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Briefings on How To Use the Federal Register—
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3. The important elements of typical Federal Register documents.
4. An introduction to the finding aids of the FR/CFR system.

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WHEN: July 15, at 9 a.m.
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Presidential Documents

Title 3—

The President

Proclamation 5660 of May 19, 1987

Amending the Generalized System of Preferences

By the President of the United States of America

A Proclamation

1. Pursuant to Title V of the Trade Act of 1974, as amended (the Trade Act) (19 U.S.C. 2461 *et seq.*), in Proclamation 5365 of August 30, 1985 (50 FR 36220), I designated specified articles provided for in the Tariff Schedules of the United States (TSUS) (19 U.S.C. 1202) as eligible for preferential tariff treatment under the Generalized System of Preferences (GSP) when imported from designated beneficiary developing countries. I also designated certain such countries as least-developed beneficiary developing countries, pursuant to section 504(c)(6) of the Trade Act, as amended (19 U.S.C. 2464(c)(6)), in order to afford such preferential tariff treatment without regard to the limitations imposed in section 504(c), as amended.

2. Pursuant to section 504(c) of the Trade Act, as amended, those beneficiary countries not designated as least-developed beneficiary developing countries are subject to limitations on the preferential treatment afforded under the GSP. Pursuant to section 504(c)(5) of the Trade Act, as amended, a country that has not been treated as a beneficiary developing country with respect to an eligible article may be redesignated with respect to such article if imports of such article from such country did not exceed the limitations in section 504(c)(1) (after application of paragraph (c)(2)) during the preceding calendar year. Further, pursuant to section 504(d)(1) of the Trade Act, as amended (19 U.S.C. 2464(d)(1)), the limitation provided in section 504(c)(1)(B) shall not apply with respect to an eligible article if a like or directly competitive article was not produced in the United States on January 3, 1985.

3. Pursuant to sections 503(a) and 504(a) of the Trade Act, as amended (19 U.S.C. 2463(a) and 2464(a)), in order to subdivide and amend the nomenclature of existing items for the purposes of the GSP, I have determined, after taking into account information and advice received under section 503(a), that the TSUS should be modified to adjust the original designation of eligible articles. I have also determined, pursuant to section 504(a) and (c)(1) of the Trade Act, that certain beneficiary countries should no longer receive preferential tariff treatment under the GSP with respect to certain eligible articles. Further, I have determined, pursuant to section 504(c)(5) of the Trade Act, that certain countries should be redesignated as beneficiary developing countries with respect to specified previously designated eligible articles. These countries have been excluded from the benefits of the GSP with respect to such eligible articles pursuant to section 504(c)(1) of the Trade Act. Last, I have determined that section 504(c)(1)(B) of the Trade Act should not apply with respect to certain eligible articles because no like or directly competitive article was produced in the United States on January 3, 1985.

4. In order to reflect correctly the names of certain previously designated beneficiary developing countries, I have determined, pursuant to section 502(a) of the Trade Act, that general headnote 3(e)(v)(A) to the TSUS should be modified.

5. Section 604 of the Trade Act (19 U.S.C. 2483) confers authority upon the President to embody in the TSUS the substance of the relevant provisions of

that Act, of other acts affecting import treatment, and of actions taken thereunder.

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, acting under the authority vested in me by the Constitution and the statutes of the United States, including but not limited to Title V and section 604 of the Trade Act of 1974, do proclaim that:

(1) In order to provide preferential tariff treatment under the GSP to certain designated eligible articles, and to provide that one or more countries should no longer be treated as beneficiary developing countries with respect to certain eligible articles for purposes of the GSP, the TSUS are modified as provided in Annex I to this Proclamation.

(2) In order to provide preferential tariff treatment under the GSP to certain countries that have been excluded from the benefits of the GSP for certain eligible articles imported from such countries, following my determination that a country not previously receiving such benefits should again be treated as a beneficiary developing country with respect to such article, the Rates of Duty Special for the TSUS items enumerated in Annex II to this Proclamation is modified: (a) by deleting from such column for each such item the symbol "A*" in parentheses, and (b) by inserting in such column the symbol "A" in lieu thereof.

(3) In order to provide that one or more countries should no longer be treated as beneficiary developing countries with respect to an eligible article for purposes of the GSP, the Rates of Duty Special column for the TSUS items enumerated in Annex III to this Proclamation is modified: (a) by deleting from each such item the symbol "A" in parentheses, and (b) by inserting in such column the symbol "A*" in lieu thereof.

(4)(a) General headnote 3(e)(v)(A) to the TSUS, listing the designated beneficiary developing countries for the purposes of the GSP, is modified as provided in section (a) of Annex IV to this Proclamation.

(b) General headnote 3(e)(v)(D) to the TSUS, listing those articles that are eligible for benefits of the GSP except when imported from the beneficiary countries listed opposite the enumerated TSUS items for those articles, is modified as provided in section (b) of Annex IV to this Proclamation.

(5)(a) The eligible articles imported from designated beneficiary developing countries and provided for in TSUS item 632.46 shall not be subject to the limitations of section 504(c)(1)(B) of the Trade Act, as amended.

(b) Presidential Proclamation 5453 of March 31, 1986, is modified by inserting in numerical sequence in Annex IV TSUS item "632.46".

(6) Effective with respect to articles the product of Israel that are entered, or withdrawn from warehouse for consumption, on or after the dates specified in Annex V to this Proclamation, the rate of duty set forth in the Rates of Duty Special column followed by the symbol "I" in parentheses for each of the TSUS items enumerated in such Annex shall be stricken and the rate of duty provided in such Annex inserted in lieu thereof.

(7) The amendments made by this Proclamation shall be effective with respect to articles both: (a) imported on or after January 1, 1976, and (b) entered, or withdrawn from warehouse for consumption, on or after July 1, 1987.

IN WITNESS WHEREOF, I have hereunto set my hand this 19th 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

Billing code 3195-01-M

ANNEX I

Notes:

1. Bracketed matter is included to assist in the understanding of ordered modifications.
2. The following supersedes matter now in the Tariff Schedules of the United States (TSUS). The items and superior descriptions are set forth in columnar form, and material in such columns is inserted in the columns of the TSUS designated "Item", "Articles", "Rates of Duty 1", "Rates of Duty Special", and "Rates of Duty 2", respectively.

Effective as to articles entered, or withdrawn from warehouse for consumption, on or after the effective date of this proclamation.

1. Item 136.80 is superseded by:

	[Vegetables, . . .:]			
	"Okra:			
136.77	If entered during the period from July 1 to October 31, inclusive, in any year.....	25% ad val.	Free (A*,E) 8% ad val.(I)	50% ad val.
136.79	Other.....	25% ad val.	Free (A,E) 8% ad val.(I)	50% ad val."

2. Item 192.21 is superseded by:

	[Cut . . .:]			
"192.23	Chrysanthemums, standard carnations, anthuriums, and orchids.....	8% ad val.	Free (A*,E,I)	40% ad val.
192.24	Other.....	8% ad val.	Free (A,E,I)	40% ad val."

Conforming change: Items 192.22 and 192.25 are redesignated as 192.27 and 192.29, respectively.

3. Items 207.00 and 207.01 are superseded by:

	"Articles not specially provided for, of wood:			
207.05	Christmas ornaments.....	5.1% ad val.	Free (A,E,I)	33-1/3% ad val.
207.09	Other.....	5.1% ad val.	Free (A*,E,I)	33-1/3% ad val.
207.10	If Canadian article and original motor-vehicle equipment (see headnote 2, part 6B, schedule 6).....	Free"		

4. Item 256.90 is superseded by:

	[Articles, . . .:]			
	[Other:]			
	"Other:			
256.91	Paint filters and strainers.....	5.3% ad val.	Free (A*,E,I)	35% ad val.
256.95	Other.....	5.3% ad val.	Free (A,E,I)	35% ad val."

5. Item 386.13 is superseded by:

	[Articles . . .:]			
	[Lace . . .:]			
	[Other:]			
"386.12	Wall banners, of man-made fibers...	10% ad val.	Free (A,E,I)	90% ad val.
386.14	Other.....	10% ad val.	Free (A*,E,I)	90% ad val."

6. Item 425.99 is superseded by:

	[Acids:]			
"425.77	Fumaric	4.2% ad val.	Free (A,E,I)	25% ad val.
	[Other enumerated acids]			
425.97	Other	4.2% ad val.	Free (E,I)	25% ad val."

7. Items 684.40, 684.41, and 684.42 are superseded by:

	[Electric . . .:]			
	[Other:]			
	"Furnaces, heaters, and ovens, and parts thereof:			
684.35	Portable space heaters	3.7% ad val.	Free (A*,E,I)	35% ad val.
684.36	If Canadian article and original motor-vehicle equipment (see headnote 2, part 6B, schedule 6)	Free		
684.37	Other	3.7% ad val.	Free (A,E,I)	35% ad val.
684.38	If Canadian article and original motor-vehicle equipment (see headnote 2, part 6B, schedule 6)	Free		
684.39	Furnaces, heaters, and ovens, if certified for use in civil aircraft (see headnote 3, part 6C, schedule 6)	Free		35% ad val."

8. Item 685.32 is superseded by:

	[Radiotelegraphic . . .:]			
	[Radiotelegraphic . . .:]			
	[Other:]			
	[Other:]			
	"Other, including parts:			
685.31	Antennas	6% ad val.	Free (A*,E,I)	35% ad val.
685.33	Other	6% ad val.	Free (A*,E,I)	35% ad val."

9. Items 685.70, 685.71, and 685.72 are superseded by:

	"Bells, sirens, indicator panels, burglar and fire alarms, and other sound or visual signalling apparatus, all the foregoing which are electrical, and parts thereof:			
685.65	Sound signalling apparatus	2.7% ad val.	Free (A*,E,I)	35% ad val.
685.66	If Canadian article and original motor-vehicle equipment (see headnote 2, part 6B, schedule 6)	Free		
685.67	If certified for use in civil aircraft (see headnote 3, part 6C, schedule 6)	Free		35% ad val.

	"Bells, sirens, indicator panels, etc. (con.):			
685.73	Other.....	2.7% ad val.	Free (A*,E,I)	35% ad val.
685.74	If Canadian article and original motor-vehicle equipment (see headnote 2, part 6B, schedule 6).....	Free		
685.75	Bells, sirens, indicator panels, burglar and fire alarms, and other visual signalling apparatus, if certified for use in civil aircraft (see headnote 3, part 6C, schedule 6)...	Free		35% ad val."

10. Item 727.40 is superseded by:

	[Furniture, . . .:]			
	[Of wood:]			
	[Other:]			
	"Parts of furniture:			
727.39	Parts of chairs.....	5.3% ad val.	Free (A*,E,I)	40% ad val.
727.41	Other.....	5.3% ad val.	Free (A*,E,I)	40% ad val."

11. Item 737.15 is superseded by:

	[Model . . .:]			
	[Other . . .:]			
"737.14	Articles described in item 737.07, made to a scale of the actual article at a ratio larger than 1 to 85.....	7.8% ad val.	Free (A*,E) 3.1% ad val. (I)	70% ad val.
737.16	Other.....	7.8% ad val.	Free (A*,E) 3.1% ad val. (I)	70% ad val."

12. Item 737.95 is superseded by:

	[Toys, . . .:]			
	[Other:]			
"737.93	Toys having an electric motor.....	7% ad val.	Free (A*,E,I)	70% ad val.
737.96	Toys wholly or almost wholly of rubber or plastics, not inflatable.....	7% ad val.	Free (A*,E,I)	70% ad val.
737.98	Other.....	7% ad val.	Free (A*,E,I)	70% ad val."

13. Item 740.38 is superseded by:

	[Jewelry . . .:]			
	[Valued . . .:]			
"740.39	Parts of watch bracelets, valued not over $12 per dozen.....	11% ad val.	Free (A*,E,I)	110% ad val.
740.41	Other.....	11% ad val.	Free (A*,E,I)	110% ad val."

14. Item 751.20 is superseded by:

	[Parts . . .:]			
	[Other:]			
	"Of metal:			
	Umbrella frames and skeletons:			
751.21	For hand-held umbrellas chiefly used for protection against rain.....	12% ad val.	Free (A,E) 4.8% ad val. (I)	60% ad val.
751.22	Other.....	12% ad val.	Free (A*,E) 4.8% ad val. (I)	60% ad val.
751.24	Other.....	12% ad val.	Free (A,E) 4.8% ad val. (I)	60% ad val."

15. Item 772.15 is superseded by:

	[Articles . . .:]			
"772.13	Picture frames.....	3.4% ad val.	Free (A,E,I)	80% ad val.
772.16	Other.....	3.4% ad val.	Free (A*,E,I)	80% ad val."

16. Item 774.55 is superseded by:

	[Articles . . .:]			
	"Other:			
774.51	Copper clad laminates.....	5.3% ad val.	Free (A*,E,I)	80% ad val.
774.53	Flexible plastic document binders with tabs, rolled or flat.....	5.3% ad val.	Free (A*,E,I)	80% ad val.
774.56	Empty cartridges and cassettes for typewriter and machine ribbons.....	5.3% ad val.	Free (A*,E,I)	80% ad val.
774.58	Other.....	5.3% ad val.	Free (A*,E,I)	80% ad val."

ANNEX II

ARTICLES ELIGIBLE FOR PREFERENTIAL TREATMENT UNDER THE GSP WHEN IMPORTED FROM ANY BENEFICIARY DEVELOPING COUNTRY

136.00	315.35	652.70	737.47
136.79	386.12	684.15	737.49
170.40	419.10	684.37	737.51
170.45	420.82	715.62	748.20
192.17	425.77	715.64	748.21
192.24	465.05	737.07	751.21
206.60	533.64	737.21	751.24
207.05	534.94	737.28	772.13
256.95	632.46	737.40	

ANNEX III

ARTICLES ELIGIBLE FOR PREFERENTIAL TREATMENT UNDER THE GSP WHEN IMPORTED FROM BENEFICIARY DEVELOPING COUNTRIES OTHER THAN THOSE SPECIFIED IN GENERAL HEADNOTE 3(e)(v)(D) OF THE TSUS

136.61	547.37	674.42	734.77
136.77	609.14	680.19	734.88
137.04	610.84	680.25	734.91
146.12	610.86	683.32	735.10
148.30	618.47	683.60	737.14
149.50	626.40	684.35	737.16
152.54	632.42	685.06	737.65
168.98	642.45	685.22	737.93
192.23	646.30	685.31	737.96
202.66	646.65	685.33	737.98
206.30	646.95	685.39	740.39
207.09	646.97	685.65	740.41
240.14	647.03	685.73	741.50
256.91	647.05	686.18	745.45
315.25	648.80	686.90	750.47
386.14	648.85	688.32	750.65
406.96	648.95	690.15	750.70
408.72	650.21	696.50	751.22
410.72	651.31	703.72	756.15
412.80	651.48	705.82	770.40
420.60	651.55	706.45	772.06
421.06	652.60	711.31	772.16
425.82	653.35	723.30	772.20
427.84	653.37	725.46	772.80
428.58	653.96	727.11	772.95
439.50	654.00	727.25	772.97
445.46	654.25	727.39	773.10
470.85	654.35	727.41	774.50
490.94	654.45	727.59	774.51
533.30	654.75	727.65	774.53
534.11	657.40	727.86	774.56
534.81	660.67	730.29	774.58
535.12	660.71	731.70	790.55
540.21	661.20	732.52	790.60
542.77	661.35	732.62	791.27
544.51	664.08	734.20	791.60
545.67	674.34	734.42	

ANNEX IV

MODIFICATIONS TO GENERAL HEADNOTE 3(e)(v) OF THE TSUS
GSP WHEN IMPORTED FROM ANY BENEFICIARY DEVELOPING COUNTRY

(a) General headnote 3(e)(v)(A) is modified--

(1) by deleting "Gambia" from the enumeration of independent countries and territories and by inserting "The Gambia" in lieu thereof, and by deleting "Gambia" from the enumeration of least-developing beneficiary developing countries and by inserting "The Gambia" in lieu thereof;

(2) by deleting "Ivory Coast" from the list of independent countries and territories and by inserting "Cote d'Ivoire" in alphabetical order in that enumeration;

(3) by inserting after "Trust Territory of the Pacific Islands" in the enumeration of non-independent countries and territories the parenthetical "(Palau)".

(b) General headnote 3(e)(v)(D) to the TSUS is modified--

(1) by deleting the following TSUS item numbers and the countries set opposite these numbers:

136.00	Dominican Republic
136.80	Mexico
192.17	Colombia
192.21	Colombia
206.60	Mexico
207.00	Taiwan
386.13	Taiwan
419.10	Chile
420.82	Israel
465.05	Philippines
534.94	Taiwan
652.70	Rep. of Korea
684.15	Singapore
685.32	Hong Kong
	Rep. of Korea
	Singapore
	Taiwan
685.70	Singapore
727.40	Taiwan
737.07	Hong Kong
737.15	Hong Kong
737.21	Hong Kong
737.28	Rep. of Korea
	Taiwan
737.40	Hong Kong
	Rep. of Korea
737.47	Rep. of Korea
737.49	Hong Kong
	Taiwan
737.51	Rep. of Korea
737.95	Hong Kong
	Taiwan
740.38	Hong Kong
	Taiwan
748.20	Taiwan
748.21	Taiwan
772.15	Taiwan
774.55	Taiwan

(2) by adding in numerical sequence, the following TSUS item numbers and countries set opposite them:

136.61	Mexico
136.77	Mexico
137.04	Mexico
146.12	Argentina
148.30	Mexico
149.50	Mexico
152.54	Brazil
168.98	Mexico
192.23	Colombia
202.66	Taiwan
206.30	Taiwan
207.09	Taiwan
240.14	Taiwan
256.91	Brazil
315.25	Mexico
386.14	Taiwan
406.96	Brazil
408.72	Taiwan
410.72	Turkey
412.80	Mexico
420.60	Mexico
421.06	Taiwan
425.82	Brazil
427.84	Brazil
428.58	Brazil
439.50	Singapore
445.46	Mexico
470.85	Mexico
490.94	Brazil
533.30	Brazil Rep. of Korea Taiwan
534.11	Taiwan
534.81	Taiwan
535.12	Mexico
540.21	Mexico
542.77	Mexico
544.51	Taiwan
545.67	Taiwan
547.37	Taiwan
609.14	Brazil
610.84	Brazil Rep. of Korea Taiwan
610.86	Rep. of Korea Taiwan
618.47	Brazil
626.40	Mexico
632.42	Brazil
642.45	Mexico
646.30	Rep. of Korea
646.65	Taiwan
646.95	Taiwan
646.97	Taiwan
647.03	Taiwan
647.05	Taiwan
648.80	Hong Kong
648.85	Taiwan
648.95	Taiwan
650.21	Taiwan
651.31	Taiwan
651.48	Taiwan
651.55	Taiwan
652.60	Taiwan
653.35	Taiwan
653.37	Taiwan
653.96	Taiwan
654.00	Taiwan
654.25	Taiwan
654.35	Taiwan
654.45	Taiwan
654.75	Taiwan
657.40	Taiwan
660.67	Brazil Mexico
660.71	Brazil
661.20	Mexico
661.35	Rep. of Korea
664.08	Brazil
674.34	Taiwan
674.42	Taiwan
680.19	Taiwan
680.25	Taiwan
683.32	Hong Kong
683.60	Mexico
684.35	Hong Kong
685.06	Taiwan
685.22	Hong Kong Rep. of Korea
685.31	Rep. of Korea Taiwan
685.33	Mexico Rep. of Korea Singapore Taiwan
685.39	Hong Kong Rep. of Korea
685.65	Singapore
685.73	Hong Kong
686.18	Taiwan
686.90	Rep. of Korea
688.32	Rep. of Korea
690.15	Mexico
696.50	Rep. of Korea
703.72	Taiwan
705.82	Taiwan
706.45	Hong Kong

(2) by adding in numerical sequence, the following TSUS item numbers and countries set opposite them (con.)

711.31	Brazil
723.30	Brazil
725.46	Rep. of Korea
	Taiwan
727.11	Taiwan
727.25	Taiwan
727.39	Taiwan
	Yugoslavia
727.41	Taiwan
727.59	Taiwan
727.65	Taiwan
727.86	Taiwan
730.29	Brazil
731.70	Taiwan
732.52	Taiwan
732.62	Taiwan
734.20	Taiwan
734.42	Brazil
734.77	Rep. of Korea
734.88	Taiwan
734.91	Taiwan
735.10	Taiwan
737.14	Hong Kong
737.16	Hong Kong
737.65	Taiwan
737.93	Taiwan
737.96	Hong Kong
	Mexico
	Hong Kong
737.98	Mexico
	Taiwan
740.39	Taiwan
740.41	Hong Kong
	Rep. of Korea
	Taiwan
741.50	Hong Kong
745.45	Taiwan
750.47	Taiwan
750.65	Taiwan
750.70	Taiwan
751.22	Taiwan
756.15	Hong Kong
770.40	Mexico
772.06	Taiwan
772.16	Hong Kong
	Taiwan
772.20	Taiwan
772.80	Taiwan
772.95	Taiwan
772.97	Taiwan
773.10	Taiwan
774.50	Taiwan
774.51	Taiwan
774.53	Taiwan
774.56	Taiwan
774.58	Taiwan
790.55	Taiwan
790.60	Taiwan
791.27	Brazil
791.60	Taiwan

(3) by deleting the following countries opposite the following TSUS items:

155.20	Philippines
676.56	Singapore
684.58	Hong Kong
685.14	Singapore
685.25	Hong Kong
688.30	Costa Rica
737.23	Taiwan
737.30	Taiwan
737.60	Hong Kong

(4) by adding, in alphabetical order, the following countries opposite the following TSUS items:

532.22	Taiwan
535.31	Brazil
545.53	Taiwan
610.82	Taiwan
612.03	Mexico
650.89	Taiwan
653.00	Singapore
	Taiwan
654.08	Mexico
654.60	Taiwan
661.06	Mexico
664.10	Mexico
676.15	Rep. of Korea
676.30	Hong Kong
678.50	Brazil
684.48	Taiwan
685.40	Hong Kong
688.18	Taiwan
688.30	Rep. of Korea
688.42	Mexico
	Rep. of Korea
692.32	Rep. of Korea
724.45	Mexico
727.29	Yugoslavia
735.20	Rep. of Korea
737.60	Taiwan
740.14	Thailand
750.45	Taiwan
772.51	Taiwan

ANNEX V

Effective with respect to articles the product of Israel which are entered, or withdrawn from warehouse for consumption, on or after the dates set forth in the following tabulation.

For each of the following items created by Annex 1 of this Proclamation the rate of duty in the Rates of Duty Special column that is followed by the symbol "I" in parentheses is deleted and the following rate of duty is inserted on the date specified in lieu thereof followed by the symbol "I" in parentheses.

TSUS ITEM	January 1, 1988	January 1, 1989
136.77	8%	Free
136.79	8%	Free
737.14	3.1%	Free
737.16	3.1%	Free
751.21	4.8%	Free
751.22	4.8%	Free
751.24	4.8%	Free

[FR Doc. 87-11886
Filed 5-20-87; 3:10 pm]
Billing code 3190-01-C

Presidential Documents

Memorandum of May 19, 1987

Actions Concerning the Generalized System of Preferences

Memorandum for the United States Trade Representative

Pursuant to section 504(f) of the Trade Act of 1974, as amended (the Act) (19 U.S.C. 2464(f)), I am hereby acting to modify the application of duty-free treatment under the Generalized System of Preferences (GSP) currently being afforded to certain beneficiary developing countries. Such countries are Bahrain, Bermuda, Brunei Darussalam, and Nauru.

Specifically, I have determined, under the provisions of section 504(f), that the per capita gross national product for each such country for calendar year 1985, calculated on the basis of the best available information, exceeds the applicable limit provided in section 504(f)(2). Accordingly, pursuant to section 504(f)(1)(A), beginning on July 1, 1986, and continuing through June 30, 1988, the limitations on preferential treatment provided under section 504(c)(1)(B) of the Act (19 U.S.C. 2464(c)(1)(B)) shall be applied substituting "25 percent" for "50 percent." Furthermore, pursuant to section 504(f)(1)(B), effective July 1, 1988, such countries shall no longer be treated as beneficiary developing countries, and articles the product of any such country shall no longer receive preferential treatment under the GSP.

This determination shall be published in the **Federal Register.**

Ronald Reagan

THE WHITE HOUSE,
Washington, May 19, 1987.

[FR Doc. 87-11887
Filed 5-20-87; 3:11 pm]
Billing code 3195-01-M

Rules and Regulations

Federal Register
Vol. 52, No. 99
Friday, May 22, 1987

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Part 245

Categorical Eligibility for Free Meals and Milk in Schools for Children Receiving Assistance Under the Food Stamp and AFDC Programs

AGENCY: Food and Nutrition Service, USDA.

ACTION: Interim rule.

SUMMARY: The Food and Nutrition Service (FNS) is amending the regulations governing the determination of eligibility for free and reduced price meals and free milk in schools to provide categorical free meal and milk eligibility and simplified eligibility and verification procedures for children in Aid to Families with Dependent Children (AFDC) assistance units. This rule implements the provisions of the School Lunch and Child Nutrition Amendments of 1986, as reflected in Pub. L. 99–500 and Pub. L. 99–591, which mandate categorical eligibility for free meals under the Child Nutrition Programs and simplified verification of such eligibility for children in food stamp households and AFDC assistance units. Since the regulations already allow simplified application and verification for food stamp households, this rule deals essentially with AFDC. However, some changes have been made in the regulatory provisions dealing with food stamp households to further simplify application procedures and to make it clear that such eligibility and verification determinations, as in AFDC, will be on a "child" rather than household basis. This rule will make it easier for households to apply for free meal and milk benefits for children who are members of food stamp households or AFDC assistance units and will facilitate eligibility and verification determinations at the school or School Food Authority level.

DATES: This rule is effective May 22, 1987, however, State agencies and School Food Authorities shall implement the provisions of this rule no later than the school year beginning on July 1, 1987. Comments must be received on or before July 21, 1987, to be assured of consideration.

ADDRESS: Comments should be submitted to Lou Pastura, Chief, Policy and Program Development Branch, Child Nutrition Division, Food and Nutrition Service, USDA, Alexandria, Virginia 22302. Copies of all written comments on the interim rule will be available for review during the normal business hours at 3101 Park Center Drive, Room 509, Alexandria, Virginia 22302.

FOR FURTHER INFORMATION CONTACT: Mr. Pastura, at the above address, or telephone (703) 756–3620.

SUPPLEMENTARY INFORMATION:

Classification

This interim rule implements a nondiscretionary provision of Pub. L. 99–500 and Pub. L. 99–591. For this reason, the Acting Administrator of the Food and Nutrition Service has determined pursuant to 5 U.S.C. 553 (b) and (d) that prior notice of proposed rulemaking and public comment are unnecessary and contrary to the public interest and that good cause exists for making this rule effective on publication. In addition, since this rule merely implements cited statutory provisions, it constitutes an interpretative rule for which notice and comment rulemaking and a 30-day period before taking effect are not required by 5 U.S.C. 553. However, since a substantial number of households will be affected by the revised application and verification procedures in the rule, the Department is requesting comments on these procedures in order that any potential discrepancies may be resolved in the final rule.

This interim rule has been reviewed under Executive Order 12291 and has been classified as not major because it does not meet any of the three criteria identified under the Executive Order. This action will not have an annual effect on the economy of $100 million or more, nor will it result in major increases in costs or prices for consumers, individual industries, Federal, State or local government agencies or geographic regions. Furthermore, it will not have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of U.S. based enterprises to compete with foreign-based enterprises in domestic or export markets.

This rule has been reviewed with regard to the requirements of the Regulatory Flexibility Act (5 U.S.C. 601 through 612). The Administrator of FNS has certified that this rule will not have a significant adverse economic impact on a substantial number of small entities.

This rule affects the School Breakfast Program, National School Lunch Program and Special Milk Program which are listed in the Catalog of Federal Domestic Assistance under 10.553, 10.555 and 10.556. These programs are subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. (See 7 CFR Part 3015, Subpart V, 48 FR 29112, June 24, 1983.)

This rule imposes no new reporting or recordkeeping provisions that are subject to Office of Management and Budget review in accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 through 3520).

Background

The School Lunch and Child Nutrition Amendments of 1986 as reflected in Pub. L. 99–500 and Pub. L. 99–591 provide categorical eligibility for free meals under the Federal Child Nutrition Programs for children from households receiving food stamps or from "assistance units" receiving AFDC benefits, provided that the AFDC benefits are not made available to assistance units with income greater than 130 percent of the Federal poverty guidelines. Currently, no State AFDC needs standards exceed this level. Consequently, receipt of AFDC will automatically qualify children to receive free meal benefits in all States and territories where the National School Lunch Program and School Breakfast Program are administered. The categorical eligibility provisions are intended to simplify free meal application procedures for children from households whose need for food assistance has already been established

by their participation in other Federal assistance programs.

The categorical eligibility provisions will necessitate several changes to the way in which childrens' eligibility for free meal benefits is determined in the school lunch and breakfast progams. Until now, eligibility determinations for free or reduced price benefits have been made only on a household basis. That is, based on information submitted for the entire household, an eligibility determination was made that applied to all schoolchildren in the household. Generally, households were required to provide information which included names of all household members, social security members of all adult household members, and income received by each household member identified by source.

Eligibility for free or reduced price meals or free milk was determined based on the household's total income as compared to the Department's Income Eligibility Guidelines. Since School Year 1984–85, Federal regulations have given households the option of providing a food stamp case number in lieu of income information on free and reduced price applications in order to establish eligibility for free meals. However, all other information on the application, including the names of all household numbers and the social security members of all adult members, has been required of these households. The Department recognized that the child nutrition definition of "household" was not entirely consistent with the more complex definition of "household" utilized in the Food Stamp Program but, to maintain a simple application and eligibility determination process in schools, decided to treat both types of households the same in determining free meal or milk eligibility.

The Department believes that the law's intent was to simplify application procedures as well as provide automatic free meal eligibility for children receiving food stamp and AFDC benefits. Therefore, the Department is amending the regulations to authorize School Food Authorities to accept abbreviated applications from households for children who are members of food stamp households or AFDC assistance units. In order to establish the eligibility of these children in the simplest manner possible, School Food Authorities will accept a current food stamp or AFDC case number to establish a child's eligibility without requiring any additional information concerning other household members or income. In such cases, eligibility for free meals or milk will be determined on a "child" rather than "household" basis. However, if an application for free or reduced price benefits is made for any child who is *not* a member of a food stamp household or AFDC assistance unit, even if that child resides in a larger household with other children who are food stamp or AFDC recipients, such application must include all household income including the amount of any AFDC or other welfare grant and other information for *all* household members. In other words, a parent can complete an abbreviated application for a child for whom AFDC is received. However, if another child in the household does not come under an AFDC grant, and free or reduced price lunches are desired for that child, a full application must be completed for that child and all household income must be listed. Whenever special application procedures apply only to children who are members of food stamp households or AFDC assistance units, they are clearly spelled out in the regulatory language. In connection with this, this rule defines "food stamp household" and "AFDC assistance unit" for purposes of the application of the rule.

The Department believes that the new application procedures for households on behalf of children who are members of food stamp households or AFDC assistance units will substantially simplify the eligibility process for those children who are designated as categorically eligible under Pub. L. 99–500 and Pub. L. 99–591. At the same time, the continuation of current application procedures for households on behalf of all other children will ensure that categorical eligibility is not inadvertently extended to persons other than those specified by law. In order to assist School Food Authorities in implementing the new application procedures under this rule, the Department will revise and reissue the Eligibility Guidance for School Meal Programs.

In addition to mandating categorical free meal eligibility for children in food stamp households and AFDC assistance units, section 323 of Pub. L. 99–500 and Pub. L. 99–591 also mandates that "proof of receipt" of food stamp or AFDC benefits be accepted as adequate verification of eligibility to receive free school meal benefits. Thus, regardless of whether or not application for free meal or milk benefits was made under the categorical eligibility procedures, eligibility for free meals or milk for any child can be verified by documenting that the child is a member of a household or assistance unit that is currently certified to participate in the Food Stamp or AFDC Program. To emphasize the requirement that current certification for participation in these programs be verified, the regulatory language specifies that program identification cards are not acceptable sources for verification unless they contain an expiration date. This provision restates current policy concerning this issue.

Finally, this rule applies to free milk benefits under the Special Milk Program as well as free or reduced price meal benefits under the National School Lunch and School Breakfast programs. Although the categorical eligibility and simplified verification provisions of the School Lunch and Child Nutrition Amendments of 1986 only address meals, the Department believes they should be extended to milk in order to provide consistency in administration between all of the school nutrition programs and to ensure equity of treatment for all program recipients.

List of Subjects in 7 CFR Part 245

Food assistance programs, Grant programs—Social programs, National School Lunch Program, School Breakfast Program, Special Milk Program, Reporting and recordkeeping requirements.

Accordingly, Part 245 is amended as follows:

PART 245—DETERMINING ELIGIBILITY FOR FREE AND REDUCED PRICE MEALS AND FREE MILK IN SCHOOLS

1. The authority citation for Part 245 continues to read as follows:

Authority: Secs. 3, 4, and 10, 80 Stat. 885, 886, 889, as amended (42 U.S.C. 1772, 1773, 1779); secs. 2–12, 60 Stat. 230, as amended (43 U.S.C. 1751–60), unless otherwise noted.

2. In § 245.2: a. Paragraphs (a–1), (a–2) and (a–3) are redesignated (a–2), (a–3) and (a–4), respectively and a new paragraph (a–1) is added.

b. Newly redesignated paragraph (a–4) is amended by removing, in paragraph (a–4)(3), the words "or in lieu of income information, the Food Stamp Program case number for those households currently receiving food stamps;" and by adding a new sentence to the end of paragraph (a–4).

c. A new paragraph (b–1) is added.

d. Paragraph (k) is revised.

The additions and revisions specified above read as follows:

§ 245.2 Definitions.

* * * * *

(a) * * *

(a–1) "AFDC Assistance Unit" means any individual or group of individuals

which is currently certified to receive assistance under the Aid to Families with Dependent Children Program in a State where the standard of eligibility for AFDC benefits does not exceed the income eligibility guidelines for free meals or free milk under this Part.

* * * * *

(a–4) * * * Alternatively, "documentation" for a child who is a member of a food stamp household or an AFDC assistance unit means completion of only the following information on a free and reduced price application: the name and appropriate food stamp or AFDC case number for the child and the name and signature of an adult member of the household.

* * * * *

(b) * * *

(b–1) "Food Stamp Household" means any individual or group of individuals which is currently certified to receive assistance as a household under the Food Stamp Program.

