no new ICD–9–CM codes had been approved. Since our regulations at § 412.10 provide that, except for new coverage issues, no DRG classification change will be made without a prior public comment period, we adopted a policy of recognizing new codes approved prior to July 1, 1986 without classification changes. We now are proposing to reclassify some of those codes newly effective for FY 1987 as discussed above.

Additional new ICD–9–CM codes have been recommended by the Committee and approved by both agency heads. These codes will become effective October 1, 1987. Since these codes have already been approved in time for publication in the proposed notice, we are proposing some DRG classification changes in this notice. We are soliciting comments on the proposed DRG classification only. The code numbers and their titles were aired for public comment in the ICD–9–CM Coordination and Maintenance Committee meetings. Both oral and written comments were considered before the codes were approved.

Further, the committee has recommended, and the agency heads have approved, the deletion of several ICD–9–CM procedure codes. Code 37.84 has been deleted, since this procedure is now included in new code 37.77. In addition, all codes in the 99.7 series have been deleted. These codes indicate pacemaker technology that no longer is in use. Table IV displays the deleted procedure codes and their titles. None of the 99.7 series codes are considered OR procedures and, therefore, their removal will not affect the DRG classification system. Although code 37.84 is considered an OR procedure, the new replacement code, 37.77, will also be considered an OR procedure and will be treated similarly by the GROUPER. Consequently, this change also will not affect DRG classification of cases showing this procedure.

Listed below are the new ICD–9–CM codes and their proposed DRG classifications

TABLE II.—NEW DIAGNOSIS CODES

Diagnosis Code [1]	Description	MDC	DRG [2]
518.81	Respiratory failure	4	87
518.82	Other pulmonary insufficiency, not elsewhere classified	4	99 and 100
518.89	Other diseases of lung, not elsewhere classified [3]	4	101 and 102
799.1	Respiratory arrest	4	101 and 102
996.51	Mechanical complication due to corneal graft	2	46, 47, and 48
996.52	Mechanical complication due to graft of other tissue, not elsewhere classified	21	452 and 453
996.53	Mechanical complication due to ocular lens prosthesis	2	46, 47, and 48
996 54	Mechanical complication due to breast prosthesis	9	276
996.59	Mechanical complication due to other implant and internal device, not elsewhere classified	21	452 and 453
996.80	Complications of transplanted organ, not otherwise specified	21	452 and 453
996.81	Complications of transplanted kidney	11	331, 332, and 333
996 82	Complications of transplanted liver	7	205 and 206
996.83	Complications of transplanted heart	5	144 and 145
996.84	Complications of transplanted lung	4	101 and 102
996.86	Complications of transplanted pancreas	7	264
996.89	Complications of other specified transplanted organ	21	452 and 453

[1] All of the new diagnosis codes, except 518.89, would be added to the list of CCs.
[2] DRG listed is assignment based on non-surgical treatment. If an OR procedure is performed, DRG assignment within the MDC is determined by the OR procedure performed.
[3] Not added to the list of CCs.