* * * * *

(k) "Verification" means confirmation of eligibility for free or reduced price benefits under the National School Lunch Program or School Breakfast Program. Verification shall include confirmation of income eligibility and, at State or local discretion, may also include confirmation of any other information required in the application which is defined as documentation in § 245.2(a–4). Such verification may be accomplished by examining information provided by the household such as wage stubs, or by other means as specified in § 245.6a(b). However, if a food stamp or AFDC case number is provided for a child, verification for such child shall only include confirmation that the child is included in a currently certified food stamp household or AFDC assistance unit.

3. In § 245.5, paragraphs (a)(1)(iii), (a)(1)(iv) and (a)(1)(vi) are revised to read as follows:

§ 245.5 Public announcement of the eligibility criteria.

(a) * * *

(1) * * *

(iii) An explanation that an application for free or reduced price benefits cannot be approved unless it contains complete "documentation" as defined in § 245.2(a–4).

(iv) An explanation that households with children who are members of currently certified food stamp households or AFDC assistance units may submit applications for such children with the abbreviated information described in § 245.2(a–4).

* * * * *

(vi) An explanation that households receiving free or reduced price benefits must notify school officials during the school year of any decreases in household size and any increases in income of over $50 per month or $600 per year (or a lesser amount if established by the State) or, in the case of households that provided a food stamp or AFDC case number to establish eligibility for free meals or milk for a child, of any termination of certification for receipt of benefits for such children under the Food Stamp or AFDC Programs

* * * * * *

4. In § 245.6—a. The fifth sentence of introductory paragraph (a) is removed and a new sentence is added before the last sentence.

b. The first and fifth sentences of paragraph (a)(1) are revised.

The addition and revision specified above read as follows:

§ 245.6 Application for free and reduced price meals and free milk.

(a) * * * However, if application is being made for a child who is a member of a food stamp household or an AFDC assistance unit, the application shall enable the household to provide the appropriate food stamp or AFDC case number in lieu of income information and names and social security numbers of all household members. * * *

(1) Section 9 of the National School Act requires that, unless you provide a food stamp or AFDC case number for your child, you must provide the social security numbers of all adult members of your household in order for your child to be eligible for free or reduced price meals. * * * These verification efforts may be carried out through program reviews, audits, and investigations and may include contacting employers to determine income, contacting a food stamp or welfare office to determine current certification for receipt of food stamps or AFDC benefits, contacting the State employment security office to determine the amount of benefits received and checking the documentation produced by household members to prove the amount of income received. * * *

* * * * *

5. In § 245.6a, the second sentence of paragraph (a)(1); paragraphs (a)(2) and (a)(3); and the second sentence of paragraphs (b)(3) are revised to read as follows:

§ 245.6a Verification requirements.

(a) * * *

(1) *Confirmation of income information.* * * * An application must be approved if it contains the essential information specified in § 245.2(a-4) and, if applicable, the household meets the income eligibility criteria for free or reduced price benefits.* * *

(2) *Notification of selection.* Households selected to provide verification shall be provided written notice that their applications have been selected for verification and that they required, by such date as determined by the School Food Authority, to submit the requested verification information to confirm eligibility for free or reduced price meals. These households shall be informed of the type or types of information and/or documents acceptable to the school and the name and phone number of a school official who can assist in the verification effort. Selected households shall also be informed that, in lieu of any information that would otherwise be required, they can submit proof of current food stamp of AFDC Program certification as described in paragraph (a)(3) of this section to verify the free meal eligibility of a child who is a member of a food stamp household or AFDC assistance unit. All households selected for verification shall be advised that failure to cooperate with verification efforts will result in the termination of benefits.

(3) *Food stamp of AFDC recipients.* On applications where households have furnished food stamp or AFDC case numbers, verification shall be accomplished either by confirming with the local food stamp or welfare office that each child, for whom application was made and a number provided, is a member of a currently certified food stamp household or AFDC assistance unit; or by obtaining from the household a copy of a current "Notice of Eligibility" for Food Stamp or AFDC Program benefits or equivalent official documentation issued by the food stamp or welfare office which confirms that the child is a member of a currently certified food stamp household or AFDC assistance unit. An identification card for either program is *not* acceptable as verification unless it contains an expiration date. If it is not established that the child is a member of a currently certified food stamp household or AFDC assistance unit, the procedures for adverse action specified at § 245.6a(e) shall be followed. The notification of forthcoming termination of benefits provided to such households shall include a request for household income information and for written evidence which confirms household income to assist those households in establishing continued eligibility for free meal benefits.

* * * * *

(b) *Sources of information.* * * *

(3) *Agency records.* * * * Information concerning income, household size or food stamp/AFDC eligibility maintained by other government agencies to which the State agency, School Food Authority, or school can legally gain access may be used to confirm a household's income, size or receipt of benefits.* * *

* * * * *

§ 245.11 [Amended]

6. In § 245.11, the first sentence of paragraph (a)(2) is amended by adding a period after the word "standards" and removing the words "which shall be applicable to all families, including welfare and other families receiving public assistance."

Dated: May 18, 1987.

S. Anna Kondratas,

Acting Administrator.

[FR Doc. 87-11685 Filed 5-21-87; 8:45 am]

BILLING CODE 3410-30-M

Agricultural Marketing Service

7 CFR Part 910

[Lemon Regulation 562]

Lemons Grown in California and Arizona; Limitation of Handling

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: Regulation 562 establishes the quantity of fresh California-Arizona lemons that may be shipped to market at 345,000 cartons during the period May 24–30, 1987. Such action is needed to balance the supply of fresh lemons with market demand for the period specified, due to the marketing situation confronting the lemon industry.

DATES: Regulation 562 (§ 910.862) is effective for the period May 24–30, 1987.

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

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

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

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

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

This regulation is consistent with the marketing policy for 1986–87. The committee met publicly on May 19, 1987, in Los Angeles, California, to consider the current and prospective conditions of supply and demand and recommended by a 9 to 1 vote (with one abstention) a quantity of lemons deemed advisable to be handled during the specified week. The committee reports that the market is very active.

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

List of Subjects in 7 CFR Part 910

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

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

PART 910—LEMONS GROWN IN CALIFORNIA AND ARIZONA

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

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

2. Section 910.862 is added to read as follows:

§ 910.862 Lemon Regulation 562.

The quantity of lemons grown in California and Arizona which may be handled during the period May 24, 1987, through May 30, 1987, is established at 345,000 cartons.

Dated: May 20, 1987.

Ronald L. Cioffi,

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

[FR Doc. 87-11891 Filed 5-21-87; 8:45 am]

BILLING CODE 3410-02-M

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7 CFR Part 908

[Valencia Orange Regulation 381]

Valencia Oranges Grown in Arizona and Designated Part of California; Minimum Size Limitation

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This rule establishes a minimum size requirement of 2.32 inches in diameter for fresh domestic shipments of California-Arizona Valencia oranges during the 1986–87 season. This action recognizes the anticipated size composition of the 1986–87 California-Arizona Valencia orange crop and current and prospective market conditions.

EFFECTIVE DATE: May 22, 1987 through December 31, 1987.

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

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

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

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order

that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the "Act", and rules issued thereunder are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

Valencia oranges regulated under Marketing Order No. 908 are grown in Arizona and designated parts of California. For marketing order purposes, the production area is divided into three districts: District 1, representing Central California; District 2, representing Southern California; and District 3, representing Arizona and the southeastern desert area of California. In recent seasons, District 1 has accounted for around 40 percent of total production, District 2 over 50 percent, and District 3 around 7 percent.

The three basic outlets for California-Arizona Valencia oranges are domestic fresh, export, and processing markets. The domestic fresh market is fairly static and is the preferred market for Valencia oranges, receiving around 23,000 cars per year unless unusual conditions such as poor quality and/or abnormal crop sizes exist. Quantities utilized in the export market have ranged from 9,208 cars to over 13,000 cars in the past five years. Exports vary depending on factors such as the foreign monetary exchange rate, orange quality, orange sizes, and trade practices. The processing market is basically a residual outlet. Valencia oranges not sold fresh are either disposed of or utilized for products, such as orange juice. Estimated crop utilization for the 1986–87 season is currently 18,000 cars (34 percent) for domestic fresh markets 11,000 cars (21 percent) export, with the remaining 24,000 (45 percent) going to processed and other outlets. Such estimates are based on the Valencia Orange Administrative Committee's (VOAC) current crop estimate, the anticipated supply of Valencia oranges available for market during the 1986–87 season, and the demand in such outlets for Valencia oranges. These figures reflect a change from that which was contained in the proposal, because of a downward revision in the tree crop estimate for the 1986–87 season from 59,000 cars to 53,000 cars.

It is estimated that 115 handlers of California-Arizona Valencia oranges will be subject to regulation during the course of the current season. There are approximately 3,500 growers of California-Arizona Valencia oranges. Small agricultural growers have been defined by the Small Business Administration (13 CFR 121.2 (1985)) as those growers having average annual gross revenues for the last three years of less than $100,000, and agricultural service firms have been defined as those whose gross annual receipts are less than $3,500,000. The majority of growers and handlers of California-Arizona Valencia oranges may be classified as small entities.

The minimum size regulation is issued under Marketing Order No. 908, as amended (7 CFR Part 908), regulating the handling of Valencia oranges grown in Arizona and a designated part of California. The order is effective under the Act. A proposed rule was issued on April 17, 1987 (52 FR 12536) and provided interested persons the opportunity for public comment through April 27, 1987. One comment was received from the VOAC in support of the minimum size regulation. However, the VOAC comment pointed out that the proposed size regulation was intended to be effective for the entire shipping season. Indeed that was clearly stated in the proposal. In addition, VOAC indicated that the October 31, 1987, termination date set forth in the proposal was inadequate to cover shipments for the 1986–87 season. Therefore, the VOAC recommended that the proposed rule be revised to establish a December 31, 1987, termination date for this rule in order to cover end of the season shipments. Based on the above, this rule establishes a minimum size regulation for the entire 1986–87 Valencia orange season. Consequently, the termination date of this rule will be established at December 31, 1987.

The VOAC met publicly on March 10, 1987, and recommended the establishment of a minimum size regulation for the 1986–87 season. The rule is consistent with the marketing policy for 1986–87. This action will proscribe the domestic shipment of small sized California-Arizona Valencia oranges during the 1986–87 season. This action is based upon the recommendation and information submitted by the VOAC and upon other available information. It is hereby found that this action will tend to effectuate the declared policy of the Act.

Valencia oranges are classified into categories which indicate the number of oranges packed in a standard carton of 37.5 pounds. For instance, a size category designating very large size oranges would be 56's and very small sizes, 180's or 210's. This regulation will prohibit the shipment of size 180's and smaller. It is difficult to ascertain the exact amount of oranges that this will preclude from shipment to the domestic fresh market because oranges tend to get larger as the season progresses, if left on the tree. Another factor complicating the exact estimation of the quantity of small sized Valencia oranges is that 1986–87 production is expected to be high, and there is generally a larger proportion of small fruit in larger crops.

The VOAC reports that growth tests indicate that the Valencia oranges have not been sizing as rapidly as normal, thus making it more difficult to predict actual outturn. The sizes precluded from shipment (180's and smaller) are estimated to represent approximately 18 to 30 percent of the crop. Although the percentage of Valencia oranges estimated to be precluded for use in domestic fresh markets because of this regulation appears to be high, the percentage of the crop expected to go to outlets other than domestic fresh is expected to total 66 percent. A good portion of such percentage traditionally includes small sized oranges. Thus, ample markets exist for the small sized oranges.

Implementation of this regulation will require the handling of larger sized oranges, thus, improving grower returns and aiding in strengthening the price patterns of all sizes. This regulation applies only to domestic shipments, including Canada. Smaller sized Valencia oranges may be processed, exported and otherwise shipped in accordance with § 908.67. As not all of the crop will be utilized in domestic fresh markets, the result of the regulation will be to move toward an economic utilization which is expected to result in higher overall grower revenue.

Consequently, when weighing costs and benefits derived from the use of size regulations, it seems highly probable that the benefits of this rule will far outweigh the costs.

Based on the above, the Administrator of the AMS has determined that issuance of this size regulation will not have a significant economic impact on a substantial number of small entities.

It is further found that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** (5 U.S.C. 553) because this rule should be issued as soon as possible since shipments of 1986–87 crop Valencia oranges have already begun and are expected to continue through December 1987.

List of Subjects in 7 CFR Part 908

Marketing agreements and orders, California, Arizona, Oranges, Valencia.

For the reasons set forth in the preamble, 7 CFR Part 908 is amended as follows:

PART 908—VALENCIA ORANGES GROWN IN ARIZONA AND DESIGNATED PARTS OF CALIFORNIA

Subpart—Rules and Regulations

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

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

2. Section 908.681 is added to read as follows: (The following section will not be published in the Code of Federal Regulations)

§ 908.681 Valencia Orange Regulation 381.

During the period beginning with May 22, 1987 through December 31, 1987, no handler shall handle any Valencia oranges which are of a size smaller than 2.32 inches in diameter, such diameter to be the largest measurement at a right angle to a straight line running from the stem to the blossom end of the fruit: *Provided,* That not to exceed 5 percent, by count, of the oranges in any container may measure smaller than 2.32 inches in diameter.

Dated: May 18, 1987.

Ronald L. Cioffi,

Acting Deputy Director, Fruit and Vegetable Division.

[FR Doc. 87–11797 Filed 5–21–87; 8:45 am]

BILLING CODE 3410–02–M

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7 CFR Parts 959 and 980

Onions Grown in South Texas; Amendment No. 5 to Handling Regulation; Vegetable Import Regulations; Onions

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This rule will permit handlers to pack onions in 40- or 50-pound cartons in addition to other previously authorized containers. In addition, the rule will allow handlers to designate onions three inches or larger in diameter as "Jumbo" or "Large." It will also provide a new size designation of "Extra Large" for onions having a diameter of 3–¾ inches and larger. It changes the termination date of inspection requirements from June 15 to May 31 to relieve restrictions on handlers in a small production area far from the primary production area, and will also shorten the period for inspection requirements on handlers in the primary production area. Finally, the rule changes the termination date of grade, size, inspection, and Sunday shipment requirements from June 1 to May 31. Conforming changes to the import regulation for onions are made to reflect applicable changes in the effective period of the domestic regulation. The rule is designed to lessen the regulatory requirements on handlers and to provide them with additional flexibility in their selection of shipping containers while assuring the condition and quality of onions in the marketplace during the 1987 and subsequent seasons.

EFFECTIVE DATE: The final rule becomes effective May 22, 1987.

FOR FURTHER INFORMATION CONTACT: James M. Scanlon, Acting Chief, Marketing Order Administration Branch, F&V, AMS, USDA, Washington, DC 20250–1400, (202) 475–3914.

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

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

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

It is estimated that 40 handlers of onions will be subject to regulaton under the South Texas Onion Marketing Order during the course of the current season. In addition, there are about 160 producers of onions in South Texas. There are approximately 28 onion importers. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.2) as those having average annual gross revenues for the last three years of less than $100,000 agricultural service firms, which include handlers and importers, are defined as those whose gross annual receipts are less that $3,500,000. The majority of producers, handlers, and importers may be classified as small entities.

Pursuant to the requirements set forth in the RFA, the Administrator of the Agricultural Marketing Service (AMS) has considered the impact of this rule on small entities. The regulatory action in this instance is a rule: (1) Allowing onions to be shipped in 40- or 50-pound cartons on a regular commercial basis not subject to the experimental/special purpose shipment safeguards currently applied to handlers utilizing such cartons; (2) allowing handlers to designate onions three inches or larger in diameter as "Jumbo" or "Large" (currently the designation for such onions is limited to "Jumbo"); (3) providing a new size designation of "Extra Large" for onions having a diameter of 3–¾ inches or larger; (4) changing the termination date of inspection requirements from June 15 to May 31 to relieve handlers in a small producing area from these requirements while also shortening the period for inspection requirements on handlers in the primary production area; (5) changing the termination date of grade, size, inspection, and Sunday shipment handling requirements applicable to all handlers in the production area so the requirements end on May 31 rather than June 1; and (6) changing both § 959.322(i) and § 980.117 to clarify that the South Texas handling requirements apply to imports during the March 10—May 31 period each season.

The primary production area for South Texas onions is the lower Rio Grande Valley. Onion production in the entire production area in 1986 was 4.2 million hundredweight with harvested acreage amounting to 12,000 acres. The percentage of the crop marketed fresh has not fallen below 92.6 percent since 1977.

Allowing onions to be shipped in 40- or 50-pound cartons on a regular commercial basis without regard to the experimental/special purpose shipment safeguards currently applied to handlers utilizing such cartons will reduce the regulatory burden on handlers desiring to ship onions in cartons. Moreover, the handling of gift packages of onions, not exceeding 25 pounds per package, individually addressed to the buyer and not for resale, and export shipments are exempt from the container requirements of the handling regulation. Special purpose shipments for charity, relief, canning, or freezing are exempt from the grade, size, container, and inspection requirements of the handling regulation if they are handled in accordance with the safeguards established in

§ 959.322(g). Moreover, regulation exemptions for experimental onion shipments can be authorized by the committee provided the shipments are made in accordance with safeguards established in § 959.322(g). Finally, any handler may handle, other than for resale, up to 110 pounds of onions per day without regard to the handling requirements.

The additional size designations "Large" and "Extra Large" will bring these designations into conformity with industry marketing terminology. Another action changes the termination date of inspection requirements from June 15 to May 31 to relieve an undue inspection cost in a minor production area. The area is the "Winter Garden" area of Texas which produces a very small part of the South Texas onion production each season and is located far from the primary production area inspection facilities. This date is also when the primary production area handlers usually complete their operations. Inspection requirements for these handlers also will be terminated on May 31 each season.

A final change is made to both § 959.322(i) and § 980.117 to clarify that the beginning of the effective regulation period for imports begins March 10, the same date as the beginning of the handling regulation for domestic onions grown in South Texas and ends May 31 of each season. This change provides importers with adequate notice as to when the South Texas requirements apply each year and allows them to plan accordingly.

It is the Department's view that the impact of the changes upon growers and handlers and importers will be favorable. The changes relieve restrictions and make clarifications. Thus they will not impose any additional costs.

This rule is issued under marketing agreement and Order No. 959, both as amended, regulating the handling of onions grown in designated counties in South Texas. The program is effective under the Act. Shipments of these onions are regulated under a handling regulation contained in § 959.322. Section 959.322 was amended and published in the **Federal Register** on March 5, 1986 (51 FR 7547). The South Texas Onion Committee, established under the order, is responsible for its local administration.

In October 1981 the committee recommended, and the Secretary approved, a handling regulation (47 FR 8551) which would continue in effect from marketing season to marketing season indefinitely unless modified, suspended or terminated by the Secretary upon recommendation submitted by the committee or other information available to the Secretary.

A proposed rule inviting comments on this action was published in the March 11, 1987, **Federal Register** (52 FR 7431). Interested persons were given until March 26, 1987, to file written comments. Subsequently the comment period was extended to April 15, 1987, to provide interested persons additional time to submit comments. This extension was published in the March 27, 1987, **Federal Register** (52 FR 9870). A total of 17 comments were received on the proposal. A majority of the comments pertained to the proposed requirement in § 959.322(c) that handlers pack three- to four-inch (Jumbo) Texas Grano 1015Y onions in cartons, the size specifications (diameter ranges) proposed for "Jumbo" and "Colossal" onions in § 959.322(b) (4) and (5), the proposed use of the term "Colossal" as a size designation, and a recommendation that the size designations and diameter ranges should apply to both white and yellow varieties of onions.

The proposed amendment to the handling regulations requiring Texas Grano 1015Y onions which are three-to four-inches in diameter to be packed in 40- and 50-pound cartons for the 1987 and subsequent seasons was recommended by the South Texas Onion Committee. According to the committee, this onion bruises more easily than other varieties of onions. The purpose of the requirement was to protect these onions from bruising during packaging and transportation and thereby assure their quality and condition in the marketplace. The goal was to provide consumers with reliable consistent quality to foster repeat purchases, reduce shrinkage, and improve the industry's economic returns.

Three of the commenters supported the mandatory use of cartons for the Jumbo Texas Grano 1015Y onion for the reasons stated in the proposal. Thirteen commenters opposed the mandatory use of containers at this time but 12 of them supported the discretionary use of 40- and 50-pound cartons for all onion varieties on a commercial basis. Some of these commenters indicated that the exclusive use of cartons as proposed was not in the best interest of growers at this time because the shipping season has already begun and handlers did not have adequate time to prepare for shipping onions in cartons.

The benefits of cartons were determined based on industry experience during the 1986 season, when carton shipments were authorized on a special purpose/experimental shipment basis. Many of the commenters believe that one season's experience in handling onions in cartons is insufficient to mandate a switch to handling the Texas Grano 1015Y exclusively in cartons. One commenter indicated that less than one percent of the total industry shipments were made in cartons last year and that such was not an adequate sample to show that cartons work better than mesh bags. These commenters also pointed out that some handlers are not equipped to properly handle onions in cartons and the mandatory carton requirement would result in added expenses in setting the necessary equipment required to handle the onions in cartons. Others indicated that mesh bags have been the traditional container in which onions have been handled and that there is a reluctance to switch to cartons for the short Texas Grano 1015Y season (approximately two months.

One commenter indicated that his firm helped pioneer the use of the carton last season in shipping Texas Grano 1015Y's and that they were very successful. However, this commenter also indicated that the use of the carton will never eliminate the use of the mesh bag, and there are certain types of users who will always need to use bags. In other words, allowing the handlers to pack all onions, regardless of variety, in 40- and 50-pound cartons and/or 50-pound mesh bags would allow each handler to decide which packing is better for his/her needs.

Two commenters indicated that onions in cartons would only be shipped in refrigerated containers and that once onions are refrigerated they must remain refrigerated or they will sweat. This sets up conditions for mold and decay and reduced shelf life and would be counterproductive to the anticipated quality improvements expected by the committee. Currently the majority of onions are shipped in open top trucks with no refrigeration, and many receivers have limited refrigeration space.

Success in using cartons can only be achieved through additional exprience in harvesting and packing more of these onions in cartons. The exclusive use of cartons for these onions should only be decided after the industry has acquired firsthand experience.

Based on the information presented in the comments and the background and supporting information submitted by the committee on the mandatory carton proposal, the Department has determined that additional experience is needed to determine whether mandatory use of cartons would be beneficial. The information submitted does not adequately justify the exclusive use of

cartons. However, it does support a regulation which allows handlers to pack all varieties of onions in 40- and 50-pounds cartons free of the experimental/special purpose reporting and safeguard requirements applied last season on such shipments, in addition to the existing container requirements. Therefore, this rule will change paragraphs (c), (f), and (g) of § 959.322 accordingly.

In the proposal, "Jumbo" onions were defined in § 959.322(b)(4) as onions 3 to 4 inches in diameter, and "Colossal" onions were defined in § 959.322(b)(5) as onions 4 inches or larger in diameter. Several commenters pointed out that the size designation of "Colossal" could be confused with the onion variety of the same name and recommended that the term "Colossal" be changed to "Extra Large." These commenters also pointed out that it would be difficult to size onions in normal packing operations according to the proposed size specifications. To overcome this, commenters recommended that § 959.322(b)(4) be changed to "Jumbo" or "Large—3 inches or larger. In addition, many suggested that the proposed "Colossal" size designation be changed to "Extra Large" and that the size specification be changed to 3–3/4 inches or larger in diameter. These comments have substantial merit and have been incorporated in the final rule. In addition, some commenters, apparently believing that the proposal included a varietal distinction, suggested that the additional size designation apply to yellow varieties in addition to white varieties. The proposal did not make a varietal distinction and, therefore, this rule will apply to both yellow and white varieties.

None of the commenters opposed the amendment that will relieve handlers in a small volume production area from an inspection burden. Previously, the minimum grade and size requirements and the prohibition against Sunday packaging, loading, and handling onions terminated on June 1 of each season. The container and inspection requirements continue in effect until June 15, the end of the effective period of the handling regulation. This amendment will include the inspection requirements in the list of provisions that are terminated before June 15 in order to relieve the "Winter Garden" area of Texas, which usually begins shipping in early June, from such requirements. This change relieves an undue inspection cost in a minor production area. The area produces a very small part of the South Texas onion production each season and is located far from the primary production area inspection facilities. Few onions are shipped during the June 1 to June 15 period. This relaxation in requirements should not adversely affect the program's effectiveness.

None of the commenters opposed the amendment to change the June 1 termination date for grade, size, inspection, and Sunday shipment handling requirements to May 31 so that requirements cease at the final day of the month rather than the first day of the following month.

Section 8e of the Act provides that whenever a Federal marketing order is in effect for onions, the importation of onions shall be prohibited unless the onions meet the grade, size, quality, and maturity provisions of the order which as determined by the Secretary of Agriculture, regulates the commodity produced in the area with which the imported commodity is in direct competition. Accordingly, § 959.322(i) of the handling regulation contains provisions which apply to imports during the approximately mid-March through May period of each year. The import regulation appears in § 980.117. While the earlier change in the termination date of May 31 from June 1 for grade and size will not require a change to these provisions, a change is made to both § 959.322(i) and § 980.117 to clarify that the beginning of the effective period for imports begins March 10, the same date as the beginning of the handling regulation for domestic onions grown in South Texas and ends May 31 of each season (the ending date of the South Texas handling regulation).

Furthermore, section 8e provides that whenever two marketing orders regulating onions produced in different areas of the United States are concurrently in effect, the Secretary shall determine which of the areas produces onions in most direct competition with the imported onions. Currently, onions are regulated on a twelve-month basis each season (August 1 to July 31) under the Idaho-Eastern Oregon Order No. 958. The South Texas Order No. 959 has historically been the dominant shipper and has been found to be in most direct competition with imported onions during the period March 10 through June 1 each season. With the change in the termination date of the effective period for the South Texas onion handling regulation, it is found that South Texas Order No. 959 is the dominant shipper and is in most direct competition with imported onions during the revised period March 10 through May 31. Accordingly, the importation requirements for onion imports during the period June 1 through March 9 will be those found in Order No. 958. A change to § 980.117 is made which will make the above changes to the applicable effective periods for imports. In addition, § 980.116 *Onion Import Regulation* is removed from the regulations because it is obsolete. The effective period for that regulation ended on April 30, 1978. None of the commenters opposed the above changes in the import regulation and some specifically supported such changes.

Therefore, after consideration of all relevant matter presented, including that in the notice, the information and recommendation submitted by the committee, the comments received, and other information, it is hereby found and determined that the amendments, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

It is further found that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** (5 U.S.C. 553). The harvest and shipment of 1987 crop onions has already started. Hence, this action must be made effective promptly to be in effect during the 1987 shipping season. Moreover, the provisions in the final rule are substantially less restrictive than those contained in the proposal which was published in the **Federal Register** on March 11, 1987. Handlers have been using various cartons, subject to committee approval, and may now use the 40- and 50-pound cartons at their discretion. Therefore, handlers do not require any additional time for preparation. No useful purpose would be served by delaying the effective date of these actions.

List of Subjects

7 CFR Part 959

Marketing agreements and orders, Onions, Texas.

7 CFR Part 980

Marketing agreements and orders, Imports, Onions.

For the reasons set forth in the preamble, 7 CFR Parts 959 and 980 are amended as follows:

1. The authority citation for 7 CFR Parts 959 and 980 continues to read as follows:

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

PART 959—ONIONS GROWN IN SOUTH TEXAS

2. Section 959.322 (47 FR 8551, March 1, 1982; 48 FR 7427, February 22, 1983; 48

FR 25169, June 6, 1983; 49 FR 4931, February 9, 1984; and 51 FR 7547, March 5, 1986) is hereby further amended by revising the introductory text of § 959.322, by revising paragraph (b)(4), redesignating paragraph (b)(5) as paragraph (b)(6), and adding a new paragraph (b)(5); by revising the introductory text of paragraph (c), revising (c)(4), and by adding new paragraphs (c)(5) and (c)(6); by revising paragraph (d)(1); by revising paragraphs (f)(2) through (f)(5), and removing paragraph (f)(6); by revising the introductory text of paragraph (g) and revising paragraph (i) as follows:

§ 959.322 Handling regulation.

During the period beginning on the effective date of this rule and ending on June 15 for the 1987 season and during the period beginning March 10, and ending on June 15 each season, no handler shall package or load onions on Sunday, or handle any onions, except red varieties, unless they comply with paragraphs (a) through (d), or (e), or (f) of this section. However, the requirements of paragraphs (a), (b), (d), and the Sunday prohibition shall terminate at 11:59 p.m. on May 31 of each season.

* * * * *

(b) * * *

(4) "Jumbo" or "Large"—3 inches or larger in diameter; or

(5) "Extra Large"—3¾ inches or larger in diameter.

(6) Tolerances for size in the U.S. onion standards shall apply except that for "repacker" and "medium" sizes not more than 20 percent, by weight, of onions in any lot may be larger than the maximum diameter specified. Application of tolerances in the U.S. onion standards shall apply.

(c) *Container requirements.* Except as provided in paragraph (f) of this section, only the following containers shall be used:

* * * * *

(4) 40-pound cartons, with an average net weight in any lot of not more than 45 pounds per carton; or

(5) 50-pound cartons, with an average net weight in any lot of not more than 55 pounds per carton.

(6) These container requirements shall not be applicable to onions sold to Federal agencies or for export.

(d) *Inspection.* (1) No handler may handle any onions regulated hereunder, except pursuant to paragraphs (e), (f)(1), or (f)(3)(ii) of this section unless an inspection certificate has been issued by the Texas-Federal Inspection Service covering them and the certificate is valid at the time of shipment. City destinations shall be listed on inspection certificates and release forms.

* * * * *

(f) * * *

(1) * * *

(2) *Gift packages.* The handling to any person of gift packages of onions not exceeding 25 pounds per package, individually addressed to such person and not for resale, is exempt from the container requirements of paragraph (c) of this section, but shall conform to all assessment requirements of § 959.42 and inspection requirements of paragraph (d) of this section, if such onions were not previously handled by a first handler. All such onions shall meet the grade and size requirements of paragraphs (a) and (b) of this section.

(3) *Experimental shipments.* (i) Upon approval of the committee, onions may be shipped in bulk bins with inside dimensions of 47 inches x 37½ inches x 36 inches deep and having a volume of 63,450 cubic inches, or containers deemed similar by the committee. Each container shall have a new perforated polyethylene liner at least 2 mils in thickness. Also, onions may be shipped in 25- and 20-pound cartons, upon approval of the committee. Such experimental shipments shall be exempt from paragraph (c) of this section but shall be handled in accordance with the safeguard provisions of § 959.54 and paragraph (g) of this section. The committee shall be notified of carton size and furnished a container manifest, and shippers must furnish the committee with outturn reports on such shipments.

(ii) Upon approval by the committee, onions may be shipped for other experimental purposes exempt from regulations issued pursuant to §§ 959.42, 959.52, and 959.60, provided they are handled in accordance with the safeguard provisions of § 959.54 and paragraph (g) of this section.

(iii) Upon approval of the committee, onions may be shipped for testing in types and sizes of containers other than those specified in paragraphs (c) and (f)(2) of this section, provided that the handling of onions in such experimental containers shall be under the supervision of the committee.

(4) *Export shipments.* (i) Upon approval of the committee, the prohibition against packaging or loading onions on any Sunday may be modified or suspended to permit the handling of onions of export provided that such handling complies with the procedures and safeguards specified by the Committee.

(ii) Following approval, if the handler grades, packages, and ships onions for export on any Sunday, such handler shall on the first weekday following shipment, cease all grading, packaging, and shipping operations for the same length of time as the handler operated on Sunday. Upon completion of such shipments, the handler shall report thereon as prescribed by the committee.

(iii) Export shipments shall also be exempt from all container requirements of this section.

(5) *Onions failing to meet requirements.* Onions failing to meet the grade, size, and container requirements of this section, and not exempt under paragraphs (e) or (f) of this section, may be handled only pursuant to § 959.126. Such onions not handled in accordance with paragraph (g) of this section shall be mechanically mutilated at the packing shed rendering them unsuitable for fresh market.

(g) *Safeguards.* Each handler making shipments of onions for relief, charity, canning, freezing, or experimental purposes shall: * * *

* * * * *

(i) *Applicability to Imports.* During the period beginning on March 10 and ending May 31, of each year, * * *

* * * * *

PART 980—VEGETABLES; IMPORT REGULATIONS; ONIONS

§ 980.116 [Removed]

3. Section 980.116 is removed.

4. Section 980.117 Import Regulations; Onions (43 FR 5499, February 9, 1978; 52 FR 8872, March 20, 1987) is amended by revising paragraphs (a)(2) and (b)(1) and (2) to read as follows:

§ 980.117 Import regulations; onions.

(a) * * *

(2) Therefore, it is hereby determined that: Imports of onions during the June 1 through March 9 period are in most direct competition with the marketing of onions produced in designated counties of Idaho and Malheur County, Oregon, covered by Marketing Order No. 958, as amended (7 CFR Part 958), and during the March 10 through May 31 period the marketing of imported onions is in most direct competition with onions produced in designated counties in South Texas covered by Marketing Order No. 959, as amended (7 CFR Part 959).

(b) * * *

(1) During the period June 1 through March 9 of each marketing year, whenever onions grown in designated counties in Idaho and Malhuer County, Oregon, are regulated under Marketing Order No. 958, imported onions shall comply with the grade, size, quality, and maturity requirements imposed under that order.

(2) During the period March 10 through May 31 of each marketing year, whenever onions grown in designated counties in South Texas are regulated under Marketing Order No. 959, imported onions shall comply with the grade, size, quality and maturity requirements imposed under that order.

* * * * *

Dated: May 18, 1987.

Ronald L. Cioffi,

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

[FR Doc. 87-11796 Filed 5-21-87; 8:45 am]

BILLING CODE 3410-02-M

Farmers Home Administration

7 CFR Parts 1804, 1822, 1924, 1933, 1944, and 1980

Revision and Redesignation; Planning and Performing Site Development Work

AGENCY: Farmers Home Administration, USDA.

ACTION: Final rule.

SUMMARY: The Farmers Home Administration (FmHA) has revised and renumbered its regulation pertaining to planning and performing site development work. This final rule implements statutory changes, and proposed rule comments and recommendations concerning the review and approval of subdivision and scattered site locations and development. The intended effect is to provide procedures and guidelines for preparing site development plans that will be consistent with Federal laws, regulations and Executive Orders. Also, it directs FmHA's financial assistance towards orderly development of rural areas and provides a planning process which considers impacts on the environment and existing development to formulate actions that advance FmHA program goals and protect, enhance and restore environmental quality.

EFFECTIVE DATE: June 22, 1987.

FOR FURTHER INFORMATION CONTACT: James A. Weibel, Senior Loan Officer, Single Family Housing Processing Division, Farmers Home Administration, USDA, Room 5346, South Agriculture Building, Washington, DC 20250. Telephone (202) 382-1485.

SUPPLEMENTARY INFORMATION: This action has been reviewed under USDA procedures established in Departmental Regulation 1512-1 which implements Executive Order 12291, and has been determined to be nonmajor, because there is no substantial change from practices under existing rules that would have an annual effect on the economy of $100 million or more. There is no major increase in cost or prices for consumers, individual industries, Federal, State or local governmental 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.

A proposed rule was published in the **Federal Register** Vol. 50, No. 4, Monday, January 7, 1985, on pages 815-834. Interested persons were invited to submit written comments, suggestions, or data for consideration by the Agency in the development of the final rule. Comments were received from 23 respondents. The respondents were comprised of builders, consumer advocates, USDA Office of Inspector General, American Congress on Surveying and Mapping, National Association of Home Builders, Housing Assistance Council, Inc., National Housing Law Project, and numerous FmHA State and District Offices. The written and oral comments of all these respondents have been carefully considered and evaluated, and many of the recommendations adopted, either in whole or in part, in this final rule.

The respondents commented on 148 specific sections or paragraphs that involved 11 different areas within the proposed regulation. The frequency of those comments occurred most often within three areas: Section 1924.102 General Policy, paragraphs (a) Rural development, and (d) Reciprocity of subdivision acceptance among Federal agencies; § 1924.105 Definitions, paragraphs, (c) Community, and (n) Subdivision; § 1924.107 Location, paragraph (d)(1).

The following revisions made to the proposed regulation are attributable to the comments received: The reciprocity provision was relocated to the subdivision review § 1924.119; a definition was added for "partially completed" as it pertains to existing subdivisions; the subdivision review § 1924.119 was divided into three different categories—new and less than partially completed subdivisions, existing subdivisions partially or more completed, and reciprocity among Federal agencies; addition of the provision for an abbreviated review process for subdivisions that are partially or more completed; reduction in the percentage of lots located within an existing subdivision that must be improved with residential dwellings, also a provision was added to consider both residential and nonresidential sites within an existing subdivision; the scattered site definition was expanded to include existing residential buildings; addition of a location and feasibility review to the scattered site § 1924.117; clarification and specificity were added concerning the location of subdivisions near the periphery of nonrural areas; addition of an exception by the State Director of the Covenants, Conditions, and Restrictions (CC&R) requirement; provision for FmHA to be a co-obligee on a local entity bonding or similar assurance requirement; clarification of the qualifications for professionals certifying documentations; and deletion or reduction of many of the requirements in Exhibit B. Also, there are numerous editorial and minor changes made to the proposed regulation and exhibits.

The area which generated the most interest and number of comments was § 1924.107, paragraph (d)(1) requiring that subdivisions be located within, or as an integral part of an eligible rural community identified and listed by the State Director. Several unfavorable comments were received on the proposed identification and listing of eligible rural communities. One industry respondent commented on that section:

> * * * The paragraph is, in a sense, a contradiction. I agree that the subdivision must serve residents of communities within eligible rural areas, but the way the section is written, some communities within eligible rural areas would be excluded. The elimination of sites near the periphery of nonrural areas is vague, not specifically identifying such sites, and it should be noted that to identify such site would effectively be to move the boundary lines of eligible areas on the maps.
>
> I would suggest that it would be much fairer to the areas in question, and much more consistent with regard to the maps which now exist, to require that the market studies or demand studies on FmHA forms demonstrate demand from only within the eligible area, excluding data from the ineligible areas.

FmHA agrees with much of the concern raised about this section and has rewritten the language to clarify subdivision locations near the periphery of nonrural areas. Also, the requirement that the State Director identify and list eligible rural communities within a State Supplement has been deleted. The Agency further agrees with the comment that market or demand studies for subdivision location and size would be more consistent and fair. Therefore, that concept has been incorporated in the final rule. However, the Agency continues to believe subdivisions should be located within, or an integral part of

a community to promote orderly development of rural areas which will best serve the interest of the borrower and the Government.

The National representative for the housing industry submitted a comment and suggestion that the Agency: "* * * eliminate the subdivision approval procedure. Local and state standards can be maintained, * * *"

There are some areas, such as, the State of California which have subdivision standards very similar to FmHA that do expedite the review and approval process.

In an effort to eliminate duplication of review and to encourage local entities to enforce satisfactory minimum standards for subdivision development this regulation contains a local entity designation provision. Under this procedure, FmHA will conduct an abbreviated review for any subdivision submittal from within the jurisdiction of a local entity designated by the State Director.

Agency experience has been that many rural areas served by our programs do not have adequate existing local or state standards and, in some areas, there are no standards whatsoever. Because of that deficiency FmHA developed subdivision regulations in 1973 to provide uniform and consistent guidance to eliminate the recurring problems in those areas without adequate standards. Since that time few rural areas have moved towards self regulation and subdivision standards which would allow FmHA to reduce or eliminate their standards.

Several general comments were received suggesting that the Agency deregulate. In response to those comments Exhibit B was revised deleting or reducing many of the requirements for residential block design, lot layout, street patterns and construction, hillside development, and grading and drainage design.

Finally, in the proposed regulation the number of lots necessary to be a subdivision was ten. This was an increase from the existing five lot requirement and was done in part to be consistent with the Department of Housing and Urban Development (HUD) definition of a subdivision. Since that time HUD has changed their requirements which are now different than FmHA's. In addition, Subpart G of Part 1940 of this chapter, "Environmental Program" requires an environmental assessment for financial assistance which involves at least five lots. Therefore, to be consistent with Subpart G of Part 1940 of this chapter, the subdivision definition was changed back to include development of five or more lots.

Also, Subpart A of Part 1924–A of this chapter was amended to conform with the requirements of this final rule.

This activity is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials (7 CFR Part 3015, Subpart V, 48 FR 29112, June 24, 1983). The FmHA programs and projects which are affected by this instruction and also subject to intergovernmental consultation are listed by the Catalog of Federal Domestic Assistance titles and numbers as follows:

Low Income Housing Loans (section 502 Rural Housing Loans)—10.410, Farm Labor Housing Loans and Grants—10.405, Rural Housing Site Loans (sections 523 and 524 Site Loans)—10.411, Rural Rental Housing Loans—10.415, Very Low Income Housing Repair Loans—10.417, and Rural Self-Help Housing Technical Assistance—10.420.

This document has been reviewed in accordance with 7 CFR Part 1940, Subpart G, "Environmental Program." It is the determination of FmHA that this action does not constitute a major Federal action significantly affecting the quality of the human environment and in accordance with the National Environmental Policy Act of 1969, Pub. L. 91–190, an Environmental Impact Statement is not required.

List of Subjects in Parts 1804, 1822, 1924, 1933, 1944, and 1980

Housing standards, Low and moderate income housing, Rural areas.

For reasons set out in the preamble, Chapter XVIII, Title 7 of the Code of Federal Regulations is amended as follows:

PART 1804—PLANNING AND PERFORMING DEVELOPMENT WORK [REMOVED AND RESERVED]

1. Part 1804 is removed and reserved.

PART 1822—RURAL HOUSING LOANS AND GRANTS

1a. The authority citation for Part 1822 is revised to read as follows:

Authority: 42 U.S.C. 1480; 7 CFR 2.23; 7 CFR 2.70.

Subpart G—Rural Housing Site Loan Policies, Procedures, and Authorizations

2. Section 1822.267, paragraph (e), and § 1822.271 paragraph (b)(3)(v) are revised to read as follows:

§ 1822.267 Special conditions.

* * * * *

(e) *Development Policies.* Development will be planned and performed in accordance with Subparts A and C of Part 1924 of this chapter, and certain information in a guide entitled "Planning and Development Building Sites" available at all FmHA offices.

* * * * *

§ 1822.271 Processing applications.

* * * * *

(b) * * *

(3) * * *

(v) Proposed subdivisions will comply with the local codes and ordinances and also meet the requirements of Subpart C of Part 1924 of this chapter.

* * * * *

PART 1924—CONSTRUCTION AND REPAIR

3. The authority citation for Part 1924 continues to read as follows:

Authority: 7 U.S.C. 1989; 42 U.S.C. 1480; 5 U.S.C. 301; 7 CFR 2.23; 7 CFR 2.70.

Subpart A—Planning and Performing Construction and Other Development

§ 1924.5 [Amended]

4. Section 1924.5, paragraph (d)(2) is amended by removing the words "§ 1804.74 of Subpart D of Part 1804 of this chapter (FmHA Instruction 424.5)." and inserting in their place, the words "Subpart C of Part 1924 of this chapter."

5. Section 1924.5, paragraph (e)(2) is amended by removing the words "should also be guided by the requirements of Subpart D of Part 1804 of this chapter (FmHA Instruction 424.5)." and inserting in their place, the words "must meet the requirements of Subpart C of Part 1924 of this chapter."

6. Section 1924.5, paragraph (e)(4) is amended by removing the words "be guided by Exhibit J of this subpart." and inserting in their place, the words "meet the requirements of Exhibit J of this subpart and Subpart C of Part 1924 of this chapter."

Exhibit I—Part 1924 [Amended]

7. Exhibit I, Sections 301–2 and 301–3 are amended by removing the words "Subpart D of Part 1804 of this chapter (FmHA Instruction 424.5)." and inserting in their place, the words "Subpart C of Part 1924 of this chapter."

Exhibit J—Part 1924 [Amended]

8. Exhibit J of Subpart A is amended by revising the definition for manufactured home subdivision in paragraph A III, and by revising

paragraphs A V B1, BIF, BIH, BIIA introductory text, BIIA6, BIIB4, BIIIA, CIII, and CIV.

Part A—Introduction

* * * * *

III. * * *

* * * * *

Manufactured Home Subdivisions. Five or more contiguous (developed or undeveloped) lots, or building sites that meet the requirements of Subpart C of Part 1924 of this chapter.

V. * * *

* * * * *

B. * * *

1. Subpart C of Part 1924 of this chapter, "Planning and Performing Development Work."

* * * * *

Part B— * * *

I. * * *

* * * * *

F. The requirements for streets shall be those found in Subpart C of Part 1924 of this chapter.

* * * * *

H. Utilities for each manufactured home site, rental housing project or subdivision shall be designed and installed in accordance with Subpart C of Part 1924 of this chapter; and the State health authority having jurisdiction, and all local laws and regulations requiring approval prior to construction.

* * * * *

II. * * *

A. *General.* Scattered sites and subdivision developments will be planned and constructed in accordance with specific requirements of this subpart, Subpart C of Part 1924, and Subpart G of Part 1940 of this chapter, and the applicable FmHA/MPS or Model Building Codes acceptable to FmHA. Manufactured homes for development in a manufactured home community shall:

* * * * *

6. Have a manufactured home site, site improvements, and all other features of the mortgaged property not addressed by the Federal Manufactured Home Construction and Safety Standards, meet or exceed applicable requirements of this subpart and Subpart C of Part 1924 of this chapter, the FmHA adopted MPS except paragraph 31–2.2 or a Model Building Code acceptable to FmHA:

* * * * *

B. * * *

4. *Lot Size.* The size of manufactured home lots (scattered sites and subdivision) shall be determined by § 1944.11(e) of Subpart A of Part 1944 and Subpart C of Part 1924 of this chapter.

* * * * *

III. * * *

A. *General.* Manufactured housing rental developments shall be planned and constructed in accordance with requirements of Subpart C of Part 1924; this subpart; Subpart C of Part 1940, the FmHA/MPS; and the requirements of Subpart E of Part 1944 of this chapter.

* * * * *

Part C— * * *

* * * * *

III. *Subdivisions.* Subpart C of Part 1924 of this chapter will be used in preparing and providing supporting documents.

IV. *Rental Housing Projects.* Subpart C of Part 1924 of this chapter will be used in preparing and providing supporting documents.

* * * * *

Subpart C is added and reads as follows:

Subpart C—Planning and Performing Site Development Work

Sec.

1924.101 Purpose.
1924.102 General policy.
1924.103 Scope.
1924.104 [Reserved]
1924.105 Definitions.
1924.106 Planning development.
1924.107 Location.
1924.108 Utilities.
1924.109 Grading and drainage.
1924.110 Performing development.
1924.111–1924.113 [Reserved]
1924.114 Multiple family housing.
1924.115 New and less than partially completed subdivisions.
1924.116 Existing subdivisions partially or more completed.
1924.117 Scattered site.
1924.118 Modification of requirements and recommendations in this subpart.
1924.119 Subdivision reviews.
1924.120 Local entity designation.
1924.121 Approval authority.
1924.122 Exception authority.
1924.123 State supplements and exhibits.
1924.124 Exhibits.
1924.125–1924.149 [Reserved]
1924.150 OMB control number.
Exhibit A—Checklist of Visual Exhibits and Documentation for Subdivisions
Exhibit B—Site Development Design Requirements
Exhibit C—Checklist of Visual Exhibits and Documentation for RRH, RCH, and LH Proposals

Subpart C—Planning and Performing Site Development Work

§ 1924.101 Purpose.

This subpart establishes the basic Farmers Home Administration (FmHA) policies for planning and performing site development work. It also provides the procedures and guidelines for preparing site development plans consistent with Federal laws, regulations and Executive Orders.

§ 1924.102 General policy.

(a) *Rural development.* This subpart provides for the orderly location and development of building sites and related facilities in rural areas. It is designed to:

(1) Establish standards for building-site design which will encourage and lead to the development of economically stable communities, and the creation of attractive, healthy, and permanent living environments.

(2) Provide for the consideration of energy-efficient land use practices in planning development. Such planning will include an evaluation of proven methods that will reduce the energy needed to install site improvements and to maintain the site and improvements.

(3) Encourage improvements planned for the site to be the most cost-effective of the practicable alternatives. Encourage utilities and services utilized to be reliable, efficient and available at reasonable costs.

(4) Provide for a planning process that will consider impacts on the environment and existing development in order to formulate actions that both advance FmHA program goals and protect, enhance, and restore environmental quality.

(5) Assure that all planned development will be integrated into the existing transportation systems to prevent traffic hazards and establish safe, convenient access to community services and facilities and provide for the efficient movement of individuals and goods.

(6) Assure that the proposed development by the applicant or developer will comply with the standards prescribed by this subpart.

(b) *Development related costs.*—(1) *Applicant.* The applicant is responsible for all costs associated with planning, technical services, and actual construction that have taken place before loan and/or grant closing. These costs may be included in the FmHA loan/grant as authorized by FmHA regulations.

(2) *Developer.* The developer is responsible for payment of all costs associated with development under this subpart.

(c) *Local regulations.* (1) The proposed development must comply with all applicable planning ordinances, codes, and regulations of the local, regional, or State planning agencies having jurisdiction.

(2) In addition to, or in the absence of local, regional or State regulations, the proposed development must meet the requirements of this subpart.

(3) In those areas where the FmHA State Director determines a local entity has site development design standards equal to or exceeding those of this

subpart and has proven capability to enforce those standards, the submittal requirements will be abbreviated under this subpart. This will eliminate duplication of local reviews and associated costs and time delays. (See § 1924.120 of of this subpart.)

§ 1924.103 Scope.

This subpart is to be used by FmHA personnel when the proposed development includes planning and performing site development work for Rural Housing (RH) loans for individuals. It also provides supplemental requirements for Rural Rental Housing (RRH) loans, Rural Cooperative Housing (RCH) loans, Farm Labor Housing (LH) loans and grants, and Rural Housing Site (RHS) loans. In addition, FmHA will consult with appropriate Federal, State, and local agencies, other organizations, and individuals to implement the provisions of this subpart.

§ 1924.104 [Reserved]

§ 1924.105 Definitions.

For the purposes of this subpart, the following definitions apply:

(a) *Applicant.* Any person, partnership, limited partnership, trust, consumer cooperative, corporation, public body or association that has filed a preapplication, or in the case of FmHA programs that do not require a preapplication, an official application with FmHA in anticipation of receiving or utilizing FmHA financial assistance.

(b) *Community.* A community includes cities, towns, boroughs, villages, and unincorporated places which have the characteristics of incorporated areas with support services such as shopping, post office, schools, central sewer and water facilities, police and fire protection etc., and are easily identifiable as established concentrations of inhabited dwellings and private and public buildings.

(c) *Contiguous.* Sharing a boundary, adjoining or adjacent. A lot or subdivision is considered to be continguous to other lots or subdivisions if it is adjoining, touching or adjacent. Lots or building sites which are in close proximity, but separated by streets, roads, driveways, or other open spaces are considered contiguous.

(d) *Construction or development.* Construction or development is the act of building structures and installing site improvements. Development may also refer to a site, a group of sites, a subdivision, rural rental housing, or some other group of dwelling units.

(e) *County Supervisor.* FmHA County Supervisor or Area Loan Specialist or their authorized representative, such as Assistant County Supervisor or Assistant Area Loan Specialist.

(f) *Developer.* Any person, partnership, public body or corporation which intends to develop a site(s) which will be acceptable for FmHA financing.

(g) *District Director.* FmHA District Director or his/her authorized representative, such as Assistant District Director or Area Loan Specialist.

(h) *Local entity.* Any city, town, village, county, borough, or parish which has legal authority to develop and enforce site development design standards.

(i) *Scattered site.* An individual single family dwelling site, with or without an existing residential building which may be located as an isolated site, or one of up to four contiguous sites in open country or a site within a subdivision or community.

(j) *Street surfaces.* Streets may be hard or all weather surfaced.

(1) *Hard surface.* A street with a portland cement concrete, asphalitic concrete, or bituminous wearing surface. Other hard surfaces may be used when acceptable to the local public body and suitable for use with local climate, soil, gradient, and volume and character of traffic as determined by the State Director.

(2) *All-weather.* A street that can be used year-round with a minimum of maintenance, such as the use of a grader and minor application of surface material. Surface material must be suitable for use with local climate, soil, gradient, and volume and character of traffic as determined by the State Director.

(k) *Subdivision.* Five or more contiguous (developed or undeveloped) lots, or building sites. Subdivisions may be new or existing.

(1) *New Subdivision.* Any planned division or contiguous development of land into lots or building sites. This applies to original subdividing and resubdividing, or the expansion of an existing subdivision.

(2) *Existing Subdivision.* Developed contiguous lots or building sites (with or without improvements).

(i) Partially or more completed—as it pertains to a subdivision means that:

(A) The local government has accepted the subdivision plan, its principal developments and right-of-ways;

(B) The construction of the streets, water and sewage systems and utilities are at the point which precludes any major changes; and

(C) Provisions are in place for continuous maintenance of the streets and water and sewage systems.

(ii) Less than partially completed—as it pertains to a subdivision means: the planning, construction and development of the subdivision does not meet the requirements of paragraph (k)(2)(i) of this section.

§ 1924.106 Planning development.

Planning is an evaluation of specific development for specific land uses. Planning must take into consideration topography, soils, climate, adjacent land use, environmental impacts, energy efficiency, local economy, aesthetic and cultural values, public and private services, housing and social conditions and a degree of flexibility to accommodate changing demands. Although all planning is the responsibility of the applicant or developer, close coordination must occur with local planning officials and with the respective FmHA office.

(a) *FmHA advice and assistance.* Applicants and developers shall be encouraged to seek the advice and assistance of FmHA before significant expenditures are made. Actions taken which are not in accordance with this subpart may jeopardize the possibility of receiving future financial (or other) assistance from FmHA. When receiving an inquiry about site development, the County Supervisor or District Director will:

(1) Discuss the requirements of FmHA with respect to compliance with local, regional, and State regulations; construction practices; energy efficiency; and, as applicable, those requirements with respect to nondiscrimination; market analysis; good house planning; and location.

(i) Requests for subdivision location and feasibility reviews for the development of new subdivisions must be in accordance with Subpart J of part 1940 of this chapter, (available in any FmHA Office.) "Intergovernmental Review of Farmers Home Administration Programs and Activities."

(ii) Whenever appropriate, applicants or developers must submit their proposals to the State Single Point of Contact for review and consideration prior to submittal to FmHA. The name of the Point of Contact is available from the FmHA State Office.

(2) Provide Form FmHA 1940–20, "Request for Environmental Information," and explain the requirements for compliance with Subpart G of Part 1940 of this chapter, as well as the limitations on applicants

during the application review process as prescribed in § 1940.309 of Subpart G of Part 1940 of this chapter.

(3) Provide information regarding publications, site planning, engineering data, environmental data, soils data, and other technical advice and assistance which are available through local, State, and Federal agencies, planning commissions, and private institutions and organizations.

(4) Provide the following assistance for proposals to develop a new subdivision or for approval of an existing subdivision:

(i) Explain to the applicant or developer the need to complete Form FmHA 1924–20, "Request for Subdivision Location and Feasibility Analysis," to obtain FmHA assistance. Also, provide and explain Form FmHA 400–4, "Assurance Agreement," Form FmHA 400–1, "Equal Opportunity Agreement," and HUD Form 935.2, "Affirmative Fair Housing Marketing Plans," and

(ii) Provide this subpart including Exhibits A and B to the applicant or developer.

(iii) Explain to the applicant or developer it is their responsibility to comply with the Interstate Land Sales Full Disclosure Act. (15 U.S.C. 1701 *et seq.*)

(5) For multiple family housing projects, provide Exhibit C of this subpart to the applicant or developer.

(b) *Technical services.* (1) Professional assistance is available from the Soil Conservation Service (SCS) and the Cooperative Extension Service.

(2) An applicant or developer proposing a new subdivision, completing or expanding an existing subdivision, or proposing a multiple family housing project which requires architectural services under § 1924.13(a) of Subpart A of this part, must contract for the technical services of an architect, engineer, land surveyor, landscape architect, or site planner, as appropriate, to provide complete planning, drawings, and specifications. Such services may be provided by the applicant's or developer's "in house" staff subject to FmHA concurrence. Technical services must be performed by professionals who are qualified and authorized to provide such services in the State in which the project would be developed. All technical services must be provided in accordance with the requirements of professional registration or licensing boards. For payments for technical services, follow § 1924.102(b) of this subpart.

(3) For developments not specifically required to have technical services under paragraph (b)(2) of this section, such services may be required by the State Director when construction of streets or installation of utilities is involved.

(4) At completion of all construction or completion of a phase or phases of the total project, the person or persons providing technical services under this section must notify the FmHA County or District Office in writing that all work has been completed in substantial conformance with the approved plans and specifications.

(c) *Drawings, specifications, contract documents, and other documentations.* Adequate drawings and specifications must be provided by the applicant or developer to fully describe the work. Required drawings and specifications are described in Exhibits A and C and supplemented by Exhibit B of this subpart. Contract documents must be prepared under § 1924.6 or, in the case of more complex construction, § 1924.13 of Subpart A of this part.

(1) Exhibit A of this subpart should be used as a guide by the applicant or developer in preparing a proposal, and in providing supporting documents for a site development of 5 or more sites.

(2) Exhibit A will also be used by FmHA County Supervisors, District Directors and State Directors in checking subdivision submissions.

(3) Other documents listed as additional supplemental information may be included in the proposals to illustrate and further clarify difficult areas of development and to help reduce possible misunderstandings.

(4) Exhibit C of this subpart should be used as a guide by the applicant or developer in preparing a proposal and supporting documents for multiple family housing projects which require architectural services.

§ 1924.107 Location.

Site selection is the most important phase of development. It is imperative that the applicant or developer conduct preliminary site investigations before purchasing the land. These investigations should be conducted with an understanding of FmHA policies regarding site selection. Stated in this subpart and in Subpart G of Part 1940 of this chapter are several key site selection criteria. (See § 1940.304 for a summary of pertinent locational requirements.) For example, FmHA will not fund any proposal which will convert floodplains, wetlands, important farmlands, prime forestlands or prime rangelands unless there is no practicable alternative to such conversion. Developments adversely affecting properties listed or eligible for listing on the National Register of Historic Places are to be avoided. No development will be approved within a Coastal Barrier Resource System and development on those portions of barrier islands not within the System is to be avoided. A site will not be selected for the purpose of excluding any group of individuals because of their race, color, national origin, sex, age, religion or handicap. In order to be eligible for FmHA participation:

(a) The proposal must be coordinated with the planning agency having jurisdiction.

(b) The site must be located in an eligible area as defined in the program regulations under which the development is being funded.

(c) The proposal must comply with the applicable environmental laws, Executive Orders, and Subpart G of Part 1940 of this chapter.

(d) The proposal must comply with the following, when the applicant or developer intends to develop a subdivision:

(1) The subdivision must be located within, or as an intergral part of, rural community and have access to all essential services available to the general population within the community.

(2) The subdivision must serve residents of eligible rural communities. Subdivisions proposed near the periphery or nonrural areas that are not part of, or associated with eligible rural communities will not be approved.

(3) The subdivision location must provide a desirable, safe, functional, and attractive living environment for the residents and be convenient to services such as shopping, schools, churches, employment opportunities, recreation and communications.

(4) The subdivision must be located and planned to ensure long-term market demand and acceptability. The size and location of the subdivision will be based primarily upon the need and demand from permanent residents of the area the subdivision will serve.

(5) For subdivisions of more than 25 new residential housing sites applicants or developers shall make a complete market analysis showing the need and demand for sites and housing within the community and surrounding trade area in which the subdivision will be located. The information needed in the market analysis includes:

(i) Identification of the specific boundaries of the market area analyzed.

(ii) Estimate of the number of housing sites currently available.

(iii) Average size and cost of available housing sites.

(iv) Estimate of the number of existing housing stock, also an indication of the quality, size, and age of the structures.

(v) Estimate of the number of houses currently on the market for sale and average number of days on the market before selling.

(vi) Complete documentation and supporting material outlining how the market analysis was conducted and how the estimated amounts used were obtained.

(vii) Any other physical, economic, or sociological factors which may affect the size or location of the subdivision.

(e) A scattered site must be planned and developed under this subpart, Subpart A of Part 1944, and Subpart G of Part 1940, with particular emphasis on location as specified in § 1940.304. Random development of sites in open country is not an acceptable alternative to orderly growth within established communities. A scattered site must comply with all of the following:

(1) The site: (i) May be a separate lot or one of up to four contiguous lots which may be develped or undeveloped, which is not contiguous to a subdivision. Strategic placement of a lot(s) such as across the street, across an intersection, or separated only by minor open spaces from other lots is not to be used to circumvent this subpart, or

(ii) May be a lot within an existing subdivision where 60 percent or more of all the residential lots have existing single family dwellings. In this instance, an existing subdivision should generally conform with the requirements for subdivisions in § 1924.115 of this subpart; however, complete conformance is not mandatory. Building site(s) within subdivisions previously rejected by FmHA may be considered for financial assistance provided the conditions for which the subdivision was rejected have been removed or the conditions no longer apply for subdivision eligibility, or

(iii) May be a site located within a subdivision which has HUD or VA acceptance that meets the requirements of § 1924.119(c) of this subpart.

(2) The site must be located to provide a desirable, safe, functional, convenient, and attractive living environment for the residents.

(3) The site must be located to insure long-term market demand and acceptability.

§ 1924.108 Utilities.

Adequate, economic, safe, energy efficient, dependable utilities with sufficient easements for installation and maintenance are required.

(a) *Water and wastewater disposal systems.* (1) All developed sites shall be served by centrally owned and operated water and wastewater disposal systems unless such systems are determined by FmHA to be economically or environmentally unfeasible and the alternate solution developed and documented by the applicant's or developer's technical consultant is determined economically and environmentally acceptable and consistent with the intent of this subpart.

(2) All central systems, whether they are public, community or private, shall meet the design requirements of the State Department of Health or other comparable reviewing and regulatory authority. The regulatory authority will verify in writing that the water and wastewater systems comply with, or have an approved plan to bring the systems into compliance with the current provisions of the Safe Drinking Water Act and the Clean Water Act, respectively.

(3) Developments which are not presently served by a central system, but which are scheduled for tie-in to the central system within 2 years should have all lines installed during the initial construction. Such developments must have an approved interim water supply or wastewater disposal system installed capable of satisfactory service until the scheduled tie-in occurs.

(4) In addition to written assurance of compliance with State and local requirements, there must be assurance of continuous service at reasonable rates for central water and wastewater disposal systems. Public ownership is preferred whenever possible. In cases where interim facilities are installed pending extension or construction of permanent public services, the developer must assume responsibility for the operation of the interim facility or establish an acceptable entity for its operation. If a system is not or will not be publicly owned and operated it must comply with one of the following:

(i) Be an organization that meets the ownership and operating requirements for a water or wastewater disposal system that FmHA could finance under Subpart A of Part 1942 of this chapter or be dedicated to and accepted by such an organization.

(ii) Be an organization or individual that meets other acceptable methods of ownership and operation as outlined in HUD Handbook 4075.12, "Ownership and Organization of Central Water and Sewerage Systems." FmHA should be assured that it has the right, in its sole discretion, to enforce the obligation of the operator of water and/or sewerage systems to provide satisfactory continuous service at reasonable rates. The advice and assistance of the Regional Attorney should be obtained in preparing any necessary agreement wtih the organization or individual supplying water and/or sewerage systems.

(iii) Be adequately controlled as to rates and services by a public body (Unit of Government or public services commission).

(5) When central systems are not available, the approving official will thoroughly evaluate the proposed individual systems for economic and environmental feasibility. Information and guidance for site evaluation and design of individual water and wastewater systems is contained in EPA publications "Manual of Individual Water Supply Systems", and "Design Manual, Onsite Wastewater Treatment and Disposal Systems", respectively. For new or the expansion of existing subdivisions of more than 25 residential building sites, National Office concurrence is required before the State Director may approve the use of individual systems. A request for concurrence must contain written recommendations from the State Director and the technical staff in addition to the full documentation listed in paragraph (a) of this section. The State Director's evaluation must consider at least the following items:

(i) Statements from local health and regulatory authorities indicating specifically why connection to or installation of a central system is not feasible at this location.

(ii) A thorough State Office technical staff review of the proposal to use individual systems to determine whether central systems might be feasible considering the market for homes over a two- or three-year period at the proposed location. Generally, more lots of higher values will result when central systems are provided. This review will include an economic feasibility analysis which considers the differences in number of lots, value of lots, initital construction costs, and operating costs of central systems versus individual systems. The analysis must take into account the possible uses of all land under the developer's control in the immediate area. Where comparable costs are found, central systems should be requried and appraisal allowances made to reflect the appropriate value of lots so served.

(iii) Information prepared by the local, county or State health authority and the County Supervisor, with written opinions of the Technical Staff of the State Office indicating whether individual systems are feasible on all the building sites in question. Supporting

factual data should include evidence that clearly shows that individual systems will perform satisfactorily for a reasonable period of time with reasonable maintenance cost. Reasonable time and reasonable cost can be equated with the cost and expected life of a central system if one were available. An individual wastewater disposal system that requires cleaning or repairs every few months cannot be considered as giving satisfactory service or an individual water system that requires extensive treatment equipment to provide an acceptable safe, potable water supply cannot be considered as within reasonable cost. All documentation, calculations and written opinions substantiating the decision shall remain in the subdivision file.

(iv) Supporting information for the proposed individual water systems covering the following points:

(A) Documentation of how individual water supplies can be developed with satisfactory water production at a reasonable cost. In areas where difficulty is anticipated in developing an acceptable water supply and FmHA is providing financial assistance for site development, contingency funds must be included in the original loan estimate. Contingency funds may be necessary for items such as drilling to a greater depth than is common to other wells in the area, providing additional storage to supplement a limited source of water, or providing treatment to soften or correct some other quality defect. It is a good practice to confirm that an acceptable water supply is available early in the site development process. In extreme cases, the water supply should be developed before any other construction is started.

(B) Documentation that the quality of the supply must meet the chemical, physical and becteriological standards of the health authority having jurisdiction. The maximum contaminant levels of U.S. EPA shall apply. Individual water systems must be tested for quantity and bacteriological quality. Where problems are anticipated with chemical quality partial chemical tests may be required. Those tests would be limited to analysis for the defects common to the area such as iron and manganese, hardness, nitrates, pH, turbidity, color, or other undesirable elements. Polluted or contaminated water supplies are unacceptable.

(v) Supporting information for individual wastewater disposal systems with subsurface discharge as reported by a soil scientist, geologist, soils engineer, or other person recognized by the State regulatory authority. This data should include the following:

(A) Assurance of nonpollution of ground water. State Health authorities must be consulted to ensure that installation of individual wastewater systems will not pollute ground water sources or create other health hazards.

(B) Description of exploratory pit observations.

(C) Determination of soil types and description. The assistance of the SCS should be obtained for soil type determination and a copy of their recommendations included in the documentation.

(D) Description of ground water elevations showing seasonal variations.

(E) Records of percolation tests. Guidance for performing these tests is included in the EPA design manual, "Onsite Wastewater Treatment and Disposal Systems."

(F) Confirmation of space allowances. An accurate drawing to indicate that there is adequate space available on the site to satisfactorily locate the individual water and/or wastewater disposal systems, likewise, documented assurance of compliance with all local requirements. Structures served by wastewater disposal systems with subsurface discharge require larger sites than those structures served by another type system.

(vi) Supporting information for individual wastewater disposal systems with surface discharge covering the following points:

(A) Effluent standards issued by the appropriate regulatory agency that controls the discharge of the proposed individual systems.

(B) Assurance from the health authority having jurisdiction that the individual systems being proposed will not pollute the environment in excess of the limitation described in paragraph (a)(5)(vi)(A) of this section.

(C) Program of maintenance, parts and service available to the system-owner for upkeep of the system.

(b) *Electric service.* The power supplier will be consulted by the applicant or developer to assure that there is adequate service available to meet the needs of the proposed development.

(1) Within subdivisions, lines must be placed underground where required by local regulatory authorities and, in other cases, where economically feasible.

(2) Where lines are installed above ground, they should be located in rear lot easements, wherever practicable. In all cases, the poles, guy wires, braces, transformers, etc., will be located so as not to unnecessarily detract from the appearance of the property.

(c) *Gas service.* Gas distribution facilities if provided will be installed according to local requirements where adequate and dependable gas service is available.

(d) *Telephone service.* Telephone service will be available at all dwelling units and other structures as applicable. Facilities will be located in accordance with paragraphs (b)(1) and (b)(2) of this section.

(e) *Outdoor lighting.* Outdoor lighting will be provided when required by local authorities or when necessary to provide adequate safety, and provisions have been made to assure permanent operation and maintenance of the facilities.

(f) *Other utilities.* Other utilities, if available, will be installed according to local requirements.

§ 1924.109 Grading and drainage.