TABLE III.—NEW PROCEDURE CODES

Procedure Code	Description	DRG
01.11	Closed (percutaneous) (needle) biopsy of cerebral meninges	non-OR [1]
01.12	Open biopsy of cerebral meninges	1, 2, 3, 400, 406, and 407 [1]
01.13	Closed (percutaneous) (needle) biopsy of brain	non-OR [1]
01.14	Open biopsy of brain	I, 2, 3, 400, 406, and 407 [1]
03.90	Insertion of catheter into spinal canal for infusion of therapeutic or palliative substances	non-OR [3]
04.11	Closed (percutaneous) (needle) biopsy of cranial or peripheral nerve or ganglion	non-OR [1]
04.12	Open biopsy of cranial or peripheral nerve or ganglion	7, 8, 63, 233, 234, 442, and 443 [1]
06.11	Closed (percutaneous) (needle) biopsy of thyroid gland	non-OR [1]
06.12	Open biopsy of thyroid gland	290 [1]
07.11	Closed (percutaneous) (needle) biopsy of adrenal gland	non-OR [1]
07.12	Open biopsy of adrenal gland	286 [1]
27.22	Biopsy of uvula (soft palate)	63, 168 and 169 [1]
33.24	Closed biopsy (endoscopic) of bronchus	non-OR [1]
33.25	Open biopsy of bronchus	75 [1]
33.26	Closed percutaneous (needle) biopsy of lung	non-OR [1]
33.27	Closed endoscopic biopsy of lung	76 and 77 [3]
33.28	Open biopsy of lung	75, 233, 234, 315, 400, 406, and 407 [2]
33.29	Other diagnostic procedures on lung or bronchus	76 and 77 [1]
34.25	Closed (percutaneous) (needle) biopsy of mediastinum	non OR [1]
34.26	Open biopsy of mediastinium	76, 77, 292, 293, 394, 400, 406, and 407 [1]
36.01	Single vessel percutaneous transluminal coronary angioplasty (PTCA) without mention of thrombolytic agent.	108 and 112 [1]
36.02	Single vessel percutaneous transluminal coronary angioplasty (PTCA) with thrombolytic agent.	108 and 112 [1]
36.05	Multiple vessel percutaneous transluminal coronary angioplasty (PCTA) (performed during the same operation) with or without mention of thrombolytic agent.	108 and 112 [2]
37.70	Initial insertion of pacemaker lead, (electrode) not otherwise specified	115, 116, 442, and 443 [2]
37.71	Initial insertion of tranvenous lead (electrode) into ventricle	115, 116, 442, and 443 [2]
37.72	Initial insertion of transvenous leads (electrodes) into atrium and ventricle	115, 116, 442, and 443 [2]
37.73	Initial insertion of transvenous lead (electrode) into atrium	115, 116, 442, and 443 [2]
37.74	Insertion or replacement of epicardial lead (electrode) into epicardium	115, 116, 117, 442, and 443 [2]
37.75	Revision of lead (electrode)	117, 442, and 443 [2]
37.76	Replacement of transvenous atrial and/or ventricular lead(s) (electrode)	117, 442, and 443 [2]
37.77	Removal of lead(s) (electrode) without replacement	117, 442, and 443 [2]
37.78	Insertion of temporary transvenous pacemaker system	non OR [2]
37.79	Revision or relocation of pacemaker pocket	117, 269, 270, 442, and 443 [3]
37.80	Insertion of permanent pacemaker, initial or replacement, type of device NOS	115, 116, 118, 442, and 443 [2]
37.81	Initial insertion of single-chamber device, not specified as rate responsive (to physiologic stimuli).	115, 116, 422, and 443 [2]
37.82	Initial insertion of single-chamber device, rate responsive	115, 116, 442, and 443 [2]
37.83	Initial insertion of dual-chamber device	115, 116, 442, and 443 [2]
37.85	Replacement of any type of pacemaker device with single-chamber device, not specified as rate responsive.	118, 442, and 443 [2]
37.86	Replacement of any type of pacemaker device with single-chamber device, rate responsive.	118, 442, and 443 [2]
37.87	Replacement of any type pacemaker device with dual-chamber device	118, 442, and 443 [2]
37.89	Revision or removal of pacemaker device	117, 442, and 443 [2]
41.32	Closed (aspiration) (percutaneous) biopsy of spleen	non-OR [1]
41.33	Open biopsy of spleen	392, 393, 400, 406, 407 [1]
44.14	Closed (endoscopic) biopsy of stomach	non-OR [1]
44.15	Open biopsy of stomach	154, 155, and 156 [1]
45.14	Closed (endoscopic) biopsy of small intestine	non OR [1]
45.15	Open biopsy of small intestine	152 and 153 [1]
45.25	Closed (endoscopic) biopsy of large intestine	non-OR [1]
45.26	Open biopsy of large intestine	152 and 153 [3]
45.95	Anastomosis to anus	148, 149, 400, 406, 407, 442, and 443 [3]
48.24	Closed (endoscopic) biopsy of rectum	non-OR [1]
48.25	Open biopsy of rectum	152 and 153 [3]
50.11	Closed (percutaneous) (needle) biopsy of liver	non OR [1]
50.12	Open biopsy of liver	63, 76, 77, 170, 171, 199, 200, 233, 234, 269, 270, 292, 293, 315, 344, 345, 365, 394, 400, 406, 407, 442, and 443 [1]
51.12	Closed (percutaneous) biopsy of gallbladder or bile ducts	non-OR [1]
51.13	Open biopsy of gallbladder or bile ducts	170, 171, 199, and 200 [1]
52.11	Closed (aspiration) (needle) (percutaneous) biopsy of pancreas	non-OR [1]