(a) Soil and geologic conditions must be suitable for the type of construction proposed. In questionable or unsurveyed areas, the applicant or developer will provide an engineering report with supporting data sufficient to identify all pertinent subsurface conditions which could adversely affect the structure and show proposed solutions.

(b) The applicant or developer must seek the advice of SCS regarding identification of soils and its characteristics that may cause problems in grading and drainage. Where soil and drainage difficulties are identified, SCS recommendations will be considered during preparation of the development plan.

(c) Grading must conform to all State and local regulations and, where applicable, a grading certificate shall be obtained and established procedures followed.

(d) Site grading will promote drainage of surface water away from buildings and foundations, minimize earth settlement and erosion, and assure that drainage from adjacent properties onto the site or from the site to adjacent properties does not create a health hazard or other undesirable conditions.

(e) Sites requiring extensive earthwork, cuts and fills of 4 feet or more, shall be designed by a duly licensed or registered engineer. Where topography requires fills of extensive earthwork that must support structures and building foundations, these must be controlled fills designed, supervised and tested by a qualified soils engineer.

(f) All slopes must be protected from erosion by planting or other means. Slopes may require temporary cover if

exposed for long periods during construction.

(g) The design of storm water systems must consider convenience and property protection both at the individual site level and the drainage basin level. Storm water systems should be compatible with the natural features of the site.

(h) In areas with inadequate natural and/or manmade drainage systems, permanent and/or temporary storm water storage shall be an integral part of the overall development plan. Design of these facilities shall consider safety, appearance and economical maintenance operations.

§ 1924.110 Performing development.

All development will be arranged and completed by the applicant or developer according to applicable local, State or Federal regulations including applicable health and safety standards pertaining to building construction or development, and requirements of this subpart.

(a) The FmHA will not become a party to any construction or development contract. The applicant or developer will contract only with competent contractors. Contractors will provide the required bonding and insurance acceptable to FmHA and the applicant or developer under § 1924.6 of Subpart A of this part.

(b) The work will be performed in accordance with drawings and specifications approved by FmHA.

(c) Written assurance of completion from the responsible public authority will be required when local, city, county, State or other public authority codes, regulations and ordinances require inspections prior to final acceptance. Written assurance of completion and notification of completion from the person(s) providing technical services under § 1924.106(c) of this subpart is required prior to final acceptance by the FmHA.

§§ 1924.111–1924.113 [Reserved]

§ 1924.114 Multiple family housing.

Multiple housing developments will be planned and constructed under the appropriate requirements of this subpart, Subpart A of this part, and the requirements of the applicable program regulations.

§ 1924.115 New and less than partially completed subdivisions.

New and less than partially completed subdivisions must be planned and developed under the requirements of this subpart. The development of housing sites must also comply with the following:

(a) *Streets.* (1) Streets must conform to master street plans, design standards, and construction specifications of the local entity or State and the requirements of this subpart. Developments with more than 25 dwelling units must have two accesses available, unless after considering the safety and convenience aspects of the proposal an exception is granted by the State Director.

(2) Streets must be dedicated to and accepted by a public body which shall be responsible for continuous maintenance, except in multiple family housing projects where streets within the development may not be able to be publicly owned and maintained. Variations of this requirement shall not be authorized by the State Director without prior approval of the National Office.

(3) Hard-surfaced streets are mandatory. However, the State Director may make an exception to this requirement when *all* of the following conditions exist:

(i) They are not required by local ordinance and codes.

(ii) The property or subdivision is not adjacent to streets that are or soon will be hard-surfaced.

(iii) The street has an all-weather surface approved by and maintained by a public body.

(iv) The local authority to whom the street is to be dedicated does not have available the required equipment necessary for maintenance and will not accept dedication and be responsible for maintenance of hard-surfaced streets notwithstanding the fact that the hard surfacing would be provided initially by the applicant or developer in accordance with standard local requirements and practices.

(v) Other lending institutions and agencies active in the area will make housing loans or insure mortgages in the subdivision when it is provided only with all-weather streets.

(4) Any deviation from the requirements indicated in paragraph (a)(3) of this section will require an exception from the National Office. The request to the National Office must include documentation as to how many of the requirements of paragraph (a)(3) of this section are met and the following additional information:

(i) Map indicating location of subdivision or project site in relation to other subdivisions and the community with types of surfacing present on the access streets or roads to the proposed subdivision or project.

(ii) Complete street layout plan.

(iii) Street cross-sections with other necessary details.

(iv) Topographic maps.

(v) Drainage plans.

(iv) All specifications for proposed street construction.

(vii) Other pertinent information.

(5) Streets must have curbs or curbs and gutters for pavement edging to prevent ravelling of the wearing surface and shifting of the pavement base. The State Director may grant an exception to this requirement if adequate shoulders are provided.

(6) Preferably, dwelling units should be occupied after street hard surfacing is completed; however, occupancy may occur after the pavement base is in place and property cured. In cases of delays due to unsuitable weather conditions or when hard surfacing is not done by the developer but by the local public body, an all-weather street acceptable to the local public body shall be provided prior to occupancy.

(i) When the developer is responsible for providing street surfacing, a performance and payment bond, escrow agreement, irrevocable letter of credit, or similar assurance acceptable to the State Director must be provided by the developer to assure that the required street work will be completed within 1 year from the date dwelling construction is started. This assurance will remain in effect until the streets are accepted by the entity responsible for continuous maintenance. The State Director shall establish a policy for handling these matters according to local regulatory practice or requirements. Any such assurance will specifically name the United States of America acting through FmHA as an obligee in order to give FmHA the ability to enforce the assurance or collection of the bond if the streets are not properly surfaced. If a local entity requires similar assurance that a developer complete street or road surfacing as discussed in this paragraph, and if the local entity requires that it be named obligee, then the requirements of this paragraph may be satisfied by naming FmHA as a co-obligee to such assurance.

(ii) Where local public bodies provide final surfacing, the subgrade and base shall be prepared according to the specifications of the local body. Written assurance must be obtained from the public body that suitable hard surface will be provided within a reasonable period usually not more than one year.

(b) *Lot layout.* (1) All lots shall be surveyed and platted. Permanent markers shall be placed at all lot corners.

(2) Lots shall meet all requirements of State and local entities and the FmHA.

(3) Lot arrangement should provide for the most effective use of building sites. Street lengths and utility runs should be minimized.

(4) Lot layout should encourage orientation of the dwelling units for solar access.

(5) Unacceptable lots. Any review of the proposed development will include all the proposed lots. Those lots determined unacceptable because of unsuitable soils, exposure to noise, flooding, etc., shall be combined with acceptable lots, redesigned to eliminate the unacceptable conditions through the use of barriers or building orientation, or made a part of a common area to be dedicated to and maintained by a public body or homeowners association in order to prevent development financed elsewhere from adversely affecting the housing financed by FmHA.

(c) *Covenants, conditions and restrictions.* Covenants, conditions and restrictions (CC&R's) shall be developed to preserve the character, value and amenities of the residential community and to avoid or mitigate potential environmental impacts unless, an exception is granted by the State Director after considering the suitability of local ordinances, zoning, and other land use controls.

(1) CC&R's shall be recorded in the public land records and specifically referenced in each deed.

(2) It is the intent that through the CC&R's the:

(i) Developers will be assured the purchasers will use the land in conformance with the planned objectives for the community, and

(ii) Purchasers are assured the developer will proceed to use the land as planned and that other purchasers will use and maintain the land as planned to prevent changes in the character of the neighborhood that would adversely impact values or create a nuisance.

(3) The CC&R's recommended in HUD Data Sheet 40 should be considered as a starting point for developing CC&R's for a specific development. Due to the unique quality and character of each development the CC&R's should be submitted to FmHA for comment prior to recording.

(4) In order to permit the use of dwellings with passive or active solar systems, consideration should be given to including a covenant to protect the solar rights of the individual property owners.

§ 1924.116 Existing subdivisions partially or more completed.

Existing subdivisions partially or more completed must comply with § 1924.107 of this subpart and all other requirements in this section to be acceptable for FmHA financing except as provided in § 1924.119(c) for existing subdivisions which have been and still are accepted by HUD or VA. Subject to § 1944.10(g) of Subpart A of Part 1944 of this chapter, those subdivisions approved under prior FmHA regulations that do not meet the general policy of § 1944.102 of this subpart and the requirements of this section are acceptable for further development only for a period of two years after the effective date of this regulation. All subdivision plats recorded or subdivisions developed after the effective date of this regulation must be processed under § 1924.115 of this subpart unless an exception is granted by the State Director on the basis that the subdivision was not previously submitted for review for reasons other than circumventing the requirements of this subpart. Those granted exceptions will meet the requirements of development in § 1924.115 (a) and (b) of this subpart with only the following modifications:

(a) *Utilities.* (1) Written verification must be obtained from the appropriate regulatory agency that any existing central water or waste-water disposal system is operating in compliance with all State and local regulations and has sufficient capacity to serve the proposed development. If a system is not publicly owned and operated it must comply with § 1924.108(a)(4) of this subpart.

(2) If individual water or wastewater disposal systems have been in use and it is not feasible to convert to central systems, determine the following and process according to § 1924.108(a)(5) of this subpart.

(i) The residents of the subdivision will not be forced to install central systems within a year or two.

(ii) Verify that the existing individual systems are operable and giving satisfactory service at a reasonable maintenance cost. The local regulatory authority should assist in making this determination.

(3) Other utilities such as electricity, telephone, gas, outdoor lighting that were previously installed should be providing reliable, efficient service.

(b) *Streets.* If the streets within the existing neighborhood are soon to be paved and the local authorities will assess such costs to the homeowners, the applicant or developer shall inform FmHA and prospective purchasers of these intentions. Sites must be served by streets as provided in § 1924.115(a) of this subpart.

(c) *Lot layout.* Lots must continue to be developed according to the size and design of the existing development except where the prior design has proven uneconomical, unfeasible or unmarketable.

(d) *Covenants, conditions and restrictions.* Existing CC&R's must be carefully reviewed to ensure they generally conform to those required for subdivisions. It may be necessary to request assistance from the Office of General Counsel to complete the review. Any unacceptable language within the CC&R's must be modified as requested by FmHA before sites in the subdivision are acceptable.

§ 1924.117 Scattered site.

Scattered sites (developed or undeveloped) will be evaluated by the loan approval official to determine that the location and market are acceptable. A scattered site must be planned and developed under the applicable requirements of this subpart, Subpart A of this part, Subpart A of Part 1944, Subpart G of Part 1940, Subpart B of Part 1806 (FmHA Instruction 426.2) and State and local regulations.

(a) *Location and feasibility reviews.* All requests for FmHA financing for the development or purchase of scattered site(s) will be submitted to the County Supervisor and processed in accordance with this section.

(1) The County Supervisor will review the proposal and site(s) to determine if the scattered site(s) conforms with the applicable requirements of this subpart.

(2) When the District Director's review of a scattered site within a subdivision is required, the District Director will review the subdivision and site to determine acceptability. Site and subdivision acceptability will be documented in the county office operational subdivision file.

(b) *Utilities.* All essential utilities will be provided. If central water or wastewater disposal services are not available, individual systems must be feasible and supporting factual data should include evidence that clearly shows the system(s) will perform satisfactorily for a reasonable period of time at a reasonable maintenance cost (see § 1924.108, paragraphs (a)(5)(iv), (a)(5)(v), and (a)(5)(vi) for suggested evidence that should be required). Onsite water or wastewater disposal systems must pass required tests. Also, there must be no evidence of well or wastewater treatment system failures on other sites nearby which may adversely affect the subject site.

(c) *Streets or roads.* All scattered sites shall be contiguous to and have direct access from a(n):

(1) Hard surfaced or all-weather street or road which has been dedicated to and accepted by a public body which is responsible for continuous maintenance, (unless an exception is granted by the National Office), or

(2) Extended driveway which connects with a hard surface or all weather street or road that meets the requirements of paragraph (c)(1) of this section, and:

(i) The driveway has an all-weather or hard surface.

(ii) The driveway does not potentially serve more than two individual dwellings, and

(iii) The property includes title to or an easement to the driveway and it is included in the security for the loan. An extended driveway will normally not exceed three hundred (300) feet in length or be used to circumvent the development of publicly-owned streets or roads.

§ 1924.118 Modification of requirements and recommendations in this subpart.

Higher standards than outlined in this subpart may be required. The site development requirements of this subpart have been adopted as minimum standards. State or local authorities or the FmHA, however, many find it necessary to require standards above those in this subpart when the public health, safety or welfare would be better served by more stringent standards. Some examples of considerations for justification for higher standards are:

(a) The site cannot be served adequately and economically with such public and central facilities and services as are normally required. For example, if the local minimum lot size of 10,000 square feet does not provide an adequate absorption field area for individual subsurface wastewater disposal systems according to professional analysis of percolation tests and soil types on a particular site, the State Director may raise the minimum requirement to that which will be safe and sanitary.

(b) Land proposed for building sites may not be safely used because of danger from flood or other inundation or as a result of natural conditions which are a menace to health, safety or public welfare. For example, where the local public body does not, in the opinion of FmHA, have adequate drainage requirements, the State Director may require more rigid specific drainage standards than requested locally or than provided in this subpart. Another example would be that in certain cases the street drainage system must be tied in with irrigation or storm drainage systems to provide storm drainage in a controlled manner.

§ 1924.119 Subdivision reviews.

The review of subdivisions is divided into three subsections: New and less than partially completed, existing partially or more completed, and reciprocity of acceptance among Federal agencies. The applicable review subsection will be followed to determine subdivision acceptability. The inoffice processing times in this section are guidelines for timely processing of properly prepared submissions, and are not intended to delay the handling of reviews or discourage proper reviews of complex submissions. Unresponsive submittals will cause delays. Requests for exceptions must be forwarded to the approving officials as soon as possible after the need is identified and the documentation is assembled.

(a) *New and less than partially completed subdivisions.*—(1) *Location and feasibility submission.* When Form FmHA 1924–20 with attachments is received from an applicant or developer:

(i) The County Supervisor will:

(A) Handle inquiries and provide basic information about subdivisions processing.

(B) In those cases subject to intergovernmental review, assure that the requirements of Subpart J of Part 1940 of this chapter have been met.

(C) Immediately forward any submission to the District Director for review and advise the applicant or developer of the limitations on their actions that apply during the application review process, pursuant to § 1940.309 (e) of Subpart G of Part 1940 of this chapter, and that further processing will be handled by the District Office. The County Supervisor must include comments and recommendations in the remarks section of Form FmHA 1924–20 or on attached separate sheets.

(ii) Upon receiving a location and feasibility submission, the District Director must:

(A) In those cases subject to intergovernmental review, assure that the requirements of Subpart J of Part 1940 of this chapter have been met.

(B) Discuss with the applicant or developer Form FmHA 1924–20 and required documents to determine the completeness of the submission and the possible need for further information.

(C) Make a field visit or accompany the applicant or developer to the proposed site to review the feasibility of the location and to become familiar with the natural and fixed features influencing the site.

(D) If the proposal is within his/her approving authority under § 1924.121 of this subpart, make a comprehensive study to assure compliance with all local, regional and State regulations, codes, ordinances, plans for future development and compliance with this subpart. It may be necessary to contact the State Office Architect, Engineer or Environmental Coordinator during this review.

(E) When possible, the review should be completed within 30 days and a written analysis including recommendations or conditions provided the applicant or developer with a copy mailed to the County Supervisor.

(F) If beyond his/her approving authority, forward to the State Director with written comments and recommendations as soon as possible.

(iii) When the State Director's review of the location and feasibility submission is required, the State Director will:

(A) Make a comprehensive study to assure compliance with all local, regional and State regulations, codes, ordinances, plans for future development and compliance with this subpart. In making this study, the State Director will use the services of State Office personnel including the Architect, Engineer, and the State Environmental Coordinator as well as ensure that the personnel required by Subpart G of Part 1940 of this chapter undertake and complete the proper environmental review for the submittal.

(B) Provide a written analysis and guidance for further processing to the District Director with a copy to the County Supervisor.

(C) Whenever possible, complete this review within 30 days.

(iv) If the submission requires National Office review, the applicant or developer should be informed. In most cases, the State Director can expect a response within 45 days of the date of a routine request for review.

(2) *Preliminary submission.* When it has been determined by FmHA that the project is feasible and the location conforms with the intent of the funding program, the applicant or developer will submit the required additional information as pursuant to Exhibit A II of this Subpart.

(i) Upon receiving a preliminary submission, the District Director will:

(A) Review the comments concerning this development which were made at the time of location and feasibility analysis and verify conformance with any conditions imposed during the initial review.

(B) Review the drawings and specifications item by item with the

applicant or developer to avoid any misunderstandings as to intent, extent, kind and quality of work to be performed and materials to be used. The District Director may find it necessary to contact the State Office technical staff in order to complete this review.

(C) Offer suggestions to the applicant or developer, when appropriate, as to how the design, drawings and specifications may be altered to improve the facilities and better serve the needs of the public. For revisions that require technical determinations, the applicant or builder-developer may be requested to obtain additional technical assistance.

(D) Act as outlined in paragraphs (a)(1)(ii)(D), (a)(1)(ii)(E), and (a)(1)(ii)(F) of this section.

(ii) When the State Director's review of the preliminary submission is required, the State Director must consider all recommendations made on the location and feasibility submission and act as outlined in paragraphs (a)(1)(iii)(A), (a)(1)(iii)(B), and (a)(1)(iii)(C) of this section.

(3) *Final submission.* (i) Upon receiving a final submission, the District Director will:

(A) Review the submission to determine the completeness of the drawings and specifications.

(B) Determine that approvals have been received for local, regional and State authorities having jurisdiction.

(C) Determine compliance with FmHA regulations, and

(D) Act as outlined in paragraphs (a)(1)(ii)(D), (a)(1)(ii)(E), and (a)(1)(ii)(F) of this section.

(ii) After approval, one copy of the final submission and evaluation will be forwarded to the County Supervisor. One copy should be placed in the District file. All additional copies, as appropriate, will be returned to the applicant or developer after the final review and a determination has been reached.

(iii) When the State Director's review of the final submission is required, the State Director must consider all previous recommendations and act as outlined in paragraphs (a)(1)(iii)(A), and (a)(1)(iii)(B), and (a)(1)(iii)(C) of this section.

(4) *Notification letters for subdivision review.* (i) The District Director will notify the applicant or developer in writing concerning the status of the proposal at the completion of each of the processing review stages. This notification will consist of either:

(A) A letter of acceptance suggesting that the applicant or developer continue with preparation of the materials for further submission to FmHA (See Guide Letter No. 1924–2) available in any FmHA office, or

(B) A letter explaining why the proposal is unacceptable. Possible reasons for rejecting the proposal may include, but are not limited to a proposed site location that would result in:

(*1*) The unnecessary conversion of important farmland, prime forestlands, prime rangelands, floodplains, or wetlands,

(*2*) The destruction of a property listed or eligible for listing on the National Register of Historic Places, and

(*3*) The isolation of housing and its residents from necessary services and utilities (See Guide Letter No. 1924.2), or

(C) Letter of approval (See Guide Letter No. 1924.4).

(ii) Before proceeding to the next submittal level, the applicant or developer must modify the proposal in accordance with FmHA recommendations, or provide acceptable alternatives.

(b) *Existing subdivisions, partially or more completed.* The review of existing subdivisions that are partially or more complete will follow the two-step process outlined below:

(1) *Location and feasibility submission.* The applicant or developer will submit FmHA Form 1924–20 and all information listed in Exhibit A, Section I of this subpart to the County Supervisor. The submittal will be processed in accordance with the procedure in § 1924.119(a)(1)(i) of this subpart.

(2) *Final submissions.* The applicant or developer will submit to the District Director all information listed in Exhibit A, Sections II and III of this subpart. The approval official may waive the requirements to submit any of the documentation listed in Exhibit A, Sections II and III, if such information is not available and is not necessary to verify that the subdivision conforms with the FmHA requirements in this subpart. The submittal will be processed in accordance with the procedure in § 1924.119(a)(3).

(c) *Reciprocity of subdivision acceptance among Federal agencies.* Subdivisions which the Department of Housing and Urban Development (HUD) or the Veterans Administration (VA) have determined acceptable will be processed under this section. The letter of subdivision acceptance used by those agencies are: HUD form 92258 and VA form FL 26–603A. HUD has two procedures for determining subdivision acceptance. Developer Certification (DC) and Local Area Certification (LAC). The DC procedure requires that the development meet HUD subdivision standards. In both cases, the developer certifies to HUD the development meets the applicable standards and any conditional requirements that were necessary for acceptance.

(1) Upon receiving a request for subdivision reciprocity acceptance for a subdivision which HUD or VA has determined acceptable:

(i) The County Supervisor or District Director will obtain from the applicant or developer a copy of the letter of acceptance (HUD form 92258 or VA form FL 26–603A). If HUD or VA issued a conditional acceptance or LAC certification, evidence must be included that those conditions have been satisfied. This informaiton along with appropriate comments will be forwarded to the State Director.

(ii) The State Director or a member of the State staff will immediately contact the issuing agency to determine if the letter of acceptance or LAC is still in effect, to verify any conditional requirements have been met, and to the extent practical, discuss and address any local problems pertaining to that subdivision. In the case of a Planned Unit Development (PUD), review of the Home Owners Association documents and covenants would be required. Responsibility for monitoring and completing subdivision improvements will remain with the agency issuing the approval.

(iii) When the State Director has determined that the subdivision is accepted by the issuing agency, the State Director will notify the County Supervisor or District Director the subdivision is acceptable and individual sites within that subdivision may be considered for financing. Each site must be considered individually and meet the conditions applicable to scattered sites under § 1924.117 of this subpart, Subpart A of this part, Subpart A of Part 1944, and Subpart B of Part 1806 (FmHA Instruction 426.6). Conditional commitments issued for sites within such a subdivision will contain a list of the specific improvements that must be completed under the issuing agency's requirements.

(iv) If a HUD or VA accepted subdivision contains uncompleted road(s) or street(s) that serve the site to be developed or financed, no financing will be approved until (A) the uncompleted streets or roads are completed or (B) FmHA is named as an obligee on a performance and payment bond, a completion bond, escrow agreement, irrevocable letter of credit, or similar assurance acceptable to the State Director that the roads and streets will be completed within one year from the date the financing is approved. If the

streets or roads within the subdivision are all-weather surfaced which are satisfactory under § 1924.117(e), then a loan may be approved on the individual site without obtaining the bonding or other assurances required in (B) of the preceding sentence provided that for valuation purposes the site is valued based on the road surfaces then existing in the subdivision. Any bonds obtained under this subpart may name FmHA as an additional obligee on an existing bond favor of HUD or VA if the bond is otherwise satisfactory. Surety companies executing Bonds must appear on the Treasury Department's most current list (Circular 570 as amended) and be authorized to transact business in the State where the subdivision is located.

(2) Upon request the state Director will provide evidence to HUD or VA of FmHA subdivision acceptance.

§ 1924.120 Local entity designation.

To eliminate duplication of review and to encourage local entities to adopt and enforce satisfactory minimum standards for subdivision development, FmHA will practice an abbreviated subdivision review procedure for any submittal from within the jurisdiction of a local entity designated by the State Director under this paragraph.

(a) *Determination.* A local entity with site development design standards equal to or exceeding those in this subpart and with the proven capability to enforce those standards shall be considered for designation. The State Director's determination for possible designation will be based on the successful completion of one or more developments under the jurisdiction of the local entity. The State Director will notify the local entity in writing of a favorable determination and indicate such to the appropriate District and county offices. This designation will be withdrawn immediately upon the local entity taking action to reduce its design standards or failing to enforce the standards. It should be clearly understood that FmHA reserves the right to make all decisions with regard to the eligibility of a proposed development for financing.

(b) *Subdivision reviews.* All site developments will be processed as outlined in § 1924.119(a)(1) of this subpart. This initial phase contains many items that cannot be delegated by FmHA. When FmHA determines the Subdivision Location and Feasibility Analysis submission is acceptable and a National Office waiver is not required, the applicant or developer will not be required to submit any additional documents for FmHA review until the development is complete. Upon completion of all development work, the local entity will provide FmHA written confirmation that the development was completed in accordance with approved drawings and specifications and is in compliance with their site design standards. If a local entity approved subdivision contains uncompleted road(s) or street(s) bonding or escrow funds must be provided in accordance with § 1924.115(a)(6).

§ 1924.121 Approval authority.

The State Director is responsible for implementing the authorities in this subpart. Tables 1 and 2 of this section summarize scattered site and subdivision review and approval authority of the County Office, District Office, State Office, and the National Office.

(a) *Subdivision approval or acceptance authority.* Subdivision approval or acceptance will be in accordance with Table 1 of this section.

(b) *Scattered site approval authority.* Scattered site approval will be in accordance with Table 2 of this section.

(c) *Redelegation of authority.* The State Director may redelegate review and approval authority to appropriate FmHA State Office employees under the following conditions:

(1) The employees have had sufficient training and have demonstrated the capability to perform the required actions, and

(2) A procedure is established to ensure the necessary input from the State Office Engineer/Architect/Environmental Coordinator, and

(3) Any redelegation must be in writing in accordance with FmHA Instruction 2006-F (available in any FmHA office).

SUBDIVISION APPROVAL OR ACCEPTANCE AUTHORITY

No. of sites [1]	County supervisor	District director	State director	National office
#Sites:				
5-25	No—Forward to District Director with recommendations.	Yes—If central water and sewer [2]. If individual water and/or wastewater systems are proposed, or unusual conditions exist forward to State Director.	Yes—Additional assistance may be requested.	Provide special assistance.
More than 25	No—Forward to District Director with recommendations.	No—Forward to State Director with recommendations.	Yes—Unless National Office concurrence or waiver is required.	Yes—All proposals where authority has not been delegated to State Director or when special assistance is requested.
5 or more HUD or VA accepted.	No—Forward to District Director with comments..	No—Forward to State Director with comments.	Yes—See § 1924.119(e)...	Provide special assistance.

NOTES:

[1] Strategic placement of lots, groupings and subdivisions will not be used to impair or circumvent these approval authorities. The approval authority for a phased project shall be determined by the size of the total proposal. Likewise, when only a portion of the site owned by the applicant is to be used, the approval authority shall be based on the total development capacity of the site.

[2] The District Director is responsible for obtaining the necessary technical assistance from the State Office Architect/Engineer in processing the proposal.

SCATTERED SITES APPROVAL AUTHORITY

Location [1]	County supervisor	District director	State director	National office
Open Country and Communities 1–4 Contiguous	Yes	Yes	Yes	
Subdivisions 60% or more filled out within or part of a community	Yes	Yes	Yes	
Subdivisions 60% or more filled out which are not within or part of a community.	Yes [2]	Yes	Yes	
FmHA accepted HUD or VA approved subdivisions	Yes	Yes	Yes	

[1] NOTES: It is the policy of the agency to encourage new FmHA financed development to take place within or in close association with existing communities and to have access to all services available within the community.

[2] Scattered sites within unapproved subdivisions, which are 60 percent or more filled out located outside communities, must be reviewed by the District Director prior to approval by the County Supervisor (See §1924.117(a)(2)).

§ 1924.122 Exception authority.

The Administrator may in individual cases, make an exception to any requirement or provision of this subpart which is not inconsistent with the authorizing statute if the Administrator determines that application of the requirement or provision would adversely affect the Government's interest. The Administrator will exercise this authority only at the request of the State Director and recommendation of the appropriate program Assistant Administrator. Requests for exceptions must be in writing by the State Director and supported with documentation to explain the adverse effect on the Government's interest, proposed alternative courses of action, and show how the adverse effect will be eliminated or minimized if the exception is granted.

§ 1924.123 State supplements and exhibits.

State Directors will obtain and issue National Office clearance for all State supplements and exhibits. These will be in accordance with FmHA Instruction 2006–B (available in any FmHA office).

(a) *State supplements.* State Directors may supplement this subpart only to meet State and local laws and regulations and to provide for orderly processing of submittals.

(b) *State exhibits.* State Directors may develop exhibits for use by applicants or developers if the exhibits to this subpart are not adequate for use in the State. Those exhibits may be developed to further explain the items needed within the various submittals; organization of those items; and coordination of this subpart with the requirements of the FmHA program(s) providing the financial assistance.

§ 1924.124 Exhibits.

State Directors may requisition additional copies of the exhibits to this subpart from the Finance Office for use by FmHA offices in assisting applicants and developers with site development.

§§ 1924.125–1924.149 [Reserved]

§ 1924.150 OMB control number.

The collection of information requirements in this regulation was approved by the Office of Management and Budget and assigned OMB control number 0575–0099.

Exhibit A—Checklist of Visual Exhibits and Documentation for Subdivisions

U.S. Department of Agriculture

Farmers Home Administration

This Exhibit lists visual exhibits and documentation necessary for FmHA to properly evaluate proposed development. Intermediate consultation by the applicant or developer with the FmHA County, District or State Offices should be as frequent as necessary to reduce chances of misunderstandings and limit the amount of nonproductive time and expense for all parties concerned.

I—*Location and Feasibility Exhibits:* The applicant or developer will submit the following information to the District Director to determine feasibility of the project and general conformance with FmHA policy:

A—*Form 1924–20, "Request for Subdivision Location and Feasibility Review."* The applicant or developer should fully complete the form and attach any information in addition to that listed herein that is essential in creating a clear understanding of the proposed development. This form is available at any FmHA office.

B—*Form 1940–20, "Request for Environmental Information."* Portions of the form must be completed when the submission contains more than 4 dwelling units and the entire form must be completed when the submission contains more than 25 dwelling units. The form and guidance concerning assembly of the information is available at any FmHA office.

C—*Form—400–1, "Equal Opportunity Agreement," and Form 400–4, "Assurance Agreement" (When applicable).*

D—*Location Map.* A general site location map of the area indicating the adjacent land uses and zoning, the present and future access roads to the site as well as the proximity to shopping, schools, churches, and major transportation facilities with note of traffic volumes. If a satisfactory map of the locality is not available, a clear and preferably scaled rough sketch map that provides the required information will be sufficient.

E—*Property Survey Map.* A current survey (where 1-inch represents no more than 100-feet) of the project site showing the boundaries as well as all existing known features specifically including utilities, easements, access roads, floodplains, drainageways, rock outcroppings and wooded areas or specimen trees. If a current survey does not exist, the most accurate document which is available will be submitted.

F—*Soils Map and Report.* A complete soils map and report, including "site specific" interpretations and recommendations, from the local or county representative of the U.S. Department of Agriculture, Soil Conservation Service (SCS) Office will be included with the location and feasibility submission. A determination of whether or not any lands described in USDA Regulation No. 9500–3 are impacted by the proposed development should also be included. The local SCS office may provide recommendations for the development of suitable drainage and landscaping plans later in the planning process.

G—*Market Survey.* Applicants or developers should conduct a market survey showing the need and demand for sites and housing within the community and surrounding trade area. Subdivision development of more than 25 new residential sites must have a complete market analysis completed in accordance with § 1924.107(d)(4).

H—*Request for Exceptions.* Any need for State or National Office exception(s) should be identified at this stage in the processing. Appropriate exception(s) should be requested and obtained prior to the preliminary submission.

I—*Other.* Optional information the applicant or developer of the project may wish to present such as:

1. Engineering report relative to the feasibility of central utilities by extension or creation of same onsite.

2. Dwelling drawings and specifications.

3. Site development information.

II—*Preliminary Submission Exhibits:* After it is determined by FmHA that the project is feasible and the location conforms with the intent of the funding program, the applicant or developer will submit the following information to the District Director in addition to those materials submitted previously:

A—*Property Survey.* A survey (were 1 inch represents no more than 100 feet) of the property and each individual lot showing the exact boundaries and corners of the property accompanied by a written description of said boundaries. Also, locations of predominant features such as utilities, easements, access points, floodplains, drainageways, rock outcroppings and wooded areas or specimen trees affecting the proposed development must be included. This document shall bear the seal of a professional licensed to provide surveying services in the State in which the subdivision would be located. This survey could be a part of item D below of this paragraph.

B—*Topographic Map.* An accurate topographic map showing existing and proposed contours with a scale compatible with the size of the project. The site shall be shown at a reasonable scale, usually 1"=100' with 5-foot contour intervals. Where the site is unusually level or steep, the contour intervals may be varied accordingly.

C—*Preliminary Subdivision Plan.* A line drawing, to scale, showing proposed street locations with profiles and widths, lot layouts, major drainageways, and other development planned. Preliminary sections and details shall be provided for the street construction, curbs and gutters, drainageways, and other physical improvements.

D—*Preliminary Dwelling Drawings and Specifications.* If the applicant or developer intends to construct the dwelling units, preliminary floor plans and specifications, elevations and sample site plans showing the placement of the unit on the individual lots should be submitted.

E—*Statement of Planning and Zoning Compliance.* A statement must be submitted which sets forth local, county and State approvals as applicable. If change of zoning or variance is required, the status of the variance or change of zoning shall be documented.

F—*Technical Service Contracts.* Executed contracts for the professional services of a site planner, architect, landscape architect, engineer, or soil engineer will be submitted as appropriate for the planning of the proposed development.

G—*Utility Approvals.* Statements of approval and feasibility for utility systems as follows:

1. Verification of adequate capacity and approval to tie in with local existing water, wastewater disposal, electric, telephone, and other utility systems as appropriate.

2. Tentative approval of local or State health authority for individual waste disposal systems when it is clear a central system is unfeasible at that time. Use §1924.108 (a)(5) of this subpart when preparing information required.

H—*Facility Acceptance.* Evidence that the appropriate public body will accept and maintain streets, common areas, street lighting, side walks, and drainageways, when such facilities are to be dedicated to a public body.

I—*Preliminary Specifications.* Outline specifications describing all the proposed materials to be used and how they are to be applied. These are only the materials used in the land development and construction of the streets, drainage, and utility work.

J—*Conditions, Covenants and Restrictions.* A copy of the convenants prior to recording. Use HUD–FHA Date Sheet 40 as a guide for developments of single family detached dwellings. For those proposals including Planned Unit Developments (PUD) or homeowners' associations, the applicant or developer should contact the District Director for guidance.

K—*Incremental Slopes Plan.* If areas of common slope are not identified elsewhere in adequate detail, this information should be provided in a separate plan.

L—*Preliminary Grading Plan.* This plan will indicate degree of work required to provide positive drainage of all building sites and control measures to be taken to eliminate soil erosion. Dwelling locations may be shown if they can be predetermined.

M—*Plat.* A copy of the subdivision plat prior to recording.

III—*Final Submission Exhibits:* All decisions regarding the conceptual design of the proposed project should be made prior to this submission. This effort is mainly to demonstrate that those agreed upon concepts have been transformed into construction documents and the necessary approvals have been granted. All items requiring revision or more detailed information as determined by the review of the preliminary submission will be resolved before the applicant or developer prepares the final submission. All documents shall be executed in a prefessional manner and shall carry the appropriate designation attesting to the professional qualifications of the architect, engineer, land surveyor or planner. All documents will be accurately drawn at an appropriate scale. The submittal should include 3 copies of each item. Exhibits will include those items in paragraphs I–A, B, C, E and II–A previously submitted and at least the following additional items.

A—*Drawings and Specifications.* These documents will be complete, and suitable for construction. They will be identical to those approved by the regulatory authorities having jurisdiction over the project and include all the following.

1. Site plan showing the location of streets, alleys, easements, water supply and wastewater disposal systems, drainage structures, lot lines, etc. Include recreational and the special purpose or common areas.

2. Grading plan with any special instructions and appropriate cross-sections for street construction, curbs and gutters, retaining walls, sidewalks, etc.

3. Drainage plan showing all improvements designed to control on-site and off-site storm water including swales, culverts, retention basins, catch basins, drainage piping, manholes, and associated details necessary for construction.

4. Utility plans and related details for installation of water supply and wastewater disposal systems, natural gas lines, district heating lines, telephone and electric services, street lighting, as applicable, indicating associated permanent and construction easements.

5. Landscaping plan detailing the existing trees to be preserved and the methods by which this and the proper development of common areas and protective screens will be accomplished.

6. Complete specifications for all proposed development.

B—*Individual Lot Plans.* A typical dwelling site plan for each site involving a characteristic situation will be included. Drawings should normally be at a scale of 1" = 20' or 1/16" = 1'0". These typical plans should illustrate mixing of homes and varying setbacks.

Dwelling location for all lots are not mandatory; however, they may be shown on Item III A 1. in lieu of individual plot plans if dwelling locations can be determined and the plan scale is 1" =40' or larger. Individual site plans will be required as part of the individual applications before the development of a lot begins.

C—*Written Approvals.* Written statements will be included which verify the regulatory authorities having jurisdiction over the development have granted the necessary approvals. These approvals shall include at least the following:

1. Local, regional or State planning authority.

2. All utilities including water supply, liquid and solid waste disposal, electric, telephone, etc.

3. Common areas and similar facilities dedicated to and accepted by the public body which shall have the responsibility for continuous maintenance, or if National Office approval has been obtained, deeded to a properly organized home owners' association.

4. Streets dedicated to and accepted by the public body which shall have the responsibility for continuous maintenance, except for those cases waived by the State Director or the National Office.

D. *Recorded Subdivision Plat.*

E. *Recorded Covenants.*

F. *Surety.* If applicable, evidence that the sponsor will provide bonding or escrow funds in accordance with § 1924.115 (a)(6)(i).

G. *Affirmative Fair Housing Marketing Plan.* Housing and Urban Development (HUD) Form, 935.2 will be completed and signed by the applicant or developer prior to submission. The plan will be reviewed for adequacy by the District Director and signed by the appropriate approving official. This plan will remain in effect until the last lot or site to be developed has sold.

H. *Other.* Pertinent items that may be required in any particular situation such as homeowner association documents, special environmental clearances, etc.

Exhibit B—Site Development Design Requirements

This Exhibit prescribes site development requirements to be used in developing residential sites in all housing programs. These requirements cover only those areas which involve health and safety concerns. They are not intended to cover all aspects of site development. Applicants and developers are expected to follow local practice, as a minimum, in all areas of site development not addressed in this Exhibit. When State, local, or other requirements are applicable in addition to FmHA's requirements, the most stringent requirement shall apply.

Proper integration of the natural features of a site with the manmade improvements is one of the most critical aspects of residential development. Poor site planning in large scale subdivisions, rental projects and individual sites, has resulted in a loss of valuable private and public natural resources and caused economic burdens and conditions unsuitable for healthy and pleasant living. Proper site design can preserve desirable natural features of the site, minimize expenses for streets and utilities, and provide a safe and pleasant living environment.

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I. Streets

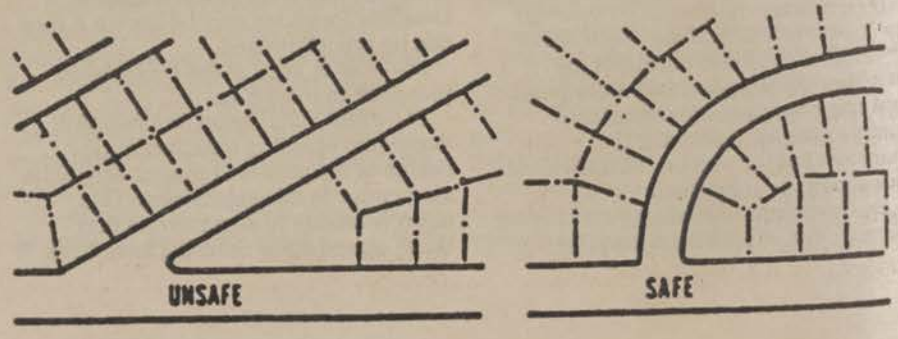
A. *Types*—1. *Collector streets.* Collector streets are feeder streets which carry traffic from local streets to the major system of arterial streets and highways. They include the principal entrance streets of residential developments and streets for circulation within such developments.

2. *Local streets.* Local streets are minor streets used primarily for access to abutting properties. These include drives serving multi-family housing units.

B. *Design Features*—1. *Emergency Access.* Access for fire equipment and other emergency vehicles shall be within 100 feet of main building entrances.

2. *Cul-de-sacs.* Cul-de-sac streets shall have a turn-around with an outside roadway diameter of at least 80 feet, and a right-of-way diameter of at least 100 feet.

3. *Intersection Angle.* Streets shall be laid out to intersect as nearly as possible at right angles and no street shall intersect any other street at an angle less than 75 degrees. Curb radii shall be a minimum of 20 feet for street intersections.



4. *Intersection Sight Distance.* Adequate distances must be maintained at intersections. Vehicles must be visible when within 75 feet of the centerlines of uncontrolled intersecting streets.

C. *Street Geometry*—1. *Definitions.* The definitions in Sections I.C.1.a and I.C.1.b. apply to the requirements in Section I.C.2.

a. *Terrain Classifications.*

(1) Ordinary—Slope less than 8%.
(2) Rolling—Slope range of 8% to 15%.
(3) Hilly—Slope greater than 15%.

b. *Development Density* (Number of Lots). (land Area minus Undeveloped Areas greater than Average Lot Size)

(1) Low—Less than 2 lots per acre.
(2) Medium—2 to 6.0 lots per acre.
(3) High-More than six lots per acre.

2. *Design Requirements.* Collector streets and local streets shall comply with the requirements in Tables 1 and 2 unless an exception is granted by the State Director. These requirements may need modification in localities having winter icing conditions.

TABLE 1.—PAVEMENT WIDTHS (FEET)

Street type	On-street parallel parking	Development density		
		Low	Medium	High
Collector	Prohibited	26	32	36
Collector	No Restrictions	36	36	40
Local	Prohibited	18	18	20
Local	Partial, One Side [1]	18	20	26
Local	Partial, One Side [1]	22	26	32
Local	Total, One Side [2]	22	26	26
Local	Total, Both Sides [2]	26	32	36

(1) At least one parking space per dwelling is provided off-street.
(2) No parking spaces are provided off-street.

TABLE 2.—STREET DESIGN (FEET)

	Terrain		
	Ordinary	Rolling	Hilly
(1) *Collector street:*			
(a) Minimum centerline radius of curvature	300	225	150
(b) Minimum sight distance	250	200	150
(c) Minimum right-of-way width	60	60	60
(2) *Local Street:*			
(a) Minimum centerline radius of curvature	200	150	100
(b) Minimum sight distance	200	150	100
(c) Minimum right-of-way width [1]	50	50	50

(1) For cul-de-sac streets, the minimum right-of-way width is 40 feet.

D. *Construction.* Street configuration and wearing surfaces must provide safe and economical access to all building sites. The design and construction of the street shall be appropriate for all anticipated traffic, climatic and soil conditions. Streets shall meet or exceed all local, county, and State requirements.

II. Walks and Steps

A. *Walks.* Where walks are provided, they shall be located to assure a minimum vertical clearance of 7 feet from all permanent or temporary obstructions. Walks shall have a slip resistant surface.

B. *Exterior Steps Not Contiguous to Dwelling or Building.*—1. *Flight.* a. Single steps or flights of steps exceeding a vertical height of 12 feet shall not be accepted.

b. Steps shall be set back from an intersecting walk or drive a minimum of 1 foot at a retaining wall and 2 feet at slopes.

2. *Risers and Treads.* a. Risers shall be a maximum of 6 inches, a minimum of 3 inches and uniform throughout the flight.

b. Treads shall be a minimum of 12 inches and uniform throughout the flight.

c. Treads shall have a slip resistant surface.

d. Treads shall be pitched appropriately to ensure drainage.

3. *Landings.* a. Minimum length shall equal 3 feet or walk width whichever is greater.

b. A change in direction in a flight of stairs shall be accomplished only at a landing or by a winder which has a tread width at a point 18 inches from the converging end, equal to the full straight stair tread width.

4. *Handrails.* Stairways having a flight rise exceeding 30 inches shall have a 36 inch high handrail located on one side for stairs 5 feet or less in width and on both sides of stairways over 5 feet wide.

III. Grading

A. *Compaction*—All fill for street or home construction shall have compaction of not less than 95 percent maximum density, as determined by proctor or other accepted testing methods. Maximum thickness of compaction layers shall be 6 inches except where compaction equipment of demonstrated capability is used under the direction of a qualified soils engineer. Earth fill used to support a building foundation shall be a controlled fill which is designed, supervised, and tested by a qualified soils engineer in accordance with good practice.

B. *Gradients.* Grading design shall be arranged to assure safe and convenient all-weather pedestrian and vehicular access to residential buildings and to all other necessary site facilities. Site grading shall be designed to establish building floor elevations and ground surface grades which allow drainage of surface water away from buildings and adjacent sites. Grading design shall conform with Tables 3 and 4.

TABLE 3.—ACCESS AND PARKING GRADIENTS [1]

[In percent]

	Minimum		Maximum	
	Center line	Crown or cross slope	Center line	Crown or cross slope
Streets	0.5	1.0	14.0	5.0
Street Intersections	0.5	1.0	[2]5.0	5.0
Driveways [3]	.05	1.0	14.0	5.0

TABLE 3.—ACCESS AND PARKING GRADIENTS [1]—Continued

[In percent]

	Minimum		Maximum	
	Cener line	Crown or cross slope	Center line	Crown or cross slope
Sidewalks ([4]):				
Concrete		0.5		
Bituminous		1.0		
Building Entrances & Short Walks	1.0		12.0	5.0
Main Walks	0.5		10.0	5.0
Adjoining Steps			2.0	
Landings		1.0		
Stepped Ramp Treads	1.0		2.0	5.0
Parking		0.5	5.0	5.0

[1] Approximate Equivalents| .5% = 1/16"ft., 1.0 = 1/8"ft., 2.0% = 1/4"ft., 5.0% = 5/8"ft., 10.0% = 1 1/4"ft., 12.0% = 1 1/2"ft., 21% = 2 5/8"ft.

[2] Grades approaching intersections shall not exceed 5 percent for a distance of not less than 100 feet from the centerline of the intersection.

[3] Vertical transitions shall percent contact of car undercarriage of bumper with driveway surface.

[4] Five percent maximum for major use by elderly tenants.

TABLE 4.—SLOPE GRADIENTS [1]

[In percent]

	Minimum	Maximum
Slope Away From Foundations:		
Pervious Surfaces	[2] 5.0	[3] 21.0
Impervious Surfaces	[2] 1.0	21.0
Previous Surfaces:		
Ground Frost Area	2.0	
Non-Ground Forst Areas	[4] 1.0	
Impervious Surfaces	0.5	
Slopes to be maintained by Machine		[3] 33.0

[1] See Table 3, footnote (1).

[2] Minimum length of 10 feet or as limited by property lines.

[3] Minimum length of 4 feet.

[4] The minimum is 2.0% if the annual precipitation is more than 50 inches.

IV. Drainage

1. *General*—1. *Collection and Disposal.* Surface and subsurface drainage systems shall be provided, as appropriate, for collection and disposal of storm drainage and subsurface water. These systems shall provide for the safety and convenience of occupants. They shall protect dwellings, other improvements and useable lot areas from water damage, flooding, and erosion.

2. *Concentrated Flow.* Where storm drainage flow is concentrated, permanently maintained facilities shall be provided to prevent significant erosion and other damage or flooding on site or on adjacent properties.

B. *Drainage Design and Flood Hazard Exposure*—1. *Storm Frequency.* Drainage facilities shall be designed for a 10 year storm frequency of 24-hour duration. Full potential development of all contributing areas shall be used as a basis for this determination.

2. *Street Drainage.* Streets shall be useable during runoff equivalent to a 10-year return frequency. Where drainage outfall is inadequate to prevent runoff equivalent to a 10-year return frequency from ponding over 6 inches deep, streets shall be made passable for local commonly used emergency vehicles during runoff equivalent to a 25-year return frequency except where an alternative access street not subject to such ponding is available.

3. *Foundation Drainage.* Appropriate crawl space and foundation drainage shall be provided for the removal of subsurface moisture.

C. *Primary Storm Sewer—1. Pipe Size.* Pipe size for the primary storm sewer (any storm sewer or inlet lateral located in a street or other public right-of-way) shall have an inside diameter based on design analysis but not less than 15 inches. Where anticipated runoff from the five-year return frequency rainfall will not fill a 15 inch pipe, a primary storm sewer system usually is unnecessary.

2. *Minimum Gradient.* Minimum gradient shall be selected to provide for self-scouring of the conduit under low-flow conditions and for removal of sediments foreseeable from the drainage area.

3. *Easements.* Easements for storm sewers shall be a minimum of 10 feet in width.

D. *Drainage Swals and Gutters*—1. *Design.* Paved gutters shall have a minimum grade of 0.5 percent. Paved gutters and unpaved drainage swales shall have adequate depth and width to accommodate the maximum foreseeable runoff without overflow. Swales and gutters shall be seeded, sodded, sprigged or paved as appropriate to minimize potential erosion. Side slopes shall be no steeper than 2:1.

2. *Easements.* Surface channels shall have an easement which is at least the width of the channel plus 10 feet.

E. *Downspouts*—1. *Outfall.* Where downspouts are provided, they shall either be connected to an available storm sewer, provided with suitable splash blocks, or empty at acceptable locations onto paved areas so that water drains away from buildings. Downspouts shall not connect to sanitary sewers.

2. *Piped Drainage.* Piped roof drainage from buildings shall be connected to available storm sewers or empty at locations where no erosion or other damage will be caused.

F. *Storm Inlets and Catch Basins*—1. *Openings.* Where inlets are accessible to small children, openings shall have one dimension limited to 6 inch access. Inlet openings in paved areas shall be designed to avoid entrapment or impedence of bicycles, baby carriages, etc.

2. *Access.* Access for cleaning shall be provided to all inlet boxes and catch basins.

G. *Drywells*—Drywells for the disposal of water from foundation drains, crawl spaces, and other small quantity sources shall be permissible where the bottom of drywells project into strata of undistributed porous soil at a level where the bottom of the drywell will be above the ground water table at its highest seasonal elevation.

V. Water Supply Systems

A. *Individual Water Systems*—1. *General.* a. In this subpart, an individual water system is a system which serves fewer customers or connections than the lower threshold for community systems stated in the Safe Drinking Water Act.

b. The system for an individual household should be capable of delivering a sustained flow of 5 gpm. A system supplying water to multiple household shall be designed by a Professional Engineer and have sufficient capacity to serve estimated demand. A test of at least 4 hours duration shall be conducted to determine the yield and maximum drawdown for all wells developed as part of an individual water system. This test may be waived by the State Office based on the hydrologic and geologic conditions in the area.

c. Water that requires continual or repetitive treatment to be safe bacterially is not acceptable.

d. After installation, the system should be disinfected in accordance with the recommendations of the health authority. In the absence of a health authority, system cleaning and disinfection should conform with the current EPA Manual of Individual Water Supply Systems.

e. Any method for individual water supply contained herein which is not permitted by the local health authority having jurisdiction shall not be used.

2. *Well Location*—a. A well located within the foundation walls of a dwelling is not acceptable except in arctic and sub-arctic regions.

b. Water which comes from soil formation which may be polluted or contaminated or is fissured or creviced or which is less than 20 feet below the natural ground surface (subject to the requirements of the local health authority) is not acceptable.

c. Individual water supply systems are not acceptable for individual lots in areas where chemical soil poisoning is practiced if the overburden of soil between the ground surface and the water bearing strata is coarse-grained sand, gravel, or porous rock, or is creviced in a manner which will permit the recharge water to carry the toxicants into the zone of saturation.

d. Table 5 shall be used in establishing the minimum acceptable distances between wells and sources of pollution located on either the same or adjoining lots. These distances may be increased by either the health authority having jurisdiction or the FmHA State Director.

TABLE 5.—DISTANCE FROM SOURCE OF POLLUTION

Source of pollution	Minimum horizontal distance (feet)
Property Line	10
Septic Tank	50
Absorption field	[1]100
Seepage pit	[1]100
Absorption Bed	[1]100
Sewer Lines w/Permanent Watertight Joints	10
Other Sewer Lines	50
Chemically Poisoned Soil	[1]100
Dry Well	50
Other	([2])—

NOTES:

[1] The horizontal distance between the sewage absorption system and the well, or the chemically poisoned soil and the well, may be reduced to 50 feet only where the ground surface is effectively separated from the water bearing formation by an extensive, continuous impervious strata of clay, hard-pan, or rock. The well shall be constructed so as to prevent the entrance of surface water and contaminants.

[2] Other sources of pollution could be fuel oil or gasoline storage tanks, farm yards or chemical storage tanks, etc. The well should be separated from these sources of pollution a distance recommended by the local health authority.

3. *Well Construction*—a. The well shall be constructed to allow the pump to be easily placed and to function properly.

b. All drilled wells shall be provided with a sound, durable and watertight casing capable of sustaining the loads imposed. The casing shall extend from a point several feet below the water level at drawdown or from an impervious strata above the water level, to 12 inches above either the ground surface or the pump room floor. The casing shall be sealed at the upper opening.

c. Bored wells shall be lined with concrete, vitrified clay, or equivalent materials.

d. The space between the casing or liner and the wall of the well hole shall be sealed with cement grout.

e. The well casing shall not be used to convey water except under positive pressure. A separate drop pipe shall be used for suction line.

f. When sand or silt is encountered in the water-bearing formation, the well shall either be gravel packed, or a removable strainer or screen shall be installed.

g. The surface of the ground above and around the well shall be graded to drain surface water away from the well.

h. Openings in the casing, cap, or concrete cover for the entrance of pipes, pump or manholes, shall be made watertight.

i. If a breather is provided, it shall extend above the highest level to which surface water may rise. The breather shall be watertight, and the open end shall be screened and positioned to prevent entry of dust, insects and foregin objects.

4. *Pumps and Equipment*—a. Pumps shall be capable of delivering the volume of water required herein under normal operating pressures within the living unit. Well pump capacity shall not exceed the output of the well.

b. Pumps and equipment shall be mounted to be free of objectionable noises, vibrations, flooding, pollution, and freezing.

c. Suction lines shall terminate below maximum drawdown of the water level in the well.

d. Horizontal segments of suction line shall be placed below the frost line in a sealed casing pipe or in at least 4 inches of concrete. The distance from suction line to sources of pollution shall be not less than shown in Table 5.

5. *Storage Tanks*—a. A system for an individual household shall include a pressure tank having a minimum capacity of 42 gallons. However, prepressured tanks and other pressurizing devices are acceptable provided that delivery between pump cycles equals or exceeds that of a 42 gallon tank. Storage capacity on a system for multiple households must be sufficient to meet estimated peak demands.

b. Tanks shall be equipped with a clean-out plug at the lowest point, and if pressurized, a suitable pressure relief value.

c. When additional storage is necessary because the well yield will not meet the system peak demands, all nonpressurized intermediate tanks shall be designed and installed in a manner that will prevent the pollution or degradation of the water supply.

B. *Community Water Systems*—1. *Definition.* In this subpart, a community water system is a system which meets the definition in the Safe Drinking Water Act.

2. *Design.* A community water system shall be designed by a qualified, professional engineer licensed in the state in which the water system will be located. Community water systems shall comply with all Federal and State laws.

VI. Wastewater Disposal Systems

Each dwelling shall be provided with a water-carried system adequate to dispose of domestic wastes in a manner which will not create a nuisance, contaminate any existing or prospective water source or water supply, or in any way endanger the public health.

A. *Individual Wastewater Disposal Systems*—1. *General.* a. In this subpart, an individual wastewater disposal system is a sewage disposal system which serves only 1 dwelling unit.

b. When service from an acceptable public or community system is not available or feasible, and ground water and soil conditions are acceptable, an individual system may be used.

c. Each individual wastewater disposal system shall consist of a house sewer, a pretreatment unit (e.g. septic tank, individual package treatment plant), and acceptable absorption system (subsurface absorption field, seepage pit(s), or subsurface absorption bed). The system shall be designed to receive all sanitary sewage (bathrooms, kitchen and laundry) from the dwelling, but not footing or roof drainage. It shall be designed so that gases generated anywhere in the system can easily flow back to the building sewer stack.

2. *Percolation Tests*—a. Percolation tests are required unless a waiver is granted by the National Office. Waivers may be granted on a statewide or local

basis in cases where an onsite evaluation of soils would be performed by a qualified soil technician, soil scientist, or engineer. Requests for waivers must describe the qualifications of the person evaluating the soils and discuss the criteria to be used in designing the absorption system.

b. In uniform soils one percolation test shall be made within each area proposed for an absorption system. If significant soil variations are encountered or expected, additional tests shall be made for each variation.

c. Percolation tests shall be conducted in accordance with good practice. Guidance for performing these tests is included in the EPA design manual, "Onsite Wastewater Treatment and Disposal Systems."

3. *Subsurface Absorption System*—a. Where percolation rates, soil characteristics and site conditions are acceptable, an absorption system may be installed in an area which is well drained, has an acceptable slope,and is acceptable for excavation.

b. Soils with percolation rates less than 1 minute per inch may be used if the soil is replaced with a layer of loamy or fine sand at least 2 feet thick. (Refer to the EPA Design Manual, "Onsite Wastewater Treatment and Disposal System").

c. soils with percolation rates greater than 60 minutes per inch are not acceptable for subsurface wastewater disposal systems.

B. *Community Wastewater Disposal Systems*—1. *Definition.* In this subpart, a community wastewater disposal system is any wastewater disposal system which serves more than 1 dwelling unit.

2. *Design.* A community wastewater disposal system shall be designed by a qualified, professional engineer licensed in the state in which the system will be located.

Exhibit C—Checklist of Visual Exhibits and Documentation for RRH, RCH, and LH Proposals

U.S. Department of Agriculture

Farmers Home Administration

This Exhibit lists visual exhibits and documentation necessary for FmHA to properly evaluate proposed development. Intermediate consultation by the applicant, builder-developer and others hereafter referred to as the sponsor with the FmHA District or State Offices should be as frequent as necessary to reduce chances of misunderstandings and limit the amount of non-productive time and expense for all parties concerned.

I—*Preapplication Submission Documents:* The sponsor will submit the following information to the District Director to determine feasibility of the project and general conformance with FmHA policy:

A—*Form 1940–20, "Request for Environmental Information."* Portions of the form must be completed when the submission contains more than 4 dwelling units and the entire form must be completed when the submission contains more than 25 dwelling units. The form and guidance concerning assembly of the information is available at any FmHA office.

B—*Location Map.* A general site location map of the area indicating the adjacent land zoning and uses, the present and future access roads to the site as well as the proximity to shopping, schools, churches, and major transportation facilities with note of traffic volumes. If a satisfactory map of the locality is not available, a clear and preferably scaled rough sketch map that provides the required information will be sufficient.

C—*Property Survey Map.* A current survey map of the project site showing the boundaries as well as all existing known features specifically including utilities, easements, access roads, floodplains, drainageways, rock outcroppings and wooded areas or specimen trees. If a current survey does not exist, the most accurate document which is available will be submitted.

D—*Soils Map and Report.* A complete soils map and report, including "site specific" interpretations and recommendations, from the local or county representative of the U.S. Department of Agriculture, Soil Conservation Service (SCS) Office will be included with the location and feasibility submission. A determination of whether or not any lands described in USDA Regulation 9500–3 are impacted by the proposed development should also be included. The local SCS office may provide recommendations for the development of suitable drainage and landscaping plans later in the planning process.

E—*Market Survey.* A market survey will be submitted in accordance with the requirements of the respective loan program as indicated in Part 1944, Subparts D and E and Part 1822, Subpart F (FmHA Instruction 444.7) of this chapter.

F—*Request for Exceptions.* Any need for State or National Office exception(s) should be identified at this stage in the processing. Appropriate exception(s) should be requested and obtained before proceeding to the preliminary submission.

G—*Other.* The applicant will need to submit any additional information that may be needed as indicated in Subpart D or Exhibit A–6 of Subpart E of Part 1944 of this chapter. This may include but is not limited to:

1. Schematic design drawings showing the proposed plot plan, typical unit plans, and elevations. If available, the proposed preliminary drawings and specifications may be submitted. This would be of assistance if it is determined that the loan must receive National Office authorization.

2. Type of construction.

3. The total number of living units and the number of each type of living unit proposed.

4. Type of utilities such as water, sewer, gas, and electricity and whether each is public, community, or individually owned.

II—*Application Submission Documents:* After it is determined by FmHA that the project is feasible and the location conforms with the intent of the funding program, the sponsor will submit the following information to the District Director in addition to those materials submitted previously.

A—*Property Survey.* A survey (where 1 inch represents no more than 100 feet) of the property lot showing the exact boundaries and corners of the property accompanied by a written description of said boundaries. Also, locations of predominant features such as utilities, easements, access points, floodplains, drainageways, rock outcroppings and wooded areas or specimen trees affecting the proposed development must be included. This document shall bear the seal of a professional licensed to provide surveying services in the State in which the project will be located. This survey could be a part of item D below.

B—*Topographic Map.* An accurate topographic map showing existing and proposed contours with a scale compatible with the size of the project. The site shall be shown at a reasonable scale with 5-foot contour intervals. Where the site is unusually level or steep, the contour intervals may be varied accordingly.

C—*Preliminary Site Plan.* A line drawing, to scale, showing proposed street locations with profiles and widths, lot layouts, major drainageways, and other development planned. Preliminary sections and details shall be provided for the street construction, curbs and gutters, drainageways, and other physical improvements.

D—*Preliminary Dwelling Drawings and Specifications.* Drawings of the dwelling units, preliminary floor plans

and specifications, elevations and sample site plans showing the placement of the individual buildings should be submitted.

E—*Statement of Planning and Zoning Compliance.* Local, county and State approvals as applicable. If change of zoning or variance is required, the status of the variance or change of zoning shall be documented.

F—*Technical Service Contracts.* Executed contracts for the professional services of an architect, engineer, land surveyor, landscape architect, site planner and/or soil engineer will be submitted as appropriate for the planning of the proposed development.

G—*Utility Approvals.* Statements of approval and feasibility for utility systems as follows:

1. Verification of adequate capacity and approval to tie-in with local existing water, wastewater disposal, electric, telephone, and other utility systems, as appropriate.

2. Tentative approval of local or State health authority for individual water and/or wastewater disposal systems when it is clear that central systems are unfeasible at this time. Use § 1924.108(a)(5) of this subpart when preparing information required.

H—*Facility Acceptance.* Evidence that the appropriate public body is willing to accept and maintain streets, common areas, lighting, fire hydrants, sidewalks, drainageways, and utilities, as appropriate, when dedicated to said body.

I—*Preliminary Specifications.* Outline specifications describing all the proposed materials to be used and how they are to be applied. These are only the materials used in the land development and construction of the streets, drainage, and utility work.

J—*Incremental Slopes Plan.* If areas of common slope are not identified elsewhere in adequate detail, this information should be provided in a separate plan.

K—*Preliminary Grading Plan.* This plan will indicate degree of work required to provide positive drainage of all building sites and control measures to be taken to eliminate soil erosion. Dwelling locations may be shown if they can be predetermined.

L—*Other.* The applicant will need to submit any additional information that may be needed as indicated in the respective loan program regulations as indicated in Part 1944, Subparts D and E and Part 1822 Subpart F this chapter (FmHA Instruction 444.7). This may include but, not be limited to:

1. A detailed trade-item cost breakdown of the project for such items as land and right-of-way, building construction, equipment, utility connections, architectural/engineering and legal fees, and both on- and off-site improvements. The cost breakdown also should show separately the items not included in the loan, such as furnishings and equipment. This trade-item cost breakdown should be updated just prior to loan approval.

2. Information on the method of construction, on the proposed contractor if a construction contract is to be negotiated and on the architectural, engineering, and legal services to be provided.

3. For all projects containing over four units the applicant will submit an Affirmative Fair Housing Marketing Plan for approval by FmHA in accordance with § 1901.203 of Subpart E to Part 1901 of this chapter. The Affirmative Fair Housing Marketing Plan must be prepared in a complete, meaningful, responsive and detailed manner.

4. A description and justification of any related facilities (including but not limited to workshops, community buildings, recreation center, central cooking and dining facilities, or other similar facilities to meet essential needs) to be financed wholly or in part with loan funds.

III—*Technical Documents Necessary for the Obligation of Funds.* All decisions regarding the conceptual design of the proposed project should be made prior to this submission. This effort is mainly to demonstrate that those agreed upon concepts have been transformed into construction documents and the necessary approvals have been granted. All items requiring revision or more detailed information as determined by the review of the preliminary submission will be resolved before the sponsor prepares the final submission. All documents shall be executed in a professional manner and shall carry the appropriate designation attesting to the professional qualifications of the architect, engineer, land surveyor or site planner. All documents will be accurately drawn at an appropriate scale.

PART 1933—LOAN AND GRANT PROGRAM (GROUP)

9. The authority citation for Part 1933 is revised to read as follows:

Authority: 42 U.S.C. 1480; 7 CFR 2.73; 7 CFR 2.70.

Subpart I—Self-Help Technical Assistance Grants

10. Section 1933.412 is revised to read as follows:

§ 1933.412 Planning and performing development work.

The development work will be planned and completed in accordance with Subparts A and C of Part 1924 of this chapter.

PART 1944—HOUSING

11. The authority citation for Part 1944 continues to read as follows:

Authority: 42 U.S.C. 1480; 7 CFR 2.23; 7 CFR 2.70.

Subpart A—Section 502 Rural Housing Loan Policies, Procedures, and Authorizations

12. Section 1944.11, paragraph (b) is revised to read as follows:

§ 1944.11 Property requirements.

* * * * *

(b) The property must be contiguous to and have direct access from a street, road, or driveway that meets the applicable requirements of § 1924.115 (New or less than partially completed subdivisions), § 1924.116 (Existing subdivisions partially or more completed), and § 1924.117 (Scattered Site) of Subpart C of Part 1924 of this chapter. For properties having access from a driveway, the maintenance cost for the driveway must be considered when determining the applicant's repayment ability.

* * * * *

§ 1944.24 [Amended]

13. Section 1944.24, paragraph (b) is amended by removing the words "Subpart D of Part 1804 of this chapter (FmHA Instruction 424.5)." and inserting in their place the words "Subpart C of Part 1924 of this chapter."

14. Section 1944.45, paragraph (f)(3)(ii) is revised to read as follows:

§ 1944.45 Conditional commitments.

* * * * *

(f) * * *

(3) * * *

(ii) Determine whether the dwelling and site meet the requirements of this subpart and Subparts A and C of Part 1924 of this chapter and will comply with all local codes and ordinances.

* * * * *

Subpart D—Farm Labor Housing Loan and Grant Policies, Procedures, and Authorizations

§ 1944.164 [Amended]

15. In § 1944.164, paragraphs (j)(2)(i) and (j)(2)(ii) are amended by removing the words "Subpart D of Part 1804 of this chapter (FmHA Instruction 424.5)." and

inserting in their place the words "Subpart C of Part 1924 of this chapter."

Exhibit A–3 to Part 1944 [Amended]

16. Exhibit A–3 to Subpart D, Paragraph II a.1. is amended by removing the words "Subpart D of Part 1804 of this chapter (FmHA Instruction 424.5)." and inserting in their place the words "Subpart C of Part 1924 of this chapter."

Subpart E—Rural Rental Housing Loan Policies, Procedures, and Authorizations

§ 1944.212 [Amended]

17. Section 1944.212, paragraph (p)(3) is amended by removing the words "Subpart A of Part 1924 and Subpart D of Part 1804 of this chapter (FmHA Instruction 424.5)." and inserting in their place, the words "Subparts A and C of Part 1924 of this chapter."

§ 1944.222 [Amended]

18. Section 1944.222, paragraphs (c)(1) and the introductory text of paragraph (d)(1) are amended by removing the words "Subpart A of Part 1924 and Subpart D of Part 1804 of this chapter (FmHA Instruction 424.5)." and inserting in their place, the words "Subparts A and C of Part 1924 of this chapter."

Subpart J—Section 504 Rural Housing Loan and Grants

19. In § 1944.456 the introductory text of paragraph (a) is revised to read as follows:

§ 1944.456 Loan and grant purposes.

* * * * *

(a) Installation and/or repair of sanitary water and waste disposal systems, together with related plumbing and fixtures, which will meet local health department requirements. Water supply and sewage disposal systems should be determined acceptable in accordance with Subparts A and C of Part 1924 of this chapter. The requirements of Subparts A and C of Part 1924 of this chapter may be waived by the State Director provided:

* * * * *

PART 1980—GENERAL

20. The authority citation for Part 1980 is revised to read as follows:

Authority: 7 U.S.C. 1989; 42 U.S.C. 1480; 5 U.S.C. 301; 7 CFR 2.23; 7 CFR 2.70.

Subpart D—Rural Housing Program Loans

§ 1980.307 [Amended]

21. Section 1980.307, paragraph (d)(1) and § 1980.307 *administrative;* paragraph A are amended by removing the words "Subpart D of Part 1804 of this chapter (FmHA Instruction 424.5)." and inserting in their place, the words "Subpart C of Part 1924 of this chapter."

22. Section 1980.327(b)(1) is revised to read as follows:

§ 1980.327 Acquisition, construction, and development.

* * * * *

(b) * * *

(1) Subpart C of Part 1924 of this chapter is used as a guide for planning and performing development work.

* * * * *

Dated: March 6, 1987.

Vance L. Clark,

Administrator, Farmers Home Administration.