TABLE III.—NEW PROCEDURE CODES—Continued

Procedure Code	Description	DRG
52.12	Open biopsy of pancreas	170, 171, 199, 200, 292, 293, 400, 406, 407, 442, and 443 [1]
54.24	Closed (percutaneous) (needle) biopsy of intra-abdominal mass	non-OR [3]
55.23	Closed (percutaneous) (needle) biopsy of kidney	non-OR [1]
55.24	Open biopsy of kidney	233, 234, 303, 304, 305, 394, 400, 406, 407, 442, and 443 [1]
56.32	Closed percutaneous biopsy of ureter	non-OR [1]
56.33	Closed endoscopic biopsy of ureter	non-OR [3]
56.34	Open biopsy of ureter	303, 304, and 305 [2]
56.35	Endoscopy (cystoscopy) (loopscopy) of ileal conduit	non-OR [3]
57.33	Closed transurethral biopsy of bladder	310, 311, 344, 345, and 365 [1]
57.34	Open biopsy of bladder	308, 309, 344, 345, 365, 400, 406, and 407 [1]
60.11	Closed (percutaneous) (needle) biopsy of prostate	non-OR [1]
60.12	Open biopsy of prostate	310, 311, 344, and 345 [1]
60.13	Closed (percutaneous) biopsy of seminal vesicles	non-OR [1]
60.14	Open biopsy of seminal vesicles	344 and 345 [1]
62.11	Closed (percutaneous) (needle) biopsy of testis	non-OR [1]
62.12	Open biopsy of testis	338, 339 and 340 [1]
68.13	Open biopsy of uterus	354, 355, 357, and 359 [3]
68.14	Open biopsy of uterine ligaments	354, 355, 357, 358, and 359 [1]
68.15	Closed biopsy of uterine ligaments	361 [3]
68.16	Closed biopsy of uterus	363 and 364 [3]
78.40	Other repair and plastic operations on bone, unspecified site	233, 234, 442, and 443 [1]
78.41	Other repair and plastic operations of chest cage	76, 77, 233, 234, 442, and 443 [1]
78.42	Other repair and plastic operations of humerus	218, 219, 220, 442, and 443 [1]
78.43	Other repair and plastic operations of radius/ulna	223, 224, 442 and 443 [1]
78.44	Other repair and plastic operations of metacarpals/carpals	228, 229, and 441 [1]
78.45	Other repair and plastic operations of femur	210, 211, 212, 442, and 443 [1]
78.46	Other repair and plastic operations of patella	221, 222, 442, and 443 [1]
78.47	Other repair and plastic operations of tibia/fibula	218, 219, 220, 442, and 443 [1]
78.48	Other repair and plastic operations of metatarsals/tarsals	225, 442 and 443 [1]
78.49	Other repair and plastic operation on bone, not elsewhere classified	233, 234, 442, and 443 [1]
78.90	Insertion of bone growth stimulator, unspecified site	233, 234, 442 and 443 [1]
78.91	Insertion of bone growth stimulator into chest cage	76, 77, 233, 234, 442 and 443 [1]
78.92	Insertion of bone growth stimulator into humerus	218, 219, 220, 442, and 443 [1]
78.93	Insertion of bone growth stimulator into radius/ulna	223, 224, 442, and 443 [1]
78.94	Insertion of bone growth stimulator into carpals/metacarpals	228, 229 and 441 [1]
78.95	Insertion of bone growth stimulator into femur	210, 211, 212, 442, and 443 [1]
78.96	Insertion of bone growth stimulator into patella	221, 222. 442, and 443 [1]
78.97	Insertion of bone growth stimulator into tibia/fibula	218, 219, 220, 442, and 443 [1]
78.98	Insertion of bone growth stimulator into tarsals/metatarsals	225, 442, and 443 [1]
78.99	Insertion of bone growth stimulator, not elsewhere classified	233, 234, 442 and 443 [1]
85.11	Closed (percutaneous) (needle) biopsy of breast	non OR [1]
85.12	Open biopsy of breast	259, 260, 262, 292, 293, 442, and 443 [1]
85.95	Insertion of breast tissue expander	259, 260, 261, 442, and 443 [3]
85.96	Removal of breast tissue expanders	259, 260, 261, 442, and 443 [3]
86.93	Insertion of tissue expander	7, 8, 63, 120, 170, 171, 217, 263, 264, 265, 266, 287, 439, 458 and 472 [3]
86.06	Insertion of infusion pump	7, 8, 76, 77, 170, 171, 201, 233, 234, 269, 270, 292, 293, 315, 344, 345, 365, 394, 401, 402, 408, 442, 443, 459 and 472 [3]
99.85	Hyperthermia for treatment of cancer	non OR [3]
99.86	Non-invasive placement of bone growth stimulator	non-OR [3]

[1] Descriptions redefined, but procedure codes not changed and not classified differently.
[2] Procedure codes changed, but procedures are classified into the same DRGs.
[3] Completely new codes.

The following ICD–9–CM codes are being deleted without replacement.

TABLE IV.—DELETED PROCEDURE CODES

Procedure Code	Description
37.84	Removal of epicardial electrode.
99 71	Mercury zinc pacemaker battery.
99.72	Nuclear pacemaker battery.
99.73	Lithuim pacemaker battery.
99.74	Other pacemaker battery type.

TABLE IV.—DELETED PROCEDURE CODES—Continued

Procedure Code	Description
99.75	Fixed rate pacemaker sensing type.
99.76	Triggered demand pacemaker sensing type.

TABLE IV.—DELETED PROCEDURE CODES—Continued

Procedure Code	Description
99.77	Inhibited demand pacemaker sensing type.
99.78	Other pacemaker sensing type.
99 79	Programmable pacemaker.

VIII. Effective Date

We propose to make these changes in DRG classification and new ICD–9–CM codes effective for discharges occurring on or after October 1, 1987.

IX. Regulatory Impact Statement

A. Executive Order 12291

Executive Order (E.O.) 12291 requires us to prepare and publish a regulatory impact analysis for notices such as this if the implementation of the notice would meet the criteria of a "major rule." A notice would be considered a major rule if its implementation would be likely to result in:

(1) An annual effect on the economy of $100 million or more;

(2) A major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or

(3) Significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign based enterprises in domestic or export markets.

As is clear from the above discussion, changes in the DRG classification system affect how much hospitals are paid for services furnished to Medicare patients. However, the effects of changes are not simple to analyze or project. The changes proposed in this notice will, if finalized, be incorporated in the revised DRGs and the recalibration of weights for those DRGs that will be effective October 1, 1987.

Each affected hospital will experience the classification changes only as mediated through recalibrated weights. We do not have a revised GROUPER available, and it is not feasible to attempt a detailed analysis at this time of the effects these changes might have. To the extent possible, we have looked at whether each change would increase or decrease particular DRG weights, as is clear from the above specific discussions. With the possible exception of the elimination of age breaks, we do not believe that any of these proposed changes to the DRG classification system and the consequent changes to the GROUPER program would meet the E.O. criteria for a major rule.