[FR Doc. 87–11530 Filed 5–21–87; 8:45 am]

BILLING CODE 3410–07–M

Food Safety and Inspection Service

9 CFR Part 318

[Docket No. 86–028F]

Silicon Dioxide as a Processing Aid in the Dispersion of Tocopherol in Pump Curing Solutions

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: The Food Safety and Inspection Service (FSIS) is amending the Federal meat inspection regulations to permit the use of silicon dioxide as a processing aid in dry bacon curing premixes for tocopherol dispersion in pump curing solutions. The Food and Drug Administration (FDA) has determined this substance to be generally recognized as safe (GRAS) at levels of up to 4.0 percent in a premixed curing base to disperse tocopherol in the pump cure solution for bacon. FSIS has determined that it is now appropriate to add silicon dioxide as a processing aid to the list of acceptable ingredients in the Federal meat inspection regulations.

EFFECTIVE DATE: June 22, 1987.

FOR FURTHER INFORMATION CONTACT: Ashland Clemons, Acting Director, Standards and Labeling Division, Meat and Poultry Inspection Technical Services, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250, (202) 447–6042.

SUPPLEMENTARY INFORMATION:

Executive Order 12291

The Agency has made a determination that this final rule is not a major rule under Executive Order 12291. 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, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The final rule provides for the use of silicon dioxide as a processing aid at a level of up to 4.0 percent in dry tocopherol containing bacon curing premixes. The current Federal meat inspection regulations do not provide for the use of silicon dioxide in bacon. Industry may benefit from this action through the ability to use a processing aid which helps to achieve greater and more uniform dispersion of tocopherol in pump cured bacon. Consumers may benefit from this action since nitrosamine formation in bacon is reduced when tocopherol is used and is more evenly dispersed throughout the bacon pump cure solution.

Effect on Small Entities

The Administrator has determined that this rule will not have a significant economic impact upon a substantial number of small entities, as defined by the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This rulemaking imposes no new requirement on industry; rather, it permits the meat industry to use a processing aid in bacon curing premixes to assist in the dispersion of tocopherol in pump cure solutions. Use of this processing aid substance is voluntary.

Background

FSIS was petitioned by Diamond Crystal Salt Company to amend the Federal meat inspection regulations to allow the use of silicon dioxide as a processing aid in dry curing premixes containing tocopherol. The request was a followup to the final rule on alpha-tocopherol published in the **Federal Register** July 5, 1985 (50 FR 27573).

The dry bacon curing premixes consist of salt, tocopherol, silicon dioxide, and lecithin. Silicon dioxide acts as a dispersant for dry mixes. It improves the flow properties and increases the rate of dispersion by keeping particles separated and permitting water to wet them individually versus forming lumps. This is necessary since alpha-tocopherol is a water-insoluble substance. At a level of 4.0 percent of the dry curing base, silicon dioxide provides optimum dispersability to attain a near 100 percent dispersion of tocopherol in

pump cured bacon. The pump cured bacon using such a premix would contain 500 ppm of tocopherol.

The petitioner supplied analytical data supporting its claims and indicating that wholesomeness is not affected when bacon is processed with this substance. The quantity of substance required to maximize dispersion of tocopherol in bacon pump cure solutions is not more than 4.0 percent of the dry bacon curing premix at formulation. Data are available from the Standards and Labeling Division at the address given under **"FOR FURTHER INFORMATION CONTACT."**

FDA advised FSIS that it considers silicon dioxide as GRAS at levels not to exceed 4.0 percent of the premix and under the use of conditions proposed.

Proposed Amendment

The Administrator finds that (1) the proposed use of this substance is in compliance with applicable FDA requirements, (2) its use is functional and suitable for the products intended, (3) the substance is used at the lowest level necessary to accomplish its intended technical effect, and (4) the use of this substance in products does not render them adulterated, misbranded, or otherwise not in accordance with the requirements of the Federal Meat Inspection Act.

Therefore, on December 16, 1986, FSIS proposed amending the table of approved substances in 9 CFR Part 318 to include the use of silicon dioxide as a processing aid in tocopherol-containing bacon curing premixes for the dispersion of tocopherol in pump cured bacon (51 FR 44994). FSIS received one comment in response to the proposed rule from a chemical supply company. The company supports the proposal based on the belief that inhibition of nitrosamine formation in bacon through the use of alpha-tocopherol is beneficial to consumers and silicon dioxide is safe and effective for dispersing tocopherol in bacon processing.

Final Rule

List of Subjects in 9 CFR Part 318

Food additives, Meat inspection.

PART 318—[AMENDED]

For the reasons set out in the preamble, Title 9, Subchapter A, Part 318 of the Code of Federal Regulations is amended as set forth below.

PART 318—ENTRY INTO OFFICIAL ESTABLISHMENTS; REINSPECTION AND PREPARATION OF PRODUCTS

1. The authority citation for Part 318 continues to read as follows:

Authority: 34 Stat. 1260, 81 Stat. 584, as amended (21 U.S.C. 601 *et seq.*); 72 Stat. 862, 92 Stat. 1069, as amended (7 U.S.C. 1091 *et seq.*); 76 Stat. 663 (7 U.S.C. 450 *et seq.*) unless otherwise noted.

2. Section 318.7(c)(4) is amended by adding the substance "silicon dioxide" to the chart of substances approved for use in the preparation of products. This substance is placed in alphabetical order under the class of substances titled "Miscellaneous".

§ 1318.7 Approval of substances for use in the preparation of products.

* * * * *

(c) * * *

(4) * * *

Class of substance	Substance	Purpose	Products	Amount
*	*	*	*	*
Miscellaneous	Silicon dioxide	Processing aid/ dispersant.	Tocopherol-containing bacon curing premixes.	At level not to exceed 4.0 percent in the dry premix.
*	*	*	*	*

Done at Washington, DC, on May 19, 1987.

Donald L. Houston,

Administrator, Food Safety and Inspection Service.

[FR Doc. 87-11798 Filed 5-21-87; 8:45 am]

BILLING CODE 3410-DM-M

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 50 and 51

Domestic Licensing of Production and Utilization Facilities; Communications Procedures Amendments; Correction

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule; correction.

SUMMARY: This document corrects a final rule amending 10 CFR Part 50 and 51 with regard to procedures for submitting correspondence, reports, applications, and other written communications pertaining to the domestic licensing of production and utilization facilities. The final rule was published on November 6, 1986 (51 FR 40303) and inadvertently omitted a recently published revision of one of the affected sections. This action is necessary to return the omitted information and to inform the public and licensees of this omission.

FOR FURTHER INFORMATION CONTACT: Donnie H. Grimsley, Director, Division of Rules and Records, Office of Administration and Resources Management, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Telephone: 301-492-7211.

In FR Doc. 86-25045, published in the **Federal Register** of Thursday, November 6, 1986, make the following correction:

1. On page 40309, in the first column (containing the revision to § 50.54(f)), in the fifth line ending with the word "revoked.", insert the following words after the period:

Except for information sought to verify licensee compliance with the current licensing basis for that facility, the NRC must prepare the reason or reasons for each information request prior to issuance to ensure that the burden to be imposed on respondents is justified in view of the potential safety significance of the issue to be addressed in the requested information. Each such justification provided for an evaluation performed by the NRC staff must be approved by the Executive Director for Operations or his or her designee prior to issuance of the request.

Dated at Bethesda, Maryland, this 18th day of May 1987.

For the Nuclear Regulatory Commission.

James M. Taylor,

Acting Deputy Executive Director for Operations.

[FR Doc. 87-11794 Filed 5-21-87; 8:45 am]

BILLING CODE 7590-01-M

10 CFR Parts 70 and 74

Reporting of Special Nuclear Material Physical Inventory Summary Results

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is amending its regulations on special nuclear material control and accounting to require the reporting of the summary results of physical inventories of special nuclear material. The affected licensees have been providing this information on a voluntary basis since 1975. These amendments will establish a regulatory basis for the reporting of special nuclear material physical inventory data by licensees so that greater assurance can be provided that timely, reliable information will be made available to the public and the NRC licensing and inspection programs. Incorporating the

special nuclear material physical inventory reporting into the NRC regulations is the most cost-effective way to obtain the necessary information.

EFFECTIVE DATE: June 22, 1987.

FOR FURTHER INFORMATION CONTACT: Darrell A. Huff, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 427–4770.

SUPPLEMENTARY INFORMATION:

Background

In 1975, the Office of Inspection and Enforcement (IE) instituted a voluntary reporting system known as the Safeguards Status Report System (SSRS) whereby licensees were requested to report to the NRC physical inventory results in a prescribed format. Currently, 12 licensees make a voluntary commitment as part of their operating plan to report physical inventory results to the appropriate NRC regional office. The information provided by these voluntary reports is used by the NRC to monitor and assess the material control and accounting performance of licensees and as input for NUREG–0430, "Licensed Fuel Facility Status Report/ Inventory Difference Data," which was initiated by the Director of IE in 1977 in response to congressional and public concerns. NUREG–0430 reports licensed fuel facilities' physical inventory difference data following agency review of the information and completion of any related investigations.

Recognizing the need for the reporting of physical inventory results, IE requested an explicit regulatory basis for this physcial inventory reporting system. On August 23, 1976 (41 FR 35537), the NRC published in the **Federal Register** proposed amendments to 10 CFR Part 70 that would have required the reporting of the results of each ending physical inventory and the associated material accounting and measurement error data. The proposed amendments were published for a 60-day public comment period, and seven letters were received on the proposed rule. Final action on the reporting requirements was postponed, pending initiation of a separate but related rulemaking effort (the MC&A reform amendments). The dalay in implementing the MC&A reform amendments caused IE to request, in a memo dated June 2, 1982, that the Office of Nuclear Regulatory Research (RES) publish an amendment to 10 CFR Part 70 requiring reporting of physical inventories of SNM. However, due to the unavailability of resources within RES, completion of this rulemaking was referred back to IE by the EDO in a memo dated May 21, 1986.

Because of the time lapse since the reporting requirements were published as a proposed rule, the NRC republished the requirements in proposed form on October 23, 1986 (51 FR 37578). The proposed amendments reflected comments and suggestions received when the amendments were first proposed in 1976 as well as comments and suggestions that were solicited from the NRC regional offices in 1983 and 1984. Public comments on the proposed rule were requested to be submitted by November 24, 1986.

In 1983, a decision was made to create a new Part 74 which would pertain solely to MC&A safeguards requirements. When 10 CFR Part 74 was published on February 28, 1985 (50 FR 7575), it contained the MC&A regulatory requirements for licensees authorized to possess and use more than one effective kilogram of special nuclear material of low strategic significance. Certain safeguards-related recordkeeping and reporting requirements, formerly found in Part 70, were also moved to Part 74 in order to separate them from safety reporting requirements. Therefore, the reporting requirement for SNM physical inventory results is also being included in Part 74.

Comments on the Proposed Rule

The Commission received one letter from a licensee and one from a citizens group commenting on the proposed rule. Copies of these letters are available for public inspection and copying for a fee at the NRC Public Document Room at 1717 H Street NW., Washington, DC 20555.

The licensee's response stated the opinon that, since a voluntary reporting approach has been satisfactory for the past 10 years, a regulation is not needed. Although the voluntary system succeeded in collecting physical inventory data, the timeliness and consistency of this data was often inadequate. Confusion has also existed over the intended form and content of this information. Promulgation of this rule will provide greater assurance of data timeliness and consistency and eliminate the form and content problems by standardizing the reporting of physical inventory information on NRC Form 327. Hence, the Commission continues to believe that a rule requiring this reporting is in the best interest of the public.

The comments received from the citizens group were merely supportive of the need for the rule and requested no changes. Therefore, no specific response is necessary; however, such comments are always appreciated and welcomed by the Commission.

In summary, no changes have been made to the rule, as proposed, as a result of the public comments received. However, due to the recent approval of a new material control and accounting rule for fuel facilities licensed to possess and use formula quantities of strategic special nuclear material, a paragraph has been added to 10 CFR 74.17 that references the appropriate sections of this new rule.

Environmental Impact: Categorical Exclusion

The NRC has determined that this final rule is the type of action described in categorical exclusion 10 CFR 51.22(c)(3). Therefore, neither an environmental impact statement nor an environmental assessment has been prepared for this final rule.

Paperwork Reduction Act Statement

This rule amends information collection requirements that are subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.). These requirements were approved by the Office of Management and Budget, approval number 3150–0139.

Regulatory Analysis

The Commission has prepared a regulatory analysis on this final rule. The analysis examines the costs and benefits of the alternatives considered by the Commission. The analysis is available for inspection or copying for a fee in the NRC Public Document Room, 1717 H Street, NW, Washington, DC. Single copies of the analysis may be obtained from Darrell A. Huff, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 427–4770.

Regulatory Flexibility Certification

As required by the Regulatory Flexibility Act of 1980, 5 U.S.C. 605(b), the Commission certifies that this rule will not have a significant economic impact upon a substantial number of small entities. Currently, 12 licensees, who are composed of low enriched uranium and high enriched uranium fuel manufacturing facilities, will be affected by these amendments. This rule codifies a reporting procedure that has been a licensee practice since 1975. Accordingly, there is no new, significant economic impact on these licensees, nor are the licensees within the definition of small businesses set forth in section 3 of the Small Business Act, 15 U.S.C. 632, or

within the Small Business Size Standards set forth in 13 CFR Part 121.

Backfit Analysis

The staff has determined that a backfit analysis is not required for this rule since these amendments do not apply to 10 CFR Part 50 licensees.

List of Subjects

10 CFR Part 70

Hazardous materials-transportation, Material Control and Accounting, Nuclear materials, Packaging and containers, Penalty, Radiation protection, Reporting and reocrdkeeping requirements, Scientific equipment, Security measures, Special nuclear material.

10 CFR Part 74

Accounting, Material control and accounting, Nuclear materials, Penalty, Reporting and recordkeeping requirements, Special nuclear material.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, and 5 U.S.C. 553, the NRC is adopting the following amendments to 10 CFR Parts 70 and 74.

PART 70—DOMESTIC LICENSING OF SPECIAL NUCLEAR MATERIAL

1. The authority citation for Part 70 continues to read as follows:

Authority: Sec. 161, 68 Stat. 948, as amended (42 U.S.C. 2201); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5481).

2. In § 70.8, paragraph (c)(6) is added to read as follows:

§ 70.8 Information collection requirements: OMB approval.

* * * * *

(c) * * *

(6) In § 70.53, NRC Form 327 is approved under control number 3150–0139.

3. In § 70.53, paragraph (b) is revised to read as follows:

§ 70.53 Material status reports.

* * * * *

(b) Each licensee subject to the requirements of § 70.51(e) shall follow the requirements set out in §§ 74.13(b) and 74.17(b) of this chapter.

* * * * *

PART 74–MATERIAL CONTROL AND ACCOUNTING OF SPECIAL NUCLEAR MATERIAL

4. The authority citation for Part 74 is revised to read as follows:

Authority: Secs. 53, 57, 161, 182, 183, 68 Stat. 930, 932, 948, 953, 954, as amended, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2073, 2077, 2201, 2232, 2233, 2282); secs. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846).

For the purposes of sec. 223, 68 Stat. 958, as amended (42 U.S.C. 2273); §§ 74.17, 74.31, 74.51, 74.53, 74.55, 74.57, 74.59, 74.81, and 74.82 are issued under secs. 161b and 161i, 68 Stat. 948, 949, as amended (42 U.S.C. 2201(b) and 2201(i)); and §§ 74.11, 74.13, 74.15, and 74.17 are issued under sec. 161o, 68 Stat. 950, as amended (42 U.S.C. 2201(o)).

5. In § 74.8, paragraph (c)(4) is added to read as follows:

§ 74.8 Information collection requirements: OMB approval.

* * * * *

(c) * * *

(4) In § 74.17, NRC Form 327 is approved under Control No. 3150–0139.

6. In Subpart B, § 74.17 is added to read as follows:

Subpart B—General Reporting

* * * * *

§ 74.17 Special nuclear material physical inventory summary report.

(a) Each licensee subject to the requirements of § 74.31 shall submit a completed Special Nuclear Material Physical Inventory Summary Report on NRC Form 327 not later than 60 calender days from the start of the physical inventory required by § 74.31(c)(5). The licensee shall report the inventory results by plant and total facility to the appropriate NRC regional office listed in Appendix A of Part 73 of this chapter.

(b) Each licensee subject to the requirements of § 70.51(e) of this chapter shall submit a completed Special Nuclear Material Physical Inventory Summary Report on NRC Form 327 not later than 30 calendar days from the start of the physical inventory required by § 70.51(e)(3) of this chapter. The licensee shall report the inventory results by plant and total facility to the appropriate NRC regional office listed in Appendix A of Part 73 of this chapter.

(c) Each licensee subject to the requirements of § 74.51 shall submit a completed Special Nuclear Material Physical Inventory Summary Report on NRC Form 327 not later than 45 calendar days from the start of the physical inventory required by § 74.59(f). The licensee shall report the inventory results by plants and total facility to the appropriate NRC regional office listed in Appendix A of Part 73 of this chapter.

Dated at Bethesda, Maryland, this 27th day of April, 1987.

For the Nuclear Regulatory Commission.

Victor Stello, Jr.,

Executive Director for Operations.

[FR Doc. 87–11793 Filed 5–21–87; 8:45 am]

BILLING CODE 7590–01–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 87–NM–52–AD; Amdt. 39–5628]

Airworthiness Directives; Aerospatiale Model ATR–42 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to Aerospatiale Model ATR–42 series airplanes, which requires isolation of the Number 1 (Captain's side) Attitude and Heading Reference System (AHRS) from the System Avionics Standard Communications Bus (ASCB). This amendment is prompted by two reports of dual, simultaneous and unannunciated failures of the ATR–42's primary attitude and heading displays. This condition, if not corrected, could result in the simultaneous presentation, without failure flags, of incorrect attitude and heading information on both pilots' primary displays. The display effectively "freezes" (no response, or intermittent and inaccurate response, to airplane maneuvers) to the display present at the time of failure.

EFFECTIVE DATE: June 8, 1987.

ADDRESSES: The applicable service information may be obtained from Aerospatiale, 316 Route de Bayonne, 31060 Toulouse Cedex 03, France. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Art Scholes, Standardization Branch, ANM–113; telephone (206) 431–1979. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: The Direction Générale de L'Aviation Civile (DGAC), which is the airworthiness authority of France, has, in accordance with existing provisions of a bilateral airworthiness agreement, notified the

FAA of an unsafe condition which may exist on Aerospatiale Model ATR–42 airplanes. It has been reported that some anomalous information on the system ASCB may affect both the pilot's and copilot's AHRS; in this case, Electronic Flight Instrument System (EFIS) displays may effectively "freeze" at the attitude and heading of the condition existing when the anomaly occurs. As both AHRS are affected at the same time, no disagreement exists between the displays. The severity of the situation is increased because no annunciation of the fault is generated.

Aerospatiale has issued Service Bulletin ATR–42–34A0016, dated March 23, 1987, which describes isolation of the pilot's AHRS from the System ASCB, limits the use of the autopilot to altitudes greater than 200 feet above ground level (AGL), and suspends Category II Approach operation. The DGAC has classified the service bulletin as mandatory.

This airplane model is manufactured in France and type certificated in the United States under the provisions of section 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement.

Since this condition is likely to exist or develop on airplanes of this model registered in the United States, the FAA has determined that an airworthiness directive is necessary to require U.S. operators to accomplish the actions described above, in accordance with the Aerospatiale service bulletin previously mentioned.

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

The FAA has determined that this regulation is an emergency regulation that is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in the aircraft. It has been further determined that this document involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). If this action is subsequently determined to involve a significant/major regulation, a final regulatory evaluation or analysis, as appropriate, will be prepared and placed in the regulatory docket (otherwise, an evaluation is not required).

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

Adoption of the Amendment

PART 39—[AMENDED]

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

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

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

2. By adding the following new airworthiness directive:

Aerospatiale: Applies to Model ATR–42 series airplanes certificated in any category, unless the equivalent of Production Modification 1397 was installed prior to delivery. Compliance is required as indicated, unless previously accomplished.

To prevent simultaneous loss of both pilots' primary attitude and heading information generated by Attitude and Heading Reference Systems (AHRS), accomplish the following:

A. Within 15 days after the effective date of this AD, isolate the pilots' AHRS (AHRS Number 1) from the System Avionics Standard Communications Bus (ASCB) in accordance with Aerospatiale Service Bulletin ATR–42–34A–0016, dated March 23, 1987, and ensure that Electronic Flight Instrument System (EFIS) Symbol Generators having part number 700544–411, Mod-level U or subsequent, have been installed.

B. Insert the following into the Airplane Flight Manual (AFM) Limitations Section 2. This can be accomplished by inserting a copy of this AD into the AFM and into the Flight Crew Operations Manual (FCOM), if used.

1. "Disconnect autopilot at or above 200 feet above ground level (AGL)."

2. "Approach operations are limited to Category I or higher weather minima."

C. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety may be used when approved by the Manager, Standardization Branch, ANM–113, FAA, Northwest Mountain Region.

D. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base for the accomplishment of the modifications required by this AD.

All persons affected by this directive who have not already received the appropriate service information from the manufacturer may obtain copies upon request to Aerospatiale, 316 Route de Bayonne, 31060 Toulouse, Cedex 03, France. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or at the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

This amendment becomes effective June 8, 1987.

Issued in Seattle, Washington, on May 15, 1987.

Frederick M. Isaac,

Acting Director, Northwest Mountain Region.

[FR Doc. 87–11695 Filed 5–21–87; 8:45 am]

BILLING CODE 4910–13–M

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 145

Fees for Requests of Commission Records

AGENCY: Commodity Futures Trading Commission.

ACTION: Final rule.

SUMMARY: On March 27, 1987, the Office of Management and Budget published a final fee schedule and guidelines implementing the Freedom of Information Reform Act of 1986 (Pub. L. 99–570). The Commission is now publishing revisions to its own regulations to implement those guidelines. The revised regulations establish four categories of requesters, each of which is charged differently. In addition, based on a review of actual costs during FY 1986 the Commission is revising the costs of staff time for reviewing and searching records, as well as the per page cost of duplicating for requests under the Freedom of Information Act (Part 145, Appendix B).

EFFECTIVE DATE: June 22, 1987.

FOR FURTHER INFORMATION CONTACT: Stacy Dean, Office of the Executive Director, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581, telephone number 202–254–7360.

SUPPLEMENTARY INFORMATION: The Freedom of Information Reform Act of 1986 (Pub. L. 99–570) amends the Freedom of Information Act (5 U.S.C. 552) by supplying new provisions relating to the charging and waiving of fees. Pursuant to the Reform Act, the Office of Management and Budget published a Uniform Freedom of Information Act Fee Schedule and Guidelines, 52 FR 10011 (March 27, 1987). The Commission is now implementing the OMB guidelines.

The OMB guidelines establish three levels of fees that may be charged, depending on the identity of the requester and the intended use of the information by the requester. Fees may be charged for document duplication, for search time and for time spent in

reviewing documents to determine if the material is exempt from disclosure. The Commission is revising Section 145.7 of its regulations to indicate that a requester should reasonably identify the category into which the requester falls and the use to which the information will be put, since this will, in part, determine the fees which the requester must pay. In addition, the Commission is amending Part 145, Appendix B, to describe the categories of requesters and the types of charges applicable to each. The Commission is also amending Part 145 to raise charges to reflect the Commission's current direct costs for duplication, search time and review time for FOIA requests.

Specifically, the Commission has recalculated its direct costs, defined by OMB for the purpose of FOIA fees as salary plus 16 percent for search or review time, and has concluded that direct costs are $3.42 per quarter hour for clerical time and $4.67 per quarter hour for professional time. These amounts will be rounded in the regulations to $3.00 per quarter hour for clerical time and $4.50 per quarter hour for professional time. Duplication costs, which include personnel and equipment costs are estimated at $0.15 per page, which is the same amount contained in the Commission's current regulations. Computer searches include a cost of $24.00 per quarter hour for central processing unit (CPU) time. Computer operator or programmer time will be charged at the rate of $4.50 per quarter hour. Certification of records as true copies will continue to cost $3.00 per certification and sending records by express or overnight mail will continue to be $10.00 per package mailed. Fees may be charged even where there is ultimately no disclosure of information.

A "commercial use request" is defined as a request from or on behalf of one who seeks information for a use or purpose that furthers the commercial, trade or profit interests of the requester or the person on whose behalf the request is made. Note that inclusion in this category is determined by the use to which the information will be put rather than the identity of the requester. Such requesters will be charged for all search time, review time and duplication costs.

An "educational institution" is defined as a school which offers a program or programs of scholarly research. This may include preschools, a public or private school whether elementary or secondary, an institute of graduate or undergraduate higher education, or an institute or professional or vocational education. A "noncommercial scientific institution" is defined as an organization which is not operated on a commercial basis and operates solely for the purpose of scientific research, the results of which are not intended to promote any particular product of industry. Both educational institutions and noncommercial scientific institutions will only be charged for document duplication, and no charge will be made for the first 100 pages copied.

A "representative of the news media" incudes any person actively gathering news for an entity that is organized and operated to publish or broadcast news to the public. The term "news" means information that is about current events or that would be of current interest to the public. This definition is intended to encompass nontraditional electronic means of news dissemination and free lance journalists who can show a solid basis for expecting publication through a news organization. Representatives of the news media are charged only reproduction costs, excluding the first 100 pages copied.

Other requesters not covered by the above categories can be charged for search time and reproduction costs. However, the first two hours of search time and the first 100 pages of copies are furnished without charge. If the search is for records stored in a computer format, a combination of computer operation charges and search time charges will be allowed up to the equivalent of two hours of professional staff time. These requesters will not be charged for review time. Note that requesters making requests under the Privacy Act will continue to be charged only for duplication and will not be covered by the 100-page exemption.

For purposes of determining the waiver of time or duplication charges, the Commission may aggregate requests if multiple, reasonably-related requests are made within a 30-day period or if there is some solid basis for believing that multiple requests were made solely to avoid fees. However, in no case will the agency aggregate multiple requests on unrelated subjects from the same requester.

The agency may also waive or reduce fees "if disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester." 5 U.S.C. 552(a)(4)(A)(iii). The Commission is revising Appendix B to Part 145 to specify that, if both of these conditions are met, the Commission will grant waiver or reduction of fees. Fees may also be waived if the administrative costs to the agency of collecting the fee would be greater than the fee itself. The Commission has determined that fees which amount to less than $5.00 may be waived.

The Commission will continue to notify parties if fees are expected to exceed $25.00 and will not proceed with the request without written authorization. A party may also specify a limit beyond which notification is required.

The advance payment provision of the regulations is being amended to conform to the new OMB guidelines. The agency will notify requesters when costs are expected to exceed $250, and will require advance payment when costs are likely to exceed $250 or where a requester has previously failed to pay a fee.

Bills which are not paid by the 31st day following the day the billing was sent will be charged interest on the full amount of the unpaid bill from the date of billing.

List of Subjects in 17 CFR Part 145

Freedom of Information Act, Fees.

For the reasons set out in the preamble, Title 17, Part 145 is amended as set forth below:

PART 145—COMMISSION RECORDS AND INFORMATION

1. The authority for Part 145 is revised to read as follows:

Authority: Pub. L. 89–554, 80 Stat. 383, Pub. L. 90–23, 81 Stat. 54, Pub. L. 93–502, 88 Stat. 1561–1564 (5 U.S.C. 552); Sec. 101(a), Pub. L. 93–463, 88 Stat. 1389 (5 U.S.C. 4a(j)); Pub. L. 99–570.

2. Section 145.7 is amended by redesignating paragraphs (e) through (i) as paragraphs (f) through (j) and by adding a new paragraph (e) to read as indicated below.

§ 145.7 [Amended]

* * * * *

(e) *Description of requester and intended use of requested records.* In each request for records, requesters shall reasonable identify themselves as a commercial user, educational institution, noncommercial scientific institution, or representative of the news

media if one of these categories is applicable. The requester shall describe the use to which the records will be put.

* * * * *

3. Appendix B to Part 145 is revised to read as follows:

Appendix B—Schedule of Fees

(a) *Charges for requests.* The following charges may be made where applicable for responding to requests for records.

(1) Three dollars for each one-quarter hour spent by clerical personnel in searching for or reviewing records.

(2) where a search or review cannot be performed by clerical personnel, $4.50 for each quarter hour spent by professional personnel in searching for or reviewing records.

(3) For searches of records stored in computer formats, the operation of the central processing unit wil be charged at a rate of $24.00 per quarter hour and operator/programmer search time will be charged at $4.50 per quarter hour.

(4) Document duplication, including computer printouts, will be charged at $0.15 per page.

(5) For copies of materials other than paper records, such as computer tapes or cassette tapes, the requsting party shall be charged the actual cost of materials and reproduction, including the time of clerical personnel at a rate of $3.00 per quarter hour.

(6) When, in accordance with § 145.7(f), a request has been made and granted to examine Commission records at an office of the Commission other than the office in which the records are routinely maintained, the requesting party (i) shall reimburse the Commission for the actual cost of transporting the records and (ii) shall be charged at a rate of $3.00 for each quarter hour devoted by clerical personnel in preparing the records for transit.

(7) For certifying that requested records are true copies, the charge will be $3.00 per certification.

(8) Upon request, records will be mailed by means of overnight or express mail at the fee of $10.00 per package mailed.

(b) *Waiver or reduction of fees.* Fees shall be waived or reduced by the Commission if (i) the fees is less than $5.00, the approximate cost to the Commission of collecting the fee; or, (ii) if the Commission determines that the disclosure of the information is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester.

(c) *Applicability of fees.* Fees shall be charged even if no records are ultimately furnished to the requester. Fees apply to various types of requests as follows.

(1) *Commercial use request.* Fees for search time, review time and duplication of records will be charged to requests from or on behalf of one who seeks information for a user or purpose that furthers the commercial, trade or profit interests of the requester or the person on whose behalf the request is made.

(2) *Educational institution or noncommercial scientific institution.* Only duplication fees will be charged to schools or to organizations which operate solely for the purpose of scientific research, the results of which are not intended to promote any particular product or industry. No charge will be made for the first 100 pages duplicated or for search or review time.

(3) *Representative of the news media.* Only duplication fees will be charged to any person actively gathering news for an entity that is organized and operated to publish or broadcast news to the public. No charge will be made for the first 100 pages duplicated or for search or review time.

(4) *Other requesters.* Fees for search time and duplication will be charged to requesters who are not covered by one of the categories above. No charge will be made for the first two hours of search time, the first 100 pages of duplication, or for review time. If the search is for records stored in a computer format, a combination of computer operation charges and search time charges will be waived up to the equivalent of two hours of professional search time.

(d) *Aggregation of requests.* For purposes of determining fees, the Commission may aggregate reasonably related requests if multiple requests are made within a 30-day period or if there is a solid basis for believing that multiple requests were made solely to avoid fees.

(e) *Notification of fees.* A request for Commission records may state that the party is willing to pay fees up to a stated limit for services to be provided in searching, reviewing and duplicating requested records. If such a statement is made, no work will be done that will result in fees beyond the stated limit without written authorization. If no limit is stated, no work will be done that will result in fees in excess of $25.00 without written authorization from the requester.

(f) *Advance payment of fees.* The Commission may request advance payment of all or part of the fee (i) when fees are expected to exceed $250; or (ii) when a requester has previously failed to pay fees in a timely fashion.

(g) *Payment of fees.* Payment should be made by check or money order payable to the Commodity Futures Trading Commission.

(h) *Interest on fees.* The Commission will begin charging interest on unpaid bills starting on the 31th day following the day on which the bill was sent. Interest will be at the rate prescribed in 31 U.S.C. 3717.

(i) *Collection of fees.* If fees not paid, the Commission may disclose debts to appropriate authorities for collection or to consumer reporting agencies.

4. The authority cite following Appendix B to Part 145 is deleted.

Issued in Washington, DC, on May 13, 1987, by the Commission.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 87-11356 Filed 5-21-87; 8:45 am]

BILLING CODE 6351-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 2

[Docket No. RM87-18-000; Order No. 471]

Public Utilities Policies Act: Primary Energy Source for Qualifying Small Power Production Facilities; Interpretation of "Waste Natural Gas"

Issued: May 18, 1987.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Final rule.

SUMMARY: The Federal Energy Regulatory Commission (Commission) is announcing its interpretation of how the Commission will determine whether natural gas may be considered "waste" within the meaning of the Public Utility Regulatory Policies Act of 1978 (PURPA), 16 U.S.C. 796(17)(A)(i) (1982), and therefore eligible as a primary energy source for a qualifying small power production facility. In order to be classified as waste, a material must be a by-product and currently have little or no commercial value. This final rule establishes guidelines for determining whether gas is unmarketable. Under the rule, the Commission will divide the gas into three categories based on heating values. The rule sets forth objective criteria under each category which the Commission will use to determine whether the gas is unmarketable.

EFFECTIVE DATE: This rule will be effective May 22, 1987.

FOR FURTHER INFORMATION CONTACT: Martha M. Poindexter, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, (202) 357-8428.

SUPPLEMENTARY INFORMATION:

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

I. Introduction

The Commission is announcing its interpretation of how to determine whether natural gas may be classified as "waste" within the meaning of section 201 of the Public Utility Regulatory Policies Act of 1978 (PURPA),[1] and therefore eligible as a primary energy source for a qualifying small power production facility.

II. Background

Waste is included as an allowable primary energy source for qualifying small power production facilities in

[1] 16 U.S.C. 796(17)(A)(i) (1982).

section 201 of PURPA. The statute, however, does not define "waste." In *Kenvil Energy Corporation*, 23 FERC ¶ 61,139 (1983), the Commission explained that in order to be classified as "waste," a material must be both a by-product of a commercial or industrial process and currently have little or no commercial value. The by-product requirement is contained in § 292.202(b) of the Commission's regulations which defines "waste" as "by-product materials other than biomass."[2]

In *Pynoyl Corporation*, 38 FERC ¶ 61,136 (1987), the Commission found that low quality natural gas which had little or no commercial value could be considered waste. The applicant's low quality natural gas was produced in association with distillates which were being removed and sold commercially. The Commission concluded that the applicant's low quality gas was a by-product of the distillate recovery process. It further found that the low quality natural gas (300 Btu per standard cubic foot (scf)) had little or no commercial value and therefore qualified as waste. In that order, the Commission recognized that, as a result of its finding, there may be an increased number of applications which will propose to use low quality natural gas as the primary energy source of a small power production facility. In anticipation of these applications, the Commission stated its intent to establish criteria for determining the quality of the gas which may be considered waste.