We have not prepared a regulatory impact analysis for this notice. However, we have, as is our usual practice, prepared such an analysis for the proposed rule on FY 1988 changes to the prospective payment system. In that analysis, and even more particularly in the analysis we plan to prepare in the subsequent final rule, we will include the effects of these changes to the DRG classification system in the assessment of impact on hospitals.

B. Regulatory Flexibility Act

It is our practice to prepare and publish an initial regulatory flexibility analysis that is consistent with the Regulatory Flexibility Act of 1980 (RFA) (5 U.S.C. 601 through 612) for a proposed notice such as this, unless the Secretary certifies that implementation of the notice would not have a significant economic impact on a substantial number of small entities We treat all hospitals under the prospective payment system as small entities for purposes of the RFA. Therefore, this notice clearly would affect a substantial number of small entities. However, we do not consider an economic impact on small entities to be significant unless their annual total costs or revenues would be increased or decreased by at least three percent.

As noted above, these proposed changes would affect the amounts hospitals would receive under the prospective payment system for furnishing services to Medicare beneficiaries. Some of these proposals certainly would change the amount paid for a particular DRG by more than 3 percent. The eliminations of age breaks, for example, may have significant effects on the weights of nearly all DRGs. However, it must be remembered that a DRG weight is a measure of average resource utilization for a particular group of cases relative to the average for all cases. The changes we propose in this notice will be used in determining the DRG weights for discharges occurring on or after October 1, 1987. Thus, each change that affects the group to which a case is assigned affects not only the payment for the reassigned case, but the weight for all other cases in both the prior and the new group. Through annual recalibrations, all weights are readjusted to reflect all reassignments, based on the best available data. Through this process some changes are offset by others. The interaction is complex, and, of course, differs from year to year. However, the end result is that most hospitals will receive higher payments for some cases and lower payments for others. Overall, we expect payments on the whole to reflect more accurately average resource utilization per case as the classification system is refined. Thus, we view it as highly unlikely that a substantial number of hospitals would experience increases or decreases of revenues of more than three percent solely as a result of changes in DRG classification.

Hypothetically, a given year's classification changes could have an effect of such magnitude on some hospitals. We expect they usually would be hospitals having a high proportion of cases falling in particular strongly affected DRGs. In such instances, we believe that improvements to the classification system would tend to correct systematic understatements or overstatements of average resource utilization. In the first case, those hospitals most affected would be significantly benefited. In the latter case, we would be ending an inappropriate windfall. In either case, the system as a whole would benefit.

For these reasons, we have determined, and the Secretary certifies, that this proposed notice would not be likely to have a significant economic impact in a substantial number of small entities. Therefore, we have not prepared a regulatory flexibility analysis.

X. Information Collection Requirements

This notice contains no information collection requirements. Consequently, it does not need to be reviewed by the Executive Office of Management and Budget under the authority of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.).

XI. Response to Comments

Because of the large number of items of correspondence we normally receive on a proposed notice such as this, we are not able to acknowledge or respond to them individually. However, we will consider all comments that we receive by the date and time specified in the "Dates" section of this preamble, and we will respond to the comments in the final notice.

(Sections 1102, 1871, and 1886(d)(4) of the Social Security Act (42 U.S.C. 1302, 1395hh, and 1395ww(d)(4)); 42 CFR 412 10)

(Catalog of Federal Domestic Assistance Program No. 13.774, Medicare-Supplementary Medical Insurance).

Dated: April 27, 1987.

William L. Roper,

Administrator, Health Care Financing Administration.

Approved: May 7, 1987.

Otis R. Bowen,

Secretary.

[FR Doc. 87-11426 Filed 5-15-87; 1:06 pm]

BILLING CODE 4120-01-M

federal register

Tuesday
May 19, 1987

Part IX

Department of Agriculture

Agriculture Marketing Service

7 CFR Part 1030

Milk in the Chicago Regional Marketing Area; Hearing of Proposed Amendments to Tentative Marketing Agreement and Order; Proposed Rulemaking

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1030

[Docket No. AO-361-A25]

Milk; Chicago Regional Marketing Area; Hearing of Proposed Amendments; Tentative Marketing Agreement and Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice of public hearing on proposed rulemaking.

SUMMARY: The hearing is being held to consider changes in the Chicago Regional order in response to various industry proposals.

Proposals by Central Milk Producers Cooperative (CMPC), a federation of 11 dairy farmer cooperatives, would pay from pooled milk values a portion of the cost of getting milk from farms to milk bottling plants. The first proposal provides for a maximum per mile transportation allowance for supply plant shipments to pool distributing plants, payable to the distribution plant operator, of .22 cents per hundredweight for the months of March through July and .28 cents for the months of August through February. CMPC's other proposals would provide for a direct-delivery differential on milk direct-shipped to distributing plants; a direct-delivery differential payable to producers on milk divert-transferred to distributing plants; and an assembly allowance for supply plants transferring milk to distributing plants. The rates for these proposals would be 6 cents per hundredweight for the months of March through July and 8 cents for the months of August through February.

Proposals by four proprietary handlers would require monthly minimum shipping requirements for all supply plants during August through January and would give the Director of the Dairy Division the authority to temporarily increase or decrease those percentages. Other proposals would amend the plant location adjustments to prices by removing the snubber that prevents the adjusted price from being less than the Class III price for the month, would eliminate shipments from supply plants to other order plants as qualifying shipments, and would eliminate both the provisions for "reserve supply plants" and the "call" for shipments by such plants. Other parties have proposed modifications of the proposals by both groups of proponents.

DATE: The hearing will convene at 9:00 a.m., local time, on June 2, 1987.

ADDRESS: The hearing will be held at the Howard Johnson—Executive Hotel, 525 W. Johnson Street, Madison, Wisconsin 53703, (608) 251-5511.

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

SUPPLEMENTARY INFORMATION: This administrative action is governed by the provision of sections 556 and 557 of Title 5 of the United States Code and, therefore, is excluded from the requirements of Executive Order 12291.

Notice is hereby given of a public hearing to be held at the Howard Johnson—Executive Hotel, 525 West Johnson Street, Madison, Wisconsin 53703, beginning at 9:00 a.m., local time, on June 2, 1987, with respect to proposed amendments to the tentative marketing agreement and to the order regulating the handling of milk in the Chicago Regional marketing area.

The hearing is called pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 through 674), and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR Part 900).

The purpose of the hearing is to receive evidence with respect to the economic and marketing conditions which relate to the proposed amendments, hereinafter set forth, and any appropriate modifications thereof, to the tentative marketing agreement and to the order.

Actions under the Federal milk order program are subject to the "Regulatory Flexibility Act" (Pub. L. 96-354). This Act seeks to ensure that, within the statutory authority of a program, the regulatory and information requirements are tailored to the size and nature of small businesses. For the purpose of the Federal order program, a small business will be considered as one which is independently owned and operated and which is not dominant in its field of operation. Most parties subject to a milk order are considered as a small business. Accordingly, interested parties are invited to present evidence on the probable regulatory and informational impact of the hearing proposals on small businesses. Also, parties may suggest modifications of these proposals for the purpose of tailoring their applicability to small businsses.

PART 1030—[AMENDED]

List of Subjects in 7 CFR Part 1030

Milk marketing orders, Milk, Dairy products.

The authority citation for Part 1030 continues to read as follows:

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

The proposed amendments, as set forth below, have not received the approval of the Secretary of Agriculture.

Proposed by Central Milk Producers Cooperative

Proposal No. 1

This proposal would provide a maximum per mile location allowance for supply plant shipments to pool distributing plants for Class I use, payable to the distributing plant operator of .22 cents for the months of March through July and .28 cents for the months of August through February.

Revise §1030.52 Plant location adjustments for handlers as follows:

§ 1030.52 Plant location adjustments for handlers.

(a) The market administrator shall determine the location adjustment rate for each plant at which Class I and producer milk is to be priced under this part pursuant to the following schedule, except that in no event shall the adjustment result in a price less than the Class III price for the month:

Zone	Distance in miles from city hall in Chicago	Location adjustment rate (cents per hundredweight)
1	0-40	0
2	41-55	-3.0
3	56-70	-6.0
4	[1] 71-85	-9.0
5	[2] 86-100	-12.0
6	101-115	-14.3
7	116-130	-16.6
8	131-145	-18.9
9	146-160	-21.2
10	161-175	-23.5
11	176-190	-25.8
12	191-205	-28.1
13	206-220	-30.4
14	221-235	-32.7
15	236-250	-35.0
16	[3]	-36.0

[1] Including Milwaukee County, WI, and Winnebago County, IL.
[2] Excluding Milwaukee County, WI, and Winnebago County, IL
[3] Beyond 250.

(i) The market administrator shall also determine a transportation allowance for each transfer of bulk fluid milk that is physically received into a pool distributing plant from another pool plant, and shall determine the distance in miles the two plants are from each other.

(ii) The miles pursuant to paragraph (a)(i) of this section, shall be multiplied by the rate determined by the following:

(*a*) For the months of March through July the result of .22 cents per mile minus the value difference between the supplying plant's location adjustment rate and that of the receiving distributing plant; and

(*b*) For the months of August through February the result of .28 cents per mile minus the value difference between the supplying plant's location adjustment rate and that of the receiving distributing plants;

(*c*) Except that if the shipping plant is in a zone having a lesser value than that of the distributing plant there will be no subtraction.

(iii) The rates pursuant to paragraph (a)(ii) of this section, are a combination

of the location adjustment and the transportation allowance, the maximum amount shall be no greater than the amount determined for the transportation allowance and the minimum amount shall be the difference between the two plant location adjustment rates.

(b) The mileage applicable pursuant to paragraph (a) of this section, and § 1030.75 shall be determined by the market administrator on the basis of the shortest highway distance between the handler's plant and the city hall in Chicago—with fractions rounded up to the next whole mile.

(i) The mileage applicable pursuant to paragraph (a)(i) of this section, shall be determined by the market administrator on the basis of the shortest highway distance between the transferor and transferee plants.