III. Discussion

In order to be classified as waste, a material must be both a by-product material and have little or no current commercial value. This rule establishes guidelines for determining commercial marketability of natural gas. The goal of this rule is to make use of resources that would not otherwise be used, and to satisfy PURPA's requirement that otherwise useful resources are not diverted to small power production facilities.

The marketability of natural gas is determined by two factors—the market price and the cost of production of gas.

The subject of the market price is complicated by the current disequilibrium of natural gas markets. The Commission's recent policies have attempted to permit competitive forces to play a greater role in determining natural gas prices. To achieve this objective, the Commission has sought to remove or modify regulatory barriers that impede development of a competitive gas marketplace. However, the Commission has recognized that its policies should not be designed solely to address the current natural gas supply surplus. Indeed, large quantities of gas that are unmarketable today could become marketable in the future. Thus, the Commission's rule should be sufficiently flexible to accommodate changes in the market.

The cost of production is the second major factor in determining the marketability of gas. The cost of production is influenced by a number of variables: Chemical composition, wellhead pressure, flow rate, and distance to a pipeline or other market.[3] Chemical composition affects the cost of production and thus marketability of gas in that impure gas must be upgraded to pipeline quality for sale.[4] Wellhead pressure also affects the cost of production since compression represents both a fixed and variable cost of delivering gas to a pipeline. Flow rate and distance to the nearest buyer affect the cost of production in that they affect the type and size of the gathering system needed to connect the gas supply to the buyer. All of these factors must be considered jointly since each affects the cost impact of the others.

The Commission recognizes that wide variation within these variables and the need to consider them jointly make it very difficult to develop a precise generic policy for determining whether natural gas is unmarketable. Generic estimates of the cost of upgrading are further complicated by the depressed condition of natural gas markets in the past several years. Few upgrading plants have been built recently. Thus, sufficient cost and performance data to support a generic standard of marketability are unavailable. Therefore, the Commission is promulgating this rule to establish generic standards for certain categories of natural gas.

The Commission is adopting a specific standard for defining the clearest cases of unmarketable gas. For others, the Commission is describing the factors that will be considered in determining whether gas is unmarketable. The Commission is dividing natural gas into three categories, based on heating values.

Category 1 will consist of natural gas with a heating value of 300 Btu per scf and below. Natural gas which falls within this category will automatically be considered unmarketable.

Category 2 will consist of natural gas with heating values above 300 Btu, but not more than 800 Btu per scf. In determining whether such gas is unmarketable, the Commission will consider the following factors: (1) The percentages of chemical components, wellhead pressure, and flow rate; (2) whether the applicant offered the gas to all potential buyers located within 20 miles of the wellhead under terms and conditions commensurate with those prevailing in the region and that such potential buyers refused to by the gas; and (3) a study, which may be submitted by an applicant, that evaluates the economics of upgrading the gas for sale and transporting the gas to a pipeline. The study should include estimates of the revenues which could be derived from the sale of the gas and the fixed and variable costs of upgrading.

Category 3 will consist of natural gas with a heating value above 800 Btu per scf. In determining whether such gas is unmarketable, the Commission will consider the same factors as in Category 2. In addition, the Commission will consider whether: (1) The gas has actually been flared, vented to the atmosphere, or continuously injected into a non-producing zone for a period of one year, pursuant to legal authority; or (2) the gas has been certified as waste, *i.e.*, suitable for disposal, by an appropriate state authority.[5]

In setting the limit for the first category (low-Btu gas), the Commission notes that for gas with a heating value of 300 Btu per scf and below, only extraordinary circumstances would make the gas worth upgrading.[6] The

[2] 18 CFR 292.202(b) (1986).

[3] The cost of drilling is not relevant to the question of gas marketability versus use in a small power production facility because drilling costs are incurred regardless of how the gas is used.

[4] Different types of separation processes are used to remove different impurities. For example, cryogenic cooling processes are used to remove nitrogen. Carbon dioxide and hydrogen sulfide, two other common impurities, are typically recovered by absorption processes. The cost of upgrading varies with the chemical composition of the gas. Factors such as wellhead pressure and flow rate affect the choice of upgrading technology, and therefore, the cost of upgrading. Moreover, some of the impurities thermselves have significant market values. Carbon dioxide can be used for enhanced oil recovery. Hydrogen sulfide can be converted to sulfur which also has a market value. The sale of these residuals complicates the economic analysis of natural gas upgrading because the market prices of carbon dioxide and sulfur vary widely by region.

[5] In states that do not have permitting procedures for the disposal of gas, the Commission will consider approving applications after notifiying the state authorities and allowing them to comment.

[6] A significant exception to this general observation is the commercial development of low-Btu gas in the Moxa Arch area in Wyoming and Utah. This project includes upgrading to pipeline quality for gas sales to interstate pipelines. The Big Piney-LaBarge (259 Btu per scf) gas reserve, a reserve in the Moxa Arch area which is presently being upgraded to pipline quality and sold to ANR

Continued

applicant in *Pynoyl Corporation* stated that the subject gas would not even burn under normal conditions. If such gas has a relatively low wellhead pressure, upgrading would require an external energy source. This would very likely be uneconomical.[7]

The Commission notes that available statistics indicate that natural gas with heating values above 800 Btu per scf is currently being marketed. However, the Commission believes that such gas should be considered unmarketable if it has been flared, vented to the atmosphere, or continuously injected into a non-producing zone for a period of one year. In order to avoid encouraging actual waste of such gas, the Commission will consider certification by appropriate state authorities that the gas is suitable for disposal.

Beween the low-Btu gas in the first category and the high-Btu gas in the third category, lies a middle ground. Statistics indicate that gas in this category is not currently being marketed. However, technology exists for upgrading the gas for sale. Therefore, the Commission believes that the criteria set forth herein for this category are appropriate for determining whether such gas may be considered waste.

The Commission's regulations require that applications for certification include a copy of a notice of such application for publication in the **Federal Register.**[8] In notices for certification of facilities using waste gas which falls within the seond or third category the Commission intends to include the identifying characteristics of the gas resource and a statement regarding whether there were buyers willing to purchase the gas, and encourages applicants to file this information. The Commission intends to add this information to notify potential buyers that may have been overlooked by an applicant of the opportunity to purchase the gas and to ensure that potential buyers that were notified were not willing to purchase the gas under reasonable terms and conditons.

The Commission believes that this approach strikes a balance between the administrative burden imposed on applicants for qualifying status and the Commission's objectives of utilizing wastes, while preventing otherwise useful gas from being diverted to small power production facilities.

IV. Effective Date

The Administrative Procedure Act exempts interpretative rules from both the notice and comment requirements of section 4(b) of the Administrative Procedure Act [9] and the requirement that publication be made thirty days before the effective date of the rule.[10] This interpretative rule will become effective upon publication in the **Federal Register**, without prior notice and comment.

List of Subjects in 18 CFR Part 2

Administrative practice and procedure, Electric power, Environmental impact statements, Natural gas, Pipelines, Reporting and recordkeeping requirements.

In consideration of the foregoing, the Commission amends Part 2, Chapter I, Title 18, Code of Federal Regulations, as set forth below.

By the Commission.

Kenneth F. Plumb,

Secretary.

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

Authority: Department of Energy Organization Act, 42 U.S.C. 7101–7352 (1982); Executive Order No. 12,009, 3 CFR Part 142 (1978); Federal Power Act, 16 U.S.C. 792–825r (1982); Natural Gas Act, 15 U.S.C 717–717w (1982); Natural Gas Policy Act of 1978, 15 U.S.C. 3301–3432 (1982); Public Utility Regulatory Policies Act of 1978, 16b U.S.C. 2601–2645 (1982); and the National Environmental Policy Act, 16 U.S.C. 4321–4361 (1978), unless otherwise indicated.

2. The Table of Contents for Part 2 is amended by adding a new heading and new § 2.400 to follow § 2.300 and to read as set forth below:

PART 2—STATEMENT OF INTERPRETATION UNDER THE PUBLIC UTILITY REGULATORY POLICIES ACT OF 1978

* * * * *

2.400 Statement of interpretation of waste concerning natural gas as the primary energy source for qualifying small power production facilities.

3. Part 2 is amended by adding a new § 2.400 to read as follows:

§ 2.400 Statement of interpretation of waste concerning natural gas as the primary energy source for qualifying small power production facilities.

For purposes of deciding whether natural gas may be considered as waste as the primary energy source pursuant to § 292.204(b)(1)(i) of this chapter, the Commission will use the criteria described in paragraphs (a), (b) and (c) of this section.

(a) *Category 1.* Except as provided in paragraph (b) of this section, natural gas with a heating value of 300 Btu per standard cubic foot (scf) or below will be considered unmarketable.

(b) *Category 2.* In determining whether natural gas with a heating value above 300 Btu but not more than 800 Btu per scf and natural gas produced in the Moxa Arch area is unmarketable, the Commission will consider the following information:

(1) The percentages of the chemical components of the gas, the wellhead pressure, and the flow rate;

(2) Whether the applicant offered the gas to all potential buyers located within 20 miles of the wellhead under terms and conditions commensurate with those prevailing in the region and that such potential buyers refused to buy the gas; and

(3) A study, which may be submitted by an applicant, that evaluates the economics of upgrading the gas for sale and transporting the gas to a pipeline. The study should include estimates of the revenues which could be derived from the sale of the gas and the fixed and variable costs of upgrading.

(c) *Category 3.* In determining whether natural gas with a heating value above 800 Btu per scf is marketable, the Commission will consider the information included in paragraph (b) of this section and whether:

(1) The gas has actually been flared, vented to the atmosphere, or continously injected into a non-producing zone for a

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Pipeline Company, represents an estimated recoverable reserve of seven trillion cubic feet (TCF). *See* ANR Pipline Company, *et al.*, 32 FERC ¶ 61,313 (1985) (order granting certificates for construction and operation of a pipeline and authority to transport gas from the LaBarge reserve to the ANR Pipeline Company). The sale of helium, sulfur, and carbon dioxide by-products has allowed this reserve to be developed commercially. Because the Moxa Arch reserve is being developed commercially, we will exclude it from Category 1. Natural gas from this reserve will be placed in Category 2. For purposes of this rule, the Moxa Arch area is the area enclosed by the Department of Interior Survey coordinates: T12N through T32N and R109W through R115W in Wyoming, and T2N through T3N and R14E through R20E in Utah.

[7] The Commission also considered requiring that gas in this category have a wellhead pressure of less than 1,500 psig. The rationale for a pressure standard is the apparent low cost of upgrading high-pressure gas for sale to pipelines. Wellhead pressures of 1,500 psig and are sufficiently above pipeline operating pressures (1,000 psig) so that no external input of energy may be required to drive a separation process. Without a pressure standard for low-Btu gas, some otherwise marketable gas could be automatically declared unmarketable. Nevertheless, the Commission concluded that more harm than good would result from requiring a pressure standard. Every source of gas is different. A pressure standard of 1,500 psig would likely prevent automatic qualification of some gas that could not be marketed. Since the probable impact of a pressure standard is not known at this time, the Commission decided not to adopt one.

[8] 18 CFR 292.207(b)(6) (1986).

[9] 5 U.S.C. 553(b) (1982).

[10] 5 U.S.C. 553(d) (1982).

period of one year, pursuant to legal authority; or

(2) The gas has been certified as waste, *i.e.*, suitable for disposal, by an appropriate state authority.

[FR Doc. 87-11705 Filed 5-21-87; 8:45 am]
BILLING CODE 6717-01-M

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

27 CFR Parts 19, 25, 70, 170, 179, 194, 197, 240, 250, 251, 270, 275, 285, 290, 295, and 296

[T.D. ATF-251]

Change in the Filing of Alcohol, Tobacco and Firearms Tax Returns, Claims and Related Documents

AGENCY: Bureau of Alcohol, Tobacco and Firearms (ATF), Treasury.

ACTION: Treasury decision, Final rule.

SUMMARY: This final rule amends regulations to require alcohol, tobacco and certain firearms excise tax returns, claims and related documents previously filed with the Internal Revenue Service (IRS) to be filed with ATF. The Treasury decision will also transfer from IRS to ATF the functions associated with the deposit and assessment of such excise taxes. All special (occupational) tax and domestic excise tax returns will be mailed to a special purpose post office box indicated on the return form, while Puerto Rican excise tax returns will be filed with the Chief, Puerto Rico Operations, ATF. All claims will be filed with the appropriate regional director (compliance). For Puerto Rican excise taxpayers, the bonds previously filed with and approved by the Officer-in-Charge, IRS, will now be approved by the regional director (compliance), and maintained on file by the Chief, Puerto Rico Operations. However, bonds previously approved by IRS remain valid. The tax stamps issued to special (occupational) taxpayers by IRS will be issued by ATF. Furthermore, certain conforming procedural and administrative rules are being transferred from IRS regulations in 26 CFR Parts 301 and 601 to ATF regulations in 27 CFR Part 70. These changes in the filing of alcohol, tobacco and firearms tax returns, claims and related documents and in the issuance of special tax stamps will reduce the time in responding to affected taxpayers and reduce processing costs for the Government.

EFFECTIVE DATE: Amendatory paragraphs 7–13, 34–42, 46–63, 67–69, 71–83, 90–94, 106, 132, and 135 are effective May 22, 1987. Amendatory paragraphs 1–6, 14–33, 43–45, 64–66, 70, 84–89, 95–105, 107–131, 133–134, and 136–189 are effective on July 1, 1987.

FOR FURTHER INFORMATION CONTACT: Manfred Roesler, Coordinator, Procedures Branch, (202) 566–7602, Bureau of Alcohol, Tobacco and Firearms, Ariel Rios Federal Building, 1200 Pennsylvania Avenue, NW., Washington, DC 20226.

SUPPLEMENTARY INFORMATION:

Background

On July 1, 1972, the Bureau of Alcohol, Tobacco and Firearms (ATF) was established by Treasury Department Order No. 120–01 (formerly Order No. 221). This order transferred from IRS to the newly-formed Bureau the functions, powers and duties relating to alcohol, tobacco, firearms, and explosives laws. The order specifically stated that "all existing activities relating to the collection, processing, depositing, or accounting for taxes . . . shall continue to be performed by the Commissioner of Internal Revenue to the extent not now performed by the Alcohol, Tobacco and Firearms Division . . . until the Director shall otherwise provide with the approval of the Secretary." Since the inception of the Bureau, ATF has continued to rely upon IRS to perform these functions.

Prior to the Tax Reform Act of 1986, existing law, 26 U.S.C. 6091, required all returns of tax, including special occupational tax, under the Internal Revenue Code of 1954, to be filed in an internal revenue district or at an Internal Revenue Service Center serving an internal revenue district.

The Tax Reform Act of 1986 amended section 6091 of the Internal Revenue Code to provide for the filing of certain excise tax returns with the Bureau rather than with IRS. Present law now vests in the Secretary the authority to prescribe the place for filing tax returns required under subtitle E of the Internal Revenue Code.

This final rule will transfer the functions associated with returns or other documents required to be filed with IRS to the Bureau. More specifically, this rule will require all alcohol, tobacco and certain firearms excise tax returns, claims, and related forms previously filed with IRS to be filed with ATF. The instructions on each form will include the address to which that form is to be mailed.

Transfer of Certain Regulations From 26 CFR Parts 301 and 601 to 27 CFR Part 70

In the past, many of the procedural and administrative rules listed in 26 CFR Parts 301 and 601 of the IRS regulations also applied to ATF because ATF did not have the means to independently perform certain deposit and accounting functions concerning the deposit and collection of excise taxes, including special (occupational) taxes. However, the recent enactment of the Tax Reform Act of 1986 (Pub. L. 99–514) now makes it possible for ATF to assume responsibility over deposit and accounting for excise taxes, including special (occupational) taxes. ATF has decided to recodify into 27 CFR Part 70 those provisions of 26 CFR Parts 301 and 601 which specifically apply to ATF, or specifically pertain to ATF matters. Presently, all deposit, assessment and collection functions with respect to the taxes administered by the Bureau are performed by the Internal Revenue Service. This Treasury decision will transfer from the Internal Revenue Service to ATF the authority to perform all functions associated with the deposit and assessment of such excise taxes. ATF anticipates that at a later date, it will also assume responsibility for all collection functions under Chapter 64 of the Internal Revenue Code now performed by IRS with respect to the alcohol, tobacco and certain firearms excise taxes administered by ATF.

Regulatory and Forms Changes

The change in the location for filing alcohol, tobacco and certain firearms tax returns, claims and related documents require many regulatory changes. Every regulation in Title 27 of the Code of Federal Regulations referring to the filing of ATF-related documents with IRS has been amended. In addition, since claims for the redemption of stamps and for the refund and abatement of such excise taxes will be filed with ATF instead of IRS, the sections of regulations which prescribe the use of IRS Form 843, Claim, have been amended to show ATF F 2635 (5620.8), Claim—Alcohol, Tobacco and Firearms Taxes. IRS Form 11, Special Tax Return and Application for Registry, has been redesignated ATF F 5630.5, Annual Special Tax Registration and Return, and this is also reflected in the regulations. ATF forms which have been revised to show that they will be filed with ATF instead of IRS are:

ATF F 5000.24—Excise Tax Return
ATF F 5110.52—Deferred Tax Return—Distilled Spirits (Puerto Rico)

ATF F 5110.53—Prepayment Tax Return—Distilled Spirits (Puerto Rico)
ATF F 2927 (5120.33)—Deferred Tax Return—Wine (Puerto Rico)
ATF F 2928 (5120.34)—Prepayment Tax Return—Wine (Puerto Rico)
ATF F 2929 (5130.17)—Deferred Tax Return—Beer (Puerto Rico)
ATF F 2930 (5130.21)—Prepayment Tax Return—Beer (Puerto Rico)
ATF F 487–B (5170.7)—Application and Permit to Ship Liquors and Articles of Puerto Rican Manufacture Taxpaid to the United States
ATF F 2988 (5200.5)—Deferred Tax Return—Puerto Rican Cigars and Cigarettes
ATF F 3073 (5200.8)—Prepayment Tax Return—Puerto Rican Cigars, Cigarettes, Cigarette Papers and Cigarette Tubes
ATF F 2897 (5120.32)—Tax Deferral Bond—Wine (Puerto Rico)
ATF F 2898 (5130.16)—Tax Deferral Bond—Beer (Puerto Rico)
ATF F 2986 (5210.12)—Deferral Bond—Cigars and Cigarettes (Puerto Rico)
ATF F 5110.50—Tax Deferral Bond—Distilled Spirits (Puerto Rico)
ATF F 5110.51—Application, Permit, and Report—Distilled Spirits Products (Puerto Rico)
ATF F 2900 (5100.21)—Application, Permit, and Report—Wine and Beer (Puerto Rico)

Three forms have been eliminated. ATF F 4640 (5600.5), Remittance Transmittal (ATF), was used by export warehouse proprietors to pay taxes on tobacco products and cigarette papers and tubes for which evidence of exportation was not timely furnished as provided in 27 CFR 290.67. ATF F 5000.24, Excise Tax Return, has been revised and will be used whenever this tax is required to be paid. ATF F 5620.3, Notice of Adjustment of Claim for Abatement, and ATF F 5620.5, Notice of Adjustment of Claim, have also been eliminated because IRS is no longer involved in the refund process. The claimant will now be advised of adjustments directly by ATF on the copy of the ATF F 2635 (5620.8), Claim—Alcohol, Tobacco and Firearms Taxes, that is returned to the taxpayer.

Regulatory Flexibility Act

The provisions of the Regulatory Flexibility Act relating to a final regulatory flexibility analysis (5 U.S.C. 604) are not applicable to this final rule because the agency was not required to publish a general notice of proposed rulemaking under 5 U.S.C. 553 or any other law.

Executive Order 12291

In compliance with Executive Order 12291, ATF has determined that this final rule is not a "major rule" since it will not result in:

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

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

(c) 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.

Paperwork Reduction Act

The requirement to file a tax return has been previously approved by the Office of Management and Budget under Control Number 1512–0467.

Administrative Procedure Act

Because this final rule merely recodifies existing requirements relating to deposit, assessment and place of filing ATF tax returns and other documents from the Internal Revenue Service under Title 26 of the Code of Federal Regulations to ATF under Title 27 of such Code, it is found to be unnecessary to issue this Treasury decision with notice and public procedure thereon under 5 U.S.C. 553(b) or subject to the effective date limitation of 5 U.S.C. 553(d).

Drafting Information

The principal authors of this document are James A. Hunt and Robert L. White of the FAA, Wine and Beer Branch, Bureau of Alcohol, Tobacco and Firearms.

List of Subjects

27 CFR Part 19

Administrative practice and procedure, Alcohol and alcoholic beverages, Authority delegations (Government agencies), Claims, Chemicals, Customs duties and inspection, Electronic fund transfers, Excise taxes, Exports, Gasohol, Imports, Labeling, Liquors, Packaging and containers, Puerto Rico, Reporting and recordkeeping requirements, Research, Security measures, Spices and flavorings, Surety bonds, Transportation, Virgin Islands, Warehouses, Wine.

27 CFR Part 25

Administrative practice and procedure, Authority delegations (Government agencies), Beer, Claims, Electronic fund transfers, Excise taxes, Labeling, Packaging and containers, Reporting and recordkeeping requirements, Research, Surety bonds, Transportation.

27 CFR Part 70

Administrative practice and procedure, Alcohol and alcoholic beverages, Authority delegations (Government agencies), Claims, Excise taxes, Firearms and ammunition, Government employees, Law enforcement, Law enforcement officers, Tobacco.

27 CFR Part 170

Alcohol and alcoholic beverages, Authority delegations (Government agencies), Claims, Customs duties and inspection, Disaster assistance, Excise taxes, Labeling, Liquors, Penalties, Reporting and recordkeeping requirements, Surety bonds, Wine.

27 CFR Part 179

Administrative practice and procedure, Arms and munitions, Authority delegations (Government agencies), Customs duties and inspection, Exports, Imports, Military personnel, Penalties, Reporting requirements, Research, Seizures and forfeitures, and Transportation.

27 CFR Part 194

Alcohol and alcoholic beverages, Authority delegations (Government agencies), Beer, Claims, Excise taxes, Exports, Labeling, Liquors, Packaging and containers, Penalties, Reporting and recordkeeping requirements, Wine.

27 CFR Part 197

Alcohol and alcoholic beverages, Authority delegations (Government agencies), Claims, Drugs, Excise taxes, Foods, Spices and flavorings, Surety bonds, Reporting and recordkeeping requirements.

27 CFR Part 240

Administrative practice and procedure, Authority delegations (Government agencies), Claims, Electronic fund transfers, Excise taxes, Exports, Food additives, Fruit juices, Labeling, Liquors, Packaging and containers, Reporting and recordkeeping requirements, Research, Scientific equipment, Spices and flavorings, Surety bonds, Transportation, Vinegar, Warehouses, Wine.

27 CFR Part 250

Administrative practice and procedure, Alcohol and alcoholic beverages, Authority delegations (Government agencies), Beer, Customs duties and inspection, Electronic fund transfers, Excise taxes, Liquors, Packaging and containers, Puerto Rico, Reporting and recordkeeping requirements, Surety bonds,

Transportation, Virgin Islands, Warehouses, Wine.

27 CFR Part 251

Administrative practice and procedure, Alcohol and alcoholic beverages, Authority delegations (Government agencies), Beer, Cosmetics, Customs duties and inspection, Excise taxes, Imports, Labeling, Liquors, Packaging and containers, Perfume, Reporting and recordkeeping requirements, Transportation, Wine.

27 CFR Part 270

Administrative practice and procedure, Authority delegations (Government agencies), Cigars and cigarettes, Claims, Electronic fund transfers, Excise taxes, Labeling, Packaging and containers, Penalties, Reporting and recordkeeping requirements, Seizures and forfeitures, Surety bonds.

27 CFR Part 275

Administrative practice and procedure, Authority delegations (Government agencies), Cigarette papers and tubes, Cigars and cigarettes, Claims, Customs duties and inspection, Electronic fund transfers, Excise taxes, Imports, Labeling, Packaging and containers, Penalties, Puerto Rico, Reporting and recordkeeping requirements, Seizures and forfeitures, Surety bonds, Virgin Islands, Warehouses.

27 CFR Part 285

Administrative practice and procedure, Authority delegations (Government agencies), Cigarette papers and tubes, Cigars and cigarettes, Claims, Excise taxes, Packaging and containers, Penalties, Reporting and recordkeeping requirements, Seizures and forfeitures, Surety bonds.

27 CFR Part 290

Administrative practice and procedure, Aircraft, Authority delegations (Government agencies), Cigarette papers and tubes, Cigars and cigarettes, Claims, Customs duties and inspection, Excise taxes, Exports, Foreign trade zones, Labeling, Packaging and containers, Penalties, Reporting and recordkeeping requirements, Surety bonds, Vessels, Warehouses.

27 CFR Part 295

Administrative practice and procedure, Authority delegations (Government agencies), Cigarette papers and tubes, Cigars and cigarettes, Excise taxes, Labeling, Packaging and containers, Reporting and recordkeeping requirements.

27 CFR Part 296

Cigarette papers and tubes, Cigars and cigarettes, Claims, Disaster assistance, Excise taxes, Penalties, Reporting and recordkeeping requirements, Seizures and forfeitures, Surety bonds.

Issuance

Title 27 CFR is amended as follows:

PART 19—[AMENDED]

Paragraph 1. The authority citation for Part 19 continues to read as follows:

Authority: 19 U.S.C. 81c, 1311; 26 U.S.C. 5001, 5002, 5004–6, 5008, 5041, 5061, 5062, 5066, 5101, 5111–5113, 5171–5173, 5175, 5176, 5178–5181, 5201–5207, 5211–5215, 5221–5223, 5231, 5232, 5235, 5236, 5241–5243, 5271–5273, 5301, 5311–5313, 5362, 5370, 5373, 5501–5505, 5551–5555, 5559, 5561, 5562, 5601, 5612, 5682, 6001, 6065, 6109, 6302, 6311, 6676, 7510, 7805; 31 U.S.C. 9301, 9303, 9304, 9306.

§ 19.44 [Amended]

Para. 2. Section 19.44 is amended by replacing the first and second sentence with the sentence "All claims filed under this part shall be filed on Form 2635 (5620.8)."

§ 19.519 [Amended]

Para. 3. Section 19.519 is amended by replacing the phrase "district director" with the phrase "regional director (compliance)" and the citation "26 CFR 301.6311–1" with the citation "§ 70.66" in the second and next to the last sentences and the phrase "Internal Revenue Service" with the phrase "Bureau of Alcohol, Tobacco and Firearms" in the last sentence.

§ 19.524 [Amended]

Para. 4. Section 19.524(c)(1) is amended by replacing the phrase "the director of the service center, district director, or regional director (compliance)," with the word "ATF."

§ 19.525 [Amended]

Para. 5. Section 19.525(a) is amended by replacing the phrase "the district director, director of the service center, or regional director (compliance)," with the word "ATF."

PART 25—[AMENDED]

Para. 6. The authority citation for Part 25 continues to read as follows:

Authority: 5 U.S.C. 552(a); 19 U.S.C. 81c; 26 U.S.C. 5002, 5051–5054, 5056, 5061, 5091, 5111, 5113, 5142, 5143, 5146, 5222, 5401–5403, 5411–5417, 5551, 5552, 5555, 5556, 5671, 5673, 5684, 6011, 6061, 6065, 6091, 6109, 6151, 6301, 6302, 6311, 6313, 6402, 6651, 6656, 6676, 6806, 7011, 7342, 7606, 7805; 31 U.S.C. 9301, 9303–9308.

§§ 25.118, 25.122, 25.125, and 25.126 [Amended]

Para. 7. Sections 25.118, 25.122, 25.125, and 25.126 are amended by replacing the phrase "IRS Form 11" wherever it appears with the phrase "Form 5630.5."

§ 25.117 [Amended]

Para. 8. Section 25.117 is amended by replacing the second sentence of paragraph (a) with the sentence "The return will be filed, with payment of tax, with ATF in accordance with the instructions on the form.", by replacing the second sentence of paragraph (b)(1) with the sentence "The return will be filed with ATF in accordance with the instructions on the form; and", by replacing the phrase "IRS Form 11" wherever it appears with the phrase "Form 5630.5", and by removing paragraph (c).

§ 25.119 [Amended]

Para. 9. Section 25.119 is amended by replacing in paragraph (c) the phrase "internal revenue" with the word "ATF" and by replacing the phrase "IRS Form 11" wherever it appears in the heading and paragraph with the phrase "Form 5630.5."

§ 25.121 [Amended]

Para. 10. Section 25.121 is amended by replacing in the second sentence the citation "26 CFR 301.6676–1" with the citation "§ 70.105" and by replacing the phrase "IRS Form 11" wherever it appears with the phrase "Form 5630.5."

Para. 11. Section 25.131 is revised to read as follows:

§ 25.131 Change in name.

If there is a change in the corporate or firm name, or in the trade name, the brewer shall, within 30 days after the change, file an additional return on Form 5630.5 covering the new corporate or firm name, or trade names. The brewer shall forward the special tax stamp or stamps with the additional return for appropriate notation with respect to the change in name.

§ 25.132 [Amended]

Para. 12. Section 25.132(b) is amended by removing from the first sentence the phrase "with the director of the service center who issued the stamp" and by replacing the phrase "IRS Form 11" with the phrase "Form 5630.5."

§ 25.134 [Amended]

Para. 13. Section 25.134 is amended by removing in the first sentence the phrase "with the director of the service center who issued the stamp", by replacing in the first sentence the phrase "IRS Form 11" with the phrase "Form 5630.5," and

by replacing in the second sentence the phrase "to the director of the service center" with the phrase "with the amended return."

Para. 14. Section 25.163 is revised to read as follows:

§ 25.163 Method of tax payment.

A brewer shall pay the tax on beer by return on Form 5000.24, as provided in §§ 25.164, 25.173 and 25.175. The brewer shall pay the tax by remittance at the time the tax return is rendered, and the remittance will be by check or money order payable to the "Bureau of Alcohol, Tobacco and Firearms" and mailed with the return, or will be effected by an electronic fund transfer. In paying the tax, a fractional part of a cent will be disregarded unless it amounts to one-half cent or more, in which case it will be increased to one cent.

Para. 15. Section 25.164(e)(1) is revised to read as follows:

§ 25.164 Semimonthly return.

* * * * *

(e) *Timely filing.* (1) When the brewer sends the semimonthly tax return, Form 5000.24, by U.S. mail, in accordance with the instructions on the form, as required by this section, with remittance as provided for in this section, or without remittance as provided for in § 25.165, the date of the official postmark of the United States Postal Service stamped on the cover in which the return and remittance were mailed is considered the date of delivery of the return and the date of delivery of the remittance, if enclosed with the return. When the postmark on the cover is illegible, the burden is on the brewer to prove when the postmark was made.

* * * * *

§ 25.165 [Amended]

Para. 16. Section 25.165(c)(1) is amended by replacing the phrase "the director of the service center, district director, or regional director (compliance)" with the word "ATF".

§ 25.166 [Amended]

Para. 17. Section 25.166(b) is amended by replacing the phrase "Form 843" with the phrase "Form 2635 (5620.8)."

§ 25.173 [Amended]

Para. 18. Section 25.173(b) is amended by replacing the citation "26 CFR 301.6311–1" with the citation "§ 70.66."

§ 25.175 [Amended]

Para. 19. Section 25.175 is amended by removing from paragraph (b)(1) the phrase "or delivering to the district director, or director of the service center", by replacing in the first sentence of paragraph (b)(2) the phrase "delivering or forwarding it to the district director, director of the service center or regional director (compliance)" with the phrase "forwarding it", and removing from paragraph (b)(3) the phrase "to the district director or director of the service center."

§ 25.283 [Amended]

Para. 20. Section 25.283(d) is amended by replacing the phrase "IRS Form 843" with the phrase "Form 2635 (5620.8)."

§ 25.285 [Amended]

Para. 21. Section 25.285(a) is amended by replacing the phrase "IRS Form 843" with the phrase "Form 2635 (5620.8)" and by replacing the citations "26 CFR 301.6511(a)–1 and 301.6511(b)–1" with the citations "§§ 70.82 and 70.83."

PART 70—[AMENDED]

Para. 22. The authority citation for Part 70 is revised to read as follows:

Authority: 5 U.S.C. 301 and 552; 26 U.S.C. 5146, 5203, 5207, 5275, 5367, 5415, 5504, 5555, 5684(a), 5741, 5761(b), 6020, 6155, 6201, 6203, 6204, 6311, 6313, 6314, 6401, 6402, 6404, 6407, 6423, 6501, 6511, 6513, 6514, 6532, 6601, 6602, 6611, 6621, 6622, 6651, 6653, 6656, 6657, 6658, 6662, 6671, 6672, 6676, 6701, 6801, 6862, 6863, 7011, 7601–7606, 7608, 7622, 7623, 7653, 7805.

Para. 23–24. Section 70.1 is revised to read as follows:

§ 70.1 General.

This part sets forth the procedural and administrative rules of the Bureau of Alcohol, Tobacco and Firearms for:

(a) The issuance and enforcement of summonses, examination of books of account and witnesses, administration of oaths, entry of premises for examination of taxable objects, granting of rewards for information, canvass of regions for taxable objects and persons, and authority of ATF officers.

(b) The use of commercial banks for payment of excise taxes imposed by 26 U.S.C. Subtitles E and F.

(c) The preparing or executing of returns; deposits; payment on notice and demand; assessment; abatements, credits, and refunds; limitations on assessment; limitations on credit or refund; periods of limitation in judicial proceedings; interest; additions to the tax, additional amounts, and assessable penalties; authority for establishment, alteration, and distribution of stamps, marks, or labels; jeopardy assessment of alcohol, tobacco, and firearms taxes; and registration of persons paying a special tax.

(d) Distilled spirits, wines, beer, tobacco products, cigarette papers and tubes, and certain firearms and explosives.

Para. 25. Subpart E is added immediately following the regulations in Subpart D to read as follows:

Subpart E—Procedural and Administrative Rules Relating to Collection of Excise and Special (Occupational) Taxes

Miscellaneous Provisions

Sec.

70.61 Returns prepared or executed by regional directors (compliance) or by other ATF officers.

70.62 Payment on notice and demand.

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70.88 Periods of limitation on suits by taxpayers.

70.89 Periods of limitation on suits by the United States.

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70.90 Interest on underpayments.

70.91 Interest on erroneous refund recoverable by suit.

70.92 Interest on overpayments.

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Additions to the Tax, Additional Amounts, and Assessable Penalties

Additions to the Tax and Additional Amounts

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70.95 Scope
70.96 Failure to file tax return or to pay tax.
70.97 Failure to pay tax.
70.98 Penalty for underpayment of deposits.
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70.100 Bad checks.
70.101 Coordination with title 11.
70.102 Failure to pay tax.