(ii) The market administrator shall notify each handler of the zone or mileage determination, which shall be subject to redetermination at all times. In the event a handler requests a redetermination of the mileage pertaining to any plant, the market administrator shall notify the handler of his findings within 30 days after the receipt of such request. Any financial obligations resulting from a change in mileage shall not be retroactive for any period prior to the redetermination announced by the market administrator.

(c) * * *

(10) Multiply the quantity assigned to receipts from other pool plants pursuant to paragraph (c)(6)(ii) of this section by 110 percent; except if a handler reports more than one pool distributing plant pursuant to § 1030.7(a)(4), the quantity to be assigned shall be to each such pool distributing plant; and

(i) Multiply by the transportation allowance rates in sequence beginning with the quantity of the actual transfer which has the least transportation mileage and continuing until the allowable volume is exhausted: *Provided*, if two or more handlers have pool plant transfer(s) that have identical mileage and there is an insufficient allowable volume, the remaining volume will be assigned pro rata;

(11) Multiply by the location adjustment rates applicable at the transferor plants and by the transportation allowance rates for bulk transfers, the quantities assigned pursuant to paragraph (c)(7) of this section to receipts from other pool plants in prior months;

(12) Multiply the quantity of bulk fluid milk products shipped from the handler's pool plant(s) to nonpool plants and classified as Class I by the location adjustment rate applicable at the shipping plant;

(13) Multiply the quantity of Class I milk packaged by pool supply plants and disposed of as route disposition or to other plants by the location adjustment rates applicable at the pool supply plants from which disposition is made; and

(14) Add together the minus amounts obtained pursuant to paragraphs (c)(8), (9), (10), (11), (12), and (13) of this section.

Proposal No. 2

This proposal would provide an assembly allowance for supply plants of 6 cents for the months of March through July and 8 cents for August through February on transfers to pool distributing plants.

In § 1030.60 Handler's value of milk for computing uniform price, revise paragraph (g) as follows and add new paragraphs (h) and (i) as follows:

§ 1030.60 [Amended]

* * * * *

(g) Subtract an amount equal to the minus location adjustment computed pursuant to § 1030.52 (c)(14) or (d);

(h) Subtract the amount obtained from multiplying the pounds of bulk fluid milk products transferred from pool reserve and supply plants to pool distributing plants as defined in § 1030.52(c)(6)(ii), by an assembly credit of 6 cents per hundredweight for the months of March through July and 8 cents per hundredweight for all remaining months;

(i) Subtract an amount equal to the minus transportation allowance computed pursuant to § 1030.52(c)(10)(i).

Proposal No. 3

This proposal would provide a direct-delivery differential of 6 cents per hundredweight during March through July and 8 cents during August through February payable to producers on milk direct-shipped and divert-transferred to distributing plants.

In § 1030.61 Computation of uniform price, revise paragraphs (c) and (d) as follows, and redesignate the present paragraphs (c), (d) and (e) as (e), (f) and (g).

§ 1030.61 [Amended]

* * * * *

(c) Add the amount at pool distributing plants obtained by multiplying the difference between the pounds of producer milk in all classes pursuant to § 1030.60(a) and the diversions associated with that producer milk by 6 cents per hundredweight for the months of March through July and 8 cents per hundredweight for all remaining months.

(d) Add the amount at pool distributing plants obtained by multiplying the pounds of producer milk receive directly from farms pursuant to § 1030.13(d) by 6 cents per hundredweight for the months of March through July and 8 cents per hundredweight for all remaining months.

(e) Add an amount representing not less than one-half the unobligated balance in the producer-settlement fund;

(f) Divide the resulting amount by the sum of the following for all handlers included in these computations;

(1) The total hundredweight of producer milk; and

(2) The total hundredweight for which a value is computed pursuant to § 1030.60(f); and

(g) Subtract not less than 4 cents nor more than 5 cents per hundredweight.

Proposal No. 4

§ 1030.71 [Amended]

In § 1030.71 Payments to the producer-settlement fund, revise paragraph (a)(2)(i) to read as follows:

(a)(2)(i) The value at the uniform price as adjusted pursuant to § 1030.75, of such handler's receipts of producer milk plus the value pursuant to § 1030.61 (c) and (d); and.

Proposal No. 5

§ 1030.73 [Amended]

In § 1030.73 Payments to producers and to cooperative associations, revise paragraphs (a)(2) and (c)(2)(i) to read as follows:

* * * * *

(a)(2) On or before the 18th day after the end of each month, for producer milk received during such month, at a rate per hundredweight of not less than the uniform price plus the added value pursuant to § 1030.61 (c) and (d) as adjusted pursuant to §§ 1030.74, § 1030.75, and § 1030.86, less any payment made pursuant to paragraph (a)(1) of this section, and any proper deduction authorized in writing by such producer and plus or minus adjustments for errors in previous payments made to such producer. If by such date the handler has not received full payment from the market administrator pursuant to § 1030.72 for such month, he may reduce pro rata his payments to producers by not more than the amount of such underpayment. Payment to producers shall be completed thereafter not later than the date for making payments pursuant to this paragraph next following receipt of the balance due from the market administrator.

* * * * *

(c) * * *

(2)(ii) For milk received during the month, the handler shall pay the cooperative association on or before the 16th day after the end of the month during which time the milk was received at a rate per hundredweight of not less than the uniform price computed as described under § 1030.61 plus the added value pursuant to paragraph (c) of that section, as adjusted pursuant to § 1030.74 and § 1030.75 and less any payment made pursuant to paragraph (c)(2)(i) of this section.

Proposal No. 6

§ 1030.7 [Revised]

Revise § 1030.7 Pool plant to:

1. Specify for a supply plant shipping percentages of five percent for August and January and ten percent for September through December, and for units of supply plants shipping percentages of ten percent for August

and January and 20 percent for September through December.

2. Provide the Director of the Dairy Division discretionary authority to increase or decrease the monthly qualification shipping percentages established for both supply plants and units of supply plants.

3. Allow units of supply plants that are owned or fully leased and operated by the handler requesting the unit.

4. Allow two or more cooperative associations to file a written contractual agreement with the market administrator obligating each plant of the unit to ship as directed by such cooperatives.

5. Require that each supply plant in a unit must be located within the State of Wisconsin or within the portion of the State of Illinois that is defined as part of the marketing area of Order 30.

Proposal No. 7

§ 1030.6 [Amended]

§ 1030.6 Supply plant and reserve supply plant, revise paragraph (a) to read as follows:

* * * * *

(a) "Supply plant" means a plant from which a Grade A fluid milk product is shipped or transshipped during the month to another plant, except that no storage capacity shall be maintained in a plant described in § 1030.4(a).

Proposal No. 8

§ 1030.13 [Amended]

In § 1030.13 Producer milk, delete paragraph (d)(1), redesignate (d)(2) as (d)(1) and revise as follows, delete (d)(3), redesignate (d)(4) and (d)(5) as (d)(2) and (d)(3), delete (d)(6), and redesignate (d)(7) as (d)(4).

* * * * *

(d)(1) Milk from a dairy farmer who was not a producer during the previous month shall not be eligible for diversion unless one day's production during the next two calendar months is received and unloaded into the pool plant where such milk is reported as producer milk;

Proposed by Dean Foods Company, Cedarburg Dairy, Inc., Certified Grocers of Illinois, Inc., and Hawthorn-Mellody, Inc.

Proposed No. 9

§ 1030.7 [Revised]

Revise § 1030.7 Pool plant to:

1. Require reserve supply plants to ship to plants described in § 1030.7(d) an amount not less than 5 percent for August and January, and 10 percent for September through December of each year of the amount of Grade A milk received at the plant from producers. Any plant not meeting these shipping qualifications would not be a pool plant for the remaining months of February through July.

2. Provide the Director of the Dairy Division the authority to revise the percentage for qualification of a reserve supply plant if upon his investigation he finds it necessary.

3. Eliminate shipments from supply plants to other order plants as qualifying shipments.

4. Eliminate the provisions for "reserve supply plants" and issuance of a "call" for shipments by such plants.

Proposal No. 10

§ 1030.52 [Amended]

In § 1030.52 Plant location adjustments for handlers, delete the following words in the introductory paragraph:

* * * "except that in no event shall the adjustment result in a price less than the Class III price for the month:."

Proposed by The Southland Corporation, Kraft Incorporated, and Dean Foods Company:

Proposal No. 11

This proposal would modify Central Milk Producers Cooperative's proposals No. 2 and No. 3 (assembly allowance and direct-delivery and divert-transfer differentials) by making them available for Class I uses at all pool plants. Also the direct-delivery differentials, divert-transfer differentials and the assembly allowance would be gradually decreased beyond zones 1 and 2.

§ 1030.60 [Amended]

11a. Revise proposed paragraph (h) in § 1030.60 as follows:

(h) Subtract the amount obtained by multiplying the Class I pounds of bulk fluid milk products transferred from a pool plant to another pool plant by an assembly credit based upon the zone location of the transferee plant according to the following schedule:

Transferee plant	March–July	Other months
Zone 1 and 2	$0.06	$0.08
Zone 3	.05	.07
Zone 4	.04	.06
Zone 5	.03	.05
Zone 6	.02	.04
Zone 7	.01	.03
Zone 8	.00	.02
Zone 9	.00	.01
Other Zones	.00	.00

11b. Revise proposed paragraphs (c) and (d) in § 1030.61 as follows:

§ 1030.61 [Amended]

* * * * *

(c) Add the amount at pool plants obtained by multiplying the pounds of Class I producer milk received at such plants, by the credit based upon the zone location of the plant, according to the following schedule:

Pool plant	March–July	Other months
Zone 1 and 2	$0.06	$0.08
Zone 3	.05	.07
Zone 4	.04	.06
Zone 5	.03	.05
Zone 6	.02	.04
Zone 7	.01	.03
Zone 8	.00	.02
Zone 9	.00	.01
Other Zones	.00	.00

(d) Add the amount at pool plants obtained by multiplying the pounds of Class I producer milk received directly from farms pursuant to § 1030.13(d), by the credit based upon the zone location of the plant, according to the following schedule:

Pool plant	March–July	Other months
Zone 1 and 2	$0.06	$0.08
Zone 3	.05	.07
Zone 4	.04	.06
Zone 5	.03	.05
Zone 6	.02	.04
Zone 7	.01	.03
Zone 8	.00	.02
Zone 9	.00	.01
Other Zones	.00	.00

Proposed by the Dairy Division, Agricultural Marketing Service

Proposal No. 12

Make such changes as may be necessary to make the entire marketing agreement and the order conform with any amendments thereto that may result from this hearing.