Assessable Penalties

70.103 Rules for application of assessable penalties.
70.104 Failure to collect and pay over tax, or attempt to evade or defeat tax.
70.105 Penalty for failure to supply taxpayer identification number.
70.106 Penalties for aiding and abetting understatement of tax liability.

General Provisions Relating to Stamps, Marks, or Labels

70.107 Authority for establishment, alteration, and distribution of stamps, marks, or labels.

Jeopardy Assessment

70.108 Jeopardy assessment of alcohol, tobacco, and firearms taxes.

Registration

70.109 Registration of persons paying a special tax.

Subpart E—Procedural and Administrative Rules Relating to Collection of Excise and Special (Occupational) Taxes

Miscellaneous Provisions

§ 70.61 Returns prepared or executed by regional directors (compliance) or by other ATF officers.

(a) *Preparation of returns*—(1) *General.* If any person required by Subtitle E of the Internal Revenue Code (or by any provision of Subtitle F which relates to Subtitle E) or by the regulations prescribed thereunder to make a return fails to make such return, it may be prepared by the regional director (compliance) or other authorized officer of the Bureau of Alcohol, Tobacco and Firearms provided such person consents to disclose all information necessary for the preparation of such return. The return upon being signed by the person required to make it shall be received by the regional director (compliance) as the return of such person.

(2) *Responsibility of person for whom return is prepared.* A person for whom a return is prepared in accordance with paragraph (a)(1) of this section shall for all legal purposes remain responsible for the correctness of the return to the same extent as if the return had been prepared by such person.

(b) *Execution of returns*— (1) *General.* If any person required by Subtitle E of the Internal Revenue Code (or by any provision of Subtitle F which relates to Subtitle E) or by the regulations prescribed thereunder to make a return fails to make such return at the time prescribed therefor, or makes, willfully or otherwise, a false or fraudulent return, the regional director (compliance) or other authorized officer of the Bureau of Alcohol, Tobacco and Firearms shall make such return from the persons own knowledge and from such information as such person can obtain through testimony or otherwise.

(2) *Status of returns.* Any return made in accordance with paragraph (b)(1) of this section and subscribed by the regional director (compliance) or other authorized officer of the Bureau of Alcohol, Tobacco and Firearms shall be prima facie good and sufficient for all legal purposes.

(c) *Cross references.* (1) For provisions that the return executed by a regional director (compliance) or other authorized officer of the Bureau of Alcohol, Tobacco and Firearms will not start the running of the period of limitations on assessment and collection, see section 6501(b)(3) of the Internal Revenue Code and § 70.80(b) of this part.

(2) For additions to the tax and additional amounts for failure to file returns, see section 6651 of the Internal Revenue Code.

(3) For additions to the tax for failure to pay tax, see sections 5684, 5761, and 6653 of the Internal Revenue Code.

(4) For failure to make deposit of taxes or overstatement of deposit claims, see section 6656 of the Internal Revenue Code.

(5) For an additional penalty for tendering a bad check or money order, see section 6657 of the Internal Revenue Code.

(6) For certain failures to pay tax with respect to cases pending under Title 11 of the United States Code, see section 6658 of the Internal Revenue Code.

(7) For failure to supply identifying numbers, see section 6676 of the Internal Revenue Code.

(8) For penalties for aiding and abetting understatement of tax liability, see section 6701 of the Internal Revenue Code.

(9) For criminal penalties for willful failure to make returns, see sections 7201, 7202, and 7203 of the Internal Revenue Code.

(10) For criminal penalties for willfully making false or fraudulent returns, see sections 7206 and 7207 of the Internal Revenue Code.

(11) For authority to examine books and witnesses, see section 7602 of the Internal Revenue Code and § 70.22.

(26 U.S.C. 6020)

§ 70.62 Payment on notice and demand.

Upon receipt of notice and demand from the regional director (compliance), there shall be paid at the place and time stated in such notice the amount of any tax (including any interest, additional amounts, additions to the tax, and assessable penalties) stated in such notice and demand.

(26 U.S.C. 6155)

Assessment

§ 70.63 Assessment authority.

(a) *General.* The regional director (compliance) is authorized and required to make all inquiries necessary to the determination and assessment of all taxes which are administered by the Bureau of Alcohol, Tobacco and Firearms under Subtitle E of the Internal Revenue Code or under any provision of Subtitle F which relates to Subtitle E or any prior internal revenue law. The regional director (compliance) is further authorized and required to make the determinations and the assessments of such taxes. The term "taxes" includes interest, additional amounts, additions to the taxes, and assessable penalties. The authority of the regional director (compliance) to make assessment includes the following:

(b) *Taxes shown on return.* The regional director (compliance) shall assess all taxes determined by the taxpayer or by the regional director (compliance) and disclosed on a return or list.

(c) *Unpaid taxes payable by stamp.* (1) If without the use of the proper stamp:

(i) Any article upon which a tax is required to be paid by means of a stamp is sold or removed for sale or use by the manufacturer thereof, or

(ii) Any transaction or act upon which a tax is required to be paid by means of a stamp occurs; The regional director (compliance), upon such information as can be obtained, must estimate the amount of the tax which has not been paid and the regional director (compliance) must make assessment therefor upon the person the regional director (compliance) determines to be liable for the tax. However, the regional director (compliance) may not assess any tax which is payable by stamp unless the taxpayer fails to pay such tax at the time and in the manner provided by law or regulations.

(2) If a taxpayer gives a check or money order as a payment for stamps but the check or money order is not paid upon presentment, then the regional director (compliance) shall assess the amount of the check or money order against the taxpayer as if it were a tax due at the time the check or money order was received by the regional director (compliance).

(26 U.S.C 6201)

§ 70.64 Method of assessment.

The regional director (compliance) shall appoint one or more assessment officers. The assessment shall be made by an assessment officer signing the summary record of assessment. The summary record, through supporting records, shall provide identification of the taxpayer, the character of the liability assessed, the taxable period, if applicable, and the amount of the assessment. The amount of the assessment shall, in the case of tax shown on a return by the taxpayer, be the amount so shown, and in all other cases the amount of the assessment shall be the amount shown on the supporting list or record. The date of the assessment is the date the summary record is signed by an assessment officer. If the taxpayer requests a copy of the record of assessment, the taxpayer shall be furnished a copy of the pertinent parts of the assessment which set forth the name of the taxpayer, the date of assessment, the character of the liability assessed, the taxable period, if applicable, and the amounts assessed.

(26 U.S.C. 6203)

§ 70.65 Supplemental assessments.

If any assessment is incomplete or incorrect in any material respect, the regional director (compliance), subject to the applicable period of limitation, may make a supplemental assessment for the purpose of correcting or completing the original assessment.

(26 U.S.C. 6204)

Receipt of Payment

§ 70.66 Payment by check or money order.

(a) *Authority to Receive*—(1) *General.* (i) Regional directors (compliance) may accept checks drawn on any bank or trust company incorporated under the laws of the United States or under the laws of any State, Territory, or possession of the United States, or money orders in payment for internal revenue taxes, provided such checks or money orders are collectible in U.S. currency at par, and subject to the further provisions contained in this section. The Director may accept such checks or money orders in payment for internal revenue stamps (authorized under Subtitle E of the Internal Revenue Code or any provision of Subtitle F which relates to Subtitle E) to the extent and under the conditions prescribed in paragraph (a)(2) of this section. A check or money order in payment for internal revenue taxes or internal revenue stamps should be made payable to the Bureau of Alcohol, Tobacco and Firearms. A check or money order is payable at par only if the full amount thereof is payable without any deduction for exchange or other charges. As used in this section, the term "money order" means:

(A) U.S. postal, bank, express, or telegraph money order; and

(B) Money order issued by a domestic building and loan association (as defined in section 7701(a)(19) of the Internal Revenue Code) or by a similar association incorporated under the laws of a possession of the United States;

(C) A money order issued by such other organization as the Director may designate; and

(D) A money order described in paragraph (a)(1)(ii) of this section in cases therein described. However, the regional director (compliance) may refuse to accept any personal check whenever there is good reason to believe that such check will not be honored upon presentment.

(ii) An American citizen residing in a country with which the United States maintains direct exchange of money orders on a domestic basis may pay his/her tax by postal money order of such country. For a list of such countries, see section 171.27 of the Postal Manual of the United States.

(iii) If one check or money order is remitted to cover two or more persons' taxes, the remittance should be accompanied by a letter of transmittal clearly identifying—

(A) Each person whose tax is to be paid by the remittance;

(B) The amount of the payment on account of each such person; and

(C) The kind of tax paid.

(2) *Payment for internal revenue stamps—In general.* The Director may accept checks and money orders described in paragraph (a)(1) of this section, in payment for internal revenue stamps authorized under Subtitle E of the Internal Revenue Code or under any provision of Subtitle F which relates to Subtitle E. However, the Director may refuse to accept any personal check whenever there is good reason to believe that the check will not be honored upon presentment.

(3) *Payment of tax on distilled spirits, wine, beer, tobacco products; proprietor in default.* Where a check or money order tendered in payment for taxes on distilled spirits, wine or beer products (imposed under Chapter 51 of the Internal Revenue Code), or tobacco products (imposed under Chapter 52 of the Internal Revenue Code) is not paid on presentment, or where a taxpayer is otherwise in default in payment of such taxes, any remittance for such taxes made during the period of such default, and until the regional director (compliance) finds that the revenue will not be jeopardized by the acceptance of personal checks, shall be in cash, or shall be in the form of a certified, cashier's, or treasurer's check, drawn on any bank or trust company incorporated under the laws of the United States, or under the laws of any State or possession of the United States, or a money order as described in paragraph (a)(1) of this section.

(b) *Checks or money orders not paid*—(1) *Ultimate liability.* The person who tenders any check (whether certified or uncertified, cashier's, treasurer's, or other form of check) or money order in payment for taxes is not released from liability until the check or money order is paid; and, if the check or money order is not duly paid, the person shall also be liable for all legal penalties and additions, to the same extent as if such check or money order had not been tendered. For the penalty in case a check or money order is not duly paid, see section 6657 of the Internal Revenue Code. For assessment of the amount of a check or money order not duly paid see section 6201(a)(2)(B) of the Internal Revenue Code.

(2) *Liability of banks and others.* If any certified, treasurer's, or cashier's check (or other guaranteed draft) or money order is not duly paid, the United States shall have a lien for the amount of such check upon all assets of the bank or trust company on which drawn or for the amount of such money order upon the assets of the issuer thereof. The unpaid amount shall be paid out of such assets in preference to any other claims against such bank or issuer except the necessary costs and expenses of administration and the reimbursement of the United States for the amount expended in the redemption of the circulating notes of such bank. In addition, the Government has the right to exact payment from the person required to make the payment.

(26 U.S.C. 6311)

§ 70.67 Fractional parts of a cent.

In the payment of any tax, a fractional part of a cent shall be disregarded unless it amounts to one-half cent or more, in which case it shall be increased to one cent. Fractional parts of a cent shall not be disregarded in the computation of taxes.

(26 U.S.C. 6313)

§ 70.68 Receipt for taxes.

The regional director (compliance) shall, upon request, issue a receipt for each tax payment made (other than a payment for stamps sold or delivered). In the case of payments made by check, the canceled check is usually a sufficient receipt. No receipt shall be issued in lieu of a stamp representing a tax, whether the payment is cash or otherwise.

(26 U.S.C. 6314)

Abatements, Credits, and Refunds

Procedure in General

§ 70.70 Amounts treated as overpayments.

(a) The term "overpayment" includes any payment of any internal revenue tax which is assessed or collected after the expiration of the period of limitation applicable thereto.

(b) An amount paid as tax shall not be considered not to constitute an overpayment solely by reason of the fact that there was no tax liability in respect of which such amount was paid.

(26 U.S.C. 6401)

§ 70.71 Authority to make credits or refunds.

The regional director (compliance), within the applicable period of limitations, may credit any overpayment of tax, including interest thereon, against any outstanding liability for any tax (or for any interest, additional amount, addition to the tax, or assessable penalty) owed by the person making the overpayment and the balance, if any, shall be refunded, subject to section 6402 (c) and (d) of the Internal Revenue Code and the regulations thereunder, to such person by the regional director (compliance).

(26 U.S.C. 6402)

§ 70.72 Claims for credit or refund.

(a) *Requirement that claim be filed.* (1) Credits or refunds of overpayments may not be allowed or made after the expiration of the statutory period of limitation properly applicable unless, before the expiration of such period, a claim therefor has been filed by the taxpayer. Furthermore, under section 7422 of the Internal Revenue Code, a civil action for refund may not be instituted unless a claim has been filed within the properly applicable period of limitation.

(2) All claims relating to Subtitle E of the Internal Revenue Code (or to any provision of Subtitle F which, relates to Subtitle E), together with appropriate supporting evidence, shall be filed with the regional director (compliance), for the region in which the claimant is located. As to interest in the case of credits or refunds, see section 6611 of the Internal Revenue Code. See section 7502 for provisions treating timely mailing as timely filing and section 7503 for time for filing claim when the last day falls on a Saturday, Sunday, or legal holiday.

(b) *Grounds set forth in claim.* (1) No refund or credit will be allowed after the expiration of the statutory period of limitation applicable to the filing of a claim therefor except upon one or more of the grounds set forth in a claim filed before the expiration of such period. The claim must set forth in detail each ground upon which credit or refund is claimed and facts sufficient to apprise the regional director (compliance) of the exact basis thereof. The statement of the grounds and facts must be verified by a written declaration that it is made under the penalties of perjury. A claim which does not comply with this paragraph will not be considered for any purpose as a claim for the refund or credit.

(2) The regional director (compliance) does not have authority to refund on equitable grounds penalties or other amounts legally collected.

(c) *Form for filing claim.* All claims by taxpayers for the refunding of taxes, interest, penalties, and additions to tax shall be made on Form 2635 (5620.8).

(d) *Proof of representative capacity.* If a return is filed by an individual and, after the individuals death, a refund claim is filed by a legal representative, certified copies of the letters testamentary, letters of administration, or other similar evidence must be annexed to the claim, to show the authority of the legal representative to file the claim. If an executor, administrator, guardian, trustee, receiver, or other fiduciary files a return and thereafter a refund claim is filed by the same fiduciary, documentary evidence to establish the legal authority of the fiduciary need not accompany the claim, provided a statement is made in the claim showing that the return was filed by the fiduciary and that the latter is still acting. In such cases, if a refund is to be paid, letters testamentary, letters of administration, or other evidence may be required, but should be submitted only upon the receipt of a specific request therefor. If a claim is filed by a fiduciary other than the one by whom the return was filed, the necessary documentary evidence should accompany the claim. A claim may be executed by an agent of the person assessed, but in such case a power of attorney must accompany the claim.

(e) *Mailing of refund check.* (1) Checks in payment of claims allowed will be drawn in the names of the persons entitled to the money and, except as provided in paragraph (e)(2) of this section, the checks may be sent direct to the claimant or to such person in care of an attorney or agent who has filed a power of attorney specifically authorizing the attorney or agent to receive such checks.

(2) Checks in payment of claims which have either been reduced to judgment or settled in the course or as a result of litigation will be drawn in the name of the person or persons entitled to the money and will be sent to the Assistant Attorney General, Tax Division, Department of Justice, for delivery to the taxpayer or the counsel of record in the court proceeding.

(3) For restrictions on the assignment of claims, see 31 U.S.C. 3727.

(26 U.S.C. 6402)

§ 70.73 Payments in excess of amounts shown on return.

In certain cases, the taxpayer's payments in respect of a tax liability, made before the filing of the taxpayers return, may exceed the amount of tax shown on the return. In any case in which the regional director (compliance) determines that the payments by the taxpayer (made within the period prescribed for payment and before the filing of the return) are in excess of the amount of tax shown on the return, the regional director (compliance) may make credit or refund of such overpayment without awaiting examination of the completed return and without awaiting filing of a claim for refund. However, the provisions of § 70.72 are applicable to such overpayment, and taxpayers should submit claims for refund to protect themselves in the event the regional director (compliance) fails to make such determination and credit or refund.

(26 U.S.C. 6402)

§ 70.74 Abatements.

(a) The regional director (compliance) may abate the unpaid portion of any assessment or liability, if the assessment is in excess of the correct tax liability, if the assessment is made subsequent to the expiration of the period of limitation

applicable thereto, or if the assessment has been erroneously or illegally made.

(b) If more than the correct amount of tax, interest, additional amount, addition to the tax, or assessable penalty is assessed but not paid to the regional director (compliance), the person against whom the assessment is made may file a claim for abatement of such overassessment. Each claim for abatement under this section shall be made on Form 2635 (5620.8) in accordance with the instructions on the form. All such claims shall be filed with the regional director (compliance).

(c) The Director may issue uniform instructions to regional directors (compliance) authorizing them, to the extent permitted in such instructions, to abate amounts the collection of which is not warranted because of the administration and collection costs.

(26 U.S.C. 6404)

§ 70.75 Date of allowance of refund or credit.

The date on which the regional director (compliance), or an authorized certifying officer designated by the regional director (compliance), first certifies the allowance of an overassessment in respect of any internal revenue tax imposed by Subtitle E of the Internal Revenue Code (or by any provision of Subtitle F which relates to Subtitle E) shall be considered as the date of allowance of refund or credit in respect of such tax.

(26 U.S.C. 6407)

Rule of Special Application

§ 70.78 Conditions to allowance.

For regulations under section 6423 of the Internal Revenue Code, see Part 170 of this chapter, relating to distilled spirits, wine, and beer; and Part 296 of this chapter, relating to tobacco products, and cigarette papers and tubes.

(26 U.S.C. 6423)

Limitations

Limitations on Assessment

§ 70.79 Period of limitations upon assessment.

(a) The amount of any tax imposed by the Internal Revenue Code (other than a tax collected by means of stamps) shall be assessed within 3 years after the return was filed. For rules applicable in cases where the return is filed prior to the due date thereof, see section 6501(b) of the Internal Revenue Code. In the case of taxes payable by stamps, assessment shall be made at any time after the tax becomes due and before the expiration of 3 years after the date on which any part of the tax was paid. For exceptions and additional rules, see subsections (b) and (c) of section 6501 of the Internal Revenue Code.

(b) No proceeding in court without assessment for the collection of any tax shall be begun after the expiration of the applicable period for the assessment of such tax.

(26 U.S.C. 6501)

§ 70.80 Time return deemed filed for purposes of determining limitations.

(a) *Early Return.* Any return filed prior to the last day prescribed by law or regulations for the filing thereof (determined without regard to any extension of time for filing) shall be considered as filed on such last day.

(b) *Returns executed by regional directors (compliance) or other ATF officers.* The execution of a return by a regional director (compliance) or other authorized officer or employee of the Bureau of Alcohol, Tobacco and Firearms under the authority of section 6020(b) of the Internal Revenue Code shall not start the running of the statutory period of limitations on assessment and collection.

(26 U.S.C. 6501)

§ 70.81 Exceptions to general period of limitations on assessment and collection.

(a) *False return.* In the case of a false or fraudulent return with intent to evade any tax, the tax may be assessed, or a proceeding in court for the collection of such tax may be begun without assessment, at any time after such false or fraudulent return is filed.

(b) *Willful attempt to evade tax.* In the case of a willful attempt in any manner to defeat or evade any tax imposed by Subtitle E of the Internal Revenue Code (or any provision of Subtitle F which relates to Subtitle E), the tax may be assessed, or a proceeding in court for the collection of such tax may be begun without assessment, at any time.

(c) *No return.* In the case of a failure to file a return, the tax may be assessed, or a proceeding in court for the collection of such tax may be begun without assessment, at any time after the date prescribed for filing the return.

(d) *Extension by agreement.* The time prescribed by section 6501 for the assessment of any tax imposed by Subtitle E of the Internal Revenue Code (or any provision of Subtitle F which relates to Subtitle E) may, prior to the expiration of such time, be extended for any period of time agreed upon in writing by the taxpayer and the regional director (compliance). The extension shall become effective when the agreement has been executed by both parties. The period agreed upon may be extended by subsequent agreements in writing made before the expiration of the period previously agreed upon.

(26 U.S.C. 6501)

Limitations on Credit or Refund

§ 70.82 Period of limitation on filing claim.

(a) In the case of any tax (other than a tax payable by stamp):

(1) If a return is filed, a claim for credit or refund of an overpayment must be filed by the taxpayer within 3 years from the time the return was filed or within 2 years from the time the tax was paid, whichever of such periods expires the later.

(2) If no return is filed, the claim for credit or refund of an overpayment must be filed by the taxpayer within 2 years from the time the tax was paid.

(b) In the case of any tax payable by means of a stamp, a claim for credit or refund of an overpayment of such tax must be filed by the taxpayer within 3 years from the time the tax was paid. For provisions relating to redemption of unused stamps, see section 6805 of the Internal Revenue Code.

(c) For limitations on allowance of credit or refund, special rules, and exceptions, see subsections (b) and (c) of section 6511 of the Internal Revenue Code. For rules as to time return is deemed filed and tax considered paid, see section 6513 of the Internal Revenue Code.

(26 U.S.C. 6511)

§ 70.83 Limitations on allowance of credits and refunds.

(a) *Effect of filing claim.* Unless a claim for credit or refund of an overpayment is filed within the period of limitation prescribed in section 6511(a), no credit or refund shall be allowed or made after the expiration of such period.

(b) *Limit on amount to be credited or refunded.* In the case of any tax (other than a tax payable by stamp):

(1) If a return was filed, and a claim is filed within 3 years from the time the return was filed, the amount of the credit or refund shall not exceed the portion of the tax paid within the period, immediately preceding the filing of the claim, equal to 3 years plus the period of any extension of time for filing the return.

(2) If a return was filed, and a claim is filed after the 3 year period described in paragraph (b)(1) of this section, but within 2 years from the time the tax was paid, the amount of the credit or refund shall not exceed the portion of the tax paid within the 2 years immediately preceding the filing of the claim.

(3) If no return was filed, but a claim is filed, the amount of the credit or refund shall not exceed the portion of the tax paid within the 2 years immediately preceding the filing of the claim.

(4) If no claim is filed, the amount of the credit or refund allowed or made by the regional director (compliance) shall not exceed the amount that would have been allowable under the preceding subparagraphs if a claim had been filed on the date the credit or refund is allowed.

(c) *In the case of a tax payable by stamp.* (1) If a claim is filed, the amount of the credit or refund shall not exceed the portion of the tax paid within the 3 years immediately preceding the filing of the claim.

(2) If no claim is filed, the amount of the credit or refund allowed or made by the regional director (compliance) shall not exceed the portion of the tax paid within the 3 years immediately preceding the allowance of the credit or refund. For provisions relating to redemption of unused stamps, see section 6805 of the Internal Revenue Code.

(26 U.S.C. 6511)

§ 70.84 Special rules applicable in case of extension of time by agreement.

(a) *Scope.* If, within the period prescribed in section 6511(a) of the Internal Revenue Code for the filing of a claim for credit or refund, an agreement extending the period for assessment of a tax has been made in accordance with the provisions of section 6501(c)(4) of the Internal Revenue Code, the special rules provided in this section become applicable. This section shall not apply to any claim filed, or credit or refund allowed if no claim is filed, either (1) prior to the execution of an agreement extending the period in which assessment may be made, or (2) more than 6 months after the expiration of the period within which an assessment may be made pursuant to the agreement or any extension thereof.

(b) *Period in which claim may be filed.* Claim for credit or refund of an overpayment may be filed, or credit or refund may be allowed if no claim is filed, at any time within which an assessment may be made pursuant to an agreement, or any extension thereof, under section 6501(c)(4), and for 6 months thereafter.

(c) *Limit on amount to be credited or refunded.* (1) If a claim is filed within the time prescribed in paragraph (b) of this section, the amount of the credit or refund allowed or made shall not exceed the portion of the tax paid after the execution of the agreement and before the filing of the claim, plus the amount that could have been properly credited or refunded under the provisions of section 6511(b)(2) if a claim had been filed on the date of the execution of the agreement.

(2) If no claim is filed, the amount of credit or refund allowed or made within the time prescribed in paragraph (b) of this section shall not exceed the portion of the tax paid after the execution of the agreement and before the making of the credit or refund, plus the amount that could have been properly credited or refunded under the provisions of section 6511(b)(2) if a claim had been filed on the date of the execution of the agreement.

(d) *Effective date of agreement.* The agreement referred to in this section shall become effective when signed by the taxpayer and the regional director (compliance).

(26 U.S.C. 6511)

§ 70.85 Time return deemed filed and tax considered paid.

For purposes of section 6511 of the Internal Revenue Code, a return filed before the last day prescribed by law or regulations for the filing thereof shall be considered as filed on such last day. For purposes of section 6511(b) (2) and (c), payment of any portion of the tax made before the last day prescribed for payment shall be considered made on such last day. An extension of time for filing a return or for paying any tax shall not be given any effect in determining under this section the last day prescribed for filing a return or paying any tax.

(26 U.S.C. 6513)

§ 70.86 Credits or refunds after period of limitation.

(a) A refund of any portion of any internal revenue tax (or any interest, additional amount, addition to the tax, or assessable penalty) shall be considered erroneous and a credit of any such portion shall be considered void:

(1) If made after the expiration of the period of limitation prescribed by section 6511 of the Internal Revenue Code for filing claim therefor, unless prior to the expiration of such period claim was filed, or

(2) In the case of a timely claim, if the credit or refund was made after the expiration of the period of limitation prescribed by section 6532(a) for the filing of suit, unless prior to the expiration of such period, suit was begun.

(b) For procedure by the United States to recover erroneous refunds, see sections 6532(b) and 7405 of the Internal Revenue Code.

(26 U.S.C. 6514)

§ 70.87 Credit against barred liability.

Any credit against a liability in respect of any taxable year shall be void if the collection of such liability would be barred by the applicable statute of limitations at the time such credit is made.

(26 U.S.C. 6514)

Periods of Limitation in Judicial Proceedings

§ 70.88 Periods of limitation on suits by taxpayers.

(a) No suit or proceeding under section 7422(a) of the Internal Revenue Code for the recovery of any internal revenue tax, penalty, or other sum shall be begun until whichever of the following first occurs:

(1) The expiration of 6 months from the date of the filing of the claim for credit or refund, or

(2) A decision is rendered on such claim prior to the expiration of 6 months after the filing thereof. Except as provided in paragraph (b) of this section, no suit or proceeding for the recovery of any internal revenue tax, penalty, or other sum may be brought after the expiration of 2 years from the date of mailing, by either registered or certified mail, by a regional director (compliance) to a taxpayer of a notice of disallowance of the part of the claim to which the suit or proceeding relates.

(b) The 2-year period described in paragraph (a) of this section may be extended if an agreement to extend the running of the period of limitations is executed. The agreement must be signed by the taxpayer or by an attorney, agent, trustee, or other fiduciary on behalf of the taxpayer. If the agreement is signed by a person other than the taxpayer, it shall be accompanied by an authenticated copy of the power of attorney or other legal evidence of the authority of such person to act on behalf of the taxpayer. If the taxpayer is a corporation, the agreement should be signed with the corporate name followed by the signature of a duly authorized officer of the corporation. The agreement will not be effective until signed by a regional director (compliance).

(c) The taxpayer may sign a waiver of the requirement that the taxpayer be mailed a notice of disallowance. Such waiver is irrevocable and will commence the running of the 2-year period described in paragraph (a) of this

section on the date the waiver is filed. The waiver shall set forth:

(1) The type of tax and the taxable period covered by the taxpayer's claim for refund;

(2) The amount of the claim;

(3) The amount of the claim disallowed;

(4) A statement that the taxpayer agrees the filing of the waiver will commence the running of the 2-year period provided for in section 6532(a)(1) as if a notice of disallowance had been sent the taxpayer by either registered or certified mail.

The filing of such a waiver prior to the expiration of 6 months from the date the claim was filed does not permit the filing of a suit for refund prior to the time specified in section 6532(a)(1) and paragraph (a) of this section.

(d) Any consideration, reconsideration, or other action with respect to a claim after the mailing, by either registered or certified mail, of a notice of disallowance or after the execution of a waiver referred to in paragraph (c) of this section, shall not extend the period for bringing suit or other proceeding under section 7422(a) of the Internal Revenue Code.

(26 U.S.C. 6532)

§ 70.89 Periods of limitation on suits by the United States.

The United States may not recover any erroneous refund by civil action under section 7405 of the Internal Revenue Code unless such action is begun within 2 years after the making of such refund. However, if any part of the refund was induced by fraud or misrepresentation of a material fact, the action to recover the erroneous refund may be brought at any time within 5 years from the date the refund was made.

(26 U.S.C. 6532)

Interest

§ 70.90 Interest on underpayments.

(a) *General rule.* Interest at the underpayment rate referred to in the regulations at 26 CFR 301.6621–1 shall be paid on any unpaid amount of tax from the last date prescribed for payment of the tax (determined without regard to any extension of time for payment) to the date on which payment is received.

(b) *Interest on penalties, additional amounts, or additions to the tax*— (1) *General.* Interest shall be imposed on any assessable penalty, additional amount, or addition to the tax (other than an addition to tax imposed under section 6651(a)(1) of the Internal Revenue Code) only if such assessable penalty, additional amount, or addition to the tax is not paid within 10 days from the date of notice and demand therefor, and in such case interest shall be imposed only for the period from the date of the notice and demand to the date of payment.

(2) *Interest on certain additions to tax.* Interest shall be imposed under this section on any addition to tax imposed by section 6651(a)(1) of the Internal Revenue Code for the period which (i) begins on the date on which the return of the tax with respect to which such addition to tax is imposed is required to be filed (including any extensions), and (ii) ends on the date of payment of such addition to tax.

(c) *Payments made within 10 days after notice and demand.* If notice and demand is made for payment of any amount, and if such amount is paid within 10 days after the date of such notice and demand, interest under this section on the amount so paid shall not be imposed for the period after the date of such notice and demand.

(d) *Satisfaction by credits.* If any portion of a tax is satisfied by credit of an overpayment, then no interest shall be imposed under section 6601 of the Internal Revenue Code on the portion of the tax so satisfied for any period during which, if the credit had not been made, interest would have been allowable with respect to such overpayment.

(e) *Last date prescribed for payment.* (1) In determining the last date prescribed for payment, any extension of time granted for payment of tax shall be disregarded. The granting of an extension of time for the payment of tax does not relieve the taxpayer from liability for the payment of interest thereon during the period of the extension. Thus, except as provided in paragraph (d) of this section, interest at the underpayment rate referred to in the regulations at 26 CFR 301.6621–1 is payable on any unpaid portion of the tax for the period during which such portion remains unpaid by reason of an extension of time for the payment thereof.

(2) In the case of taxes payable by stamp and in all other cases where the last date for payment of the tax is not otherwise prescribed, such last date for the purpose of the interest computation shall be deemed to be the date on which the liability for the tax arose. However, such last date shall in no event be later than the date of issuance of a notice and demand for the tax.

(26 U.S.C. 6601)

§ 70.91 Interest on erroneous refund recoverable by suit.

Any portion of an internal revenue tax (or any interest, assessable penalty, additional amount, or addition to tax) which has been erroneously refunded, and which is recoverable by a civil action pursuant to section 7405 of the Internal Revenue Code, shall bear interest at the underpayment rate referred to in the regulations at 26 CFR 301.6621–1 from the date of the payment of the refund.

(26 U.S.C. 6602)

§ 70.92 Interest on overpayments.

(a) *General rule.* Except as otherwise provided, interest shall be allowed on any overpayment of any tax at the overpayment rate referred to in the regulations at 26 CFR 301.6621–1 from the date of overpayment of the tax.

(b) *Date of overpayment.* Except as provided in section 6401(a) of the Internal Revenue Code, relating to assessment and collection after the expiration of the applicable period of limitation, there can be no overpayment of tax until the entire tax liability has been satisfied. Therefore, the dates of overpayment of any tax are the date of payment of the first amount which (when added to previous payments) is in excess of the tax liability (including any interest, addition to the tax, or additional amount) and the dates of payment of all amounts subsequently paid with respect to such tax liability.

(c) *Period for which interest allowable in case of refunds.* If an overpayment of tax is refunded, interest shall be allowed from the date of the overpayment to a date determined by the regional director (compliance) which shall be not more than 30 days prior to the date of the refund check. The acceptance of a refund check shall not deprive the taxpayer of the right to make a claim for any additional overpayment and interest thereon, provided the claim is made within the applicable period of limitation. However, if a taxpayer does not accept a refund check, no additional interest on the amount of the overpayment included in such check shall be allowed.

(d) *Period for which interest allowable in case of credits*—(1) *General rule.* If an overpayment of tax is credited, interest shall be allowed from the date of overpayment to the due date (as determined under paragraph (d)(2) of this section of the amount against which such overpayment is credited.

(2) *Determination of due date*— (i) *General.* The term "due date", as used in this section, means the last day fixed by law or regulations for the payment of the tax (determined without regard to any extension of time), and not the date on which the regional director (compliance) makes demand for the

payment of the tax. Therefore, the due date of the tax is the date fixed for the payment of the tax;

(ii) *Tax not due yet.* If a taxpayer agrees to the crediting of an overpayment against tax and the schedule of allowance is signed prior to the date on which such tax would otherwise become due, then the due date of such tax shall be the date on which such schedule is signed;

(iii) *Assessed interest.* In the case of a credit against assessed interest, the due date is the date of the assessment of such interest;

(iv) *Additional amount, addition to the tax, or assessable penalty.* In the case of a credit against an amount assessed as an additional amount, addition to the tax, or assessable penalty, the due date is the date of the assessment.

(26 U.S.C. 6611)

§ 70.93 Interest rate.

Adjusted interest rates are periodically announced by the Commissioner of Internal Revenue in accordance with section 6621 of the Internal Revenue Code. The regional director (compliance) will provide information, when requested, regarding interest rates applicable to specific time periods.

(26 U.S.C. 6621)

§ 70.94 Interest compounded daily.

In computing the amount of any interest required to be paid under Title 26 of the United States Code by the regional director (compliance) or by the taxpayer, or any other amount determined by reference to such amount of interest, such interest and such amount shall be compounded daily.

(26 U.S.C. 6622)

Additions to the Tax, Additional Amounts, and Assessable Penalties

Additions to the Tax and Additional Amounts

§ 70.95 Scope.

For purposes of the administration of excise taxes by the Bureau of Alcohol, Tobacco and Firearms in accordance with Title 26 of the United States Code, the penalties prescribed in §§ 70.96 through 70.106 shall apply.

§ 70.96 Failure to file tax return or to pay tax.

(a) *Addition to the tax*— (1) *Failure to file tax return.* In the case of failure to file a return required under authority of,

(i) Chapter 61 of the Internal Revenue