Copies of this notice of hearing and the order may be procured from the Market Administrator, Myron R. McKinley, 800 Roosevelt Road, Building A, Suite 200, Glen Ellyn, Illinois 60137, or from the Hearing Clerk, Room 1079, South Building, United States Department of Agriculture, Washington, DC 20250, or may be inspected there.

Copies of the transcript of testimony taken at the hearing will not be available for distribution through the Hearing Clerk's Office. If you wish to purchase a copy, arrangements may be made with the reporter at the hearing.

From the time that a hearing notice is issued and until the issuance of a final decision in a 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. For this particular 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
Dairy Division, Agricultural Marketing Service (Washington office only)
Office of the Market Administrator, Chicago Regional Marketing Area

Procedural matters are not subject to the above prohibition and may be discussed at any time.

Signed at Washington, DC, on May 15, 1987.

J. Patrick Boyle,

Administrator.

[FR Doc. 87–11563 Filed 5–18–87; 10:22 am]

BILLING CODE 3410–02–M

federal register

Tuesday
May 19, 1987

Part X

The President

Proclamation No. 5655—World Trade Week, 1987

Proclamation No. 5656—National Fishing Week, 1987

Federal Register
Vol. 52, No. 96
Tuesday, May 19, 1987

Presidential Documents

Title 3—

The President

Proclamation 5655 of May 15, 1987

World Trade Week, 1987

By the President of the United States of America

A Proclamation

Each year, World Trade Week celebrates the many benefits of international trade to our country and all countries. This commerce strengthens our economy in many ways. Exports expand our business and employment opportunities: in the growing world marketplace, over 5 million American jobs are related to foreign sales. Imports also enrich our lives. Foreign goods increase consumer choice both in terms of quality and price. Competition from foreign producers provides an important stimulus to American producers to maintain and enhance the quality of American-made products.

Americans can be proud of the role our country plays in international trade. We are the world's largest participant in international commerce. We have also taken a leading role in ensuring the expansion of international trade around the world. Our initiative has made possible successive monetary and trade agreements that have integrated world markets and offered unprecedented prosperity. We have extended friendship to former adversaries and have seen them grow into valued trading partners. Through our impetus, the developing and newly industrialized countries become fully accepted into the world trading community.

As increased trade has led to increased integration of world economies, the growth of the world economy has become more dependent on achieving better coordination of macroeconomic policies and continued adoption of sound microeconomic policies to facilitate structural adjustment. Thus, it is crucial that cooperative solutions be found to the problems faced in the international economy.

For its part, the United States must work to regain and sustain our competitiveness in world markets; continue with its efforts to expand and improve the ground rules of world trade provided by the General Agreement on Tariffs and Trade; and resist pressures toward protectionism. The futile prescription of protectionism would only fuel inflation; lower economic growth; and invite retaliatory policies against our exports.

It is also important for our trading partners to do their part—by dismantling protective barriers around their home markets and allowing more open competition; by adopting fiscal, monetary, and exchange rate policies that are in line with goals of stable growth with low inflation; and by helping resolve the problem of Third World debt.

The challenges we face are difficult. They require the strong resolve of all nations. We can and will succeed in these ventures that offer much for the American people and for the peoples of the world.

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim the week beginning May 17, 1987, as World Trade Week. I invite the people of the United States to join in appropriate observances to reaffirm the great promise of international trade for creating jobs and stimulating economic activity in our country and for generating prosperity everywhere.

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

Ronald Reagan

[FR Doc. 87-11617
Filed 5-18-87; 11:53 am]
Billing code 3195-01-M

Presidential Documents

Proclamation 5656 of May 15, 1987

National Fishing Week, 1987

By the President of the United States of America

A Proclamation

It is most fitting that we take time to salute the role of fishing in the lives of Americans. Fishing greatly aids our economy, is a source of healthful food, promotes respect for sound conservation and for the bounty and wonder of our natural resources, and introduces millions of people to the benefits of outdoor recreation.

Today, roughly a quarter of all Americans call sport fishing one of their favorite outdoor activities. Fishing represents a fine opportunity for all of us, especially children and young adults, to discover a wholesome, relaxing, and enjoyable pastime. Fishing can teach us the importance of clean water and a stable aquatic environment. Recreational fishing also contributes much to our economy, and each year provides millions of dollars in revenue for fishery restoration projects. Fishermen take pride in our abundant fishery resources and work diligently for their continued well-being.

In recognition of all that recreational fishing and the commercial fishing industry do for America, the Congress, by Public Law 100–22, has designated the week of June 1 through June 7, 1987, as "National Fishing Week" and authorized and requested the President to issue a proclamation in its observance.

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, do hereby proclaim the week of June 1 through June 7, 1987, as National Fishing Week. I encourage all Americans to join with anglers and all who treasure our Nation's fisheries as they work to ensure superior fishing opportunities for our children and for generations to come.

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

Ronald Reagan

[FR Doc. 87–11618
Filed 5–18–87; 11:54 am]
Billing code 3195–01–M

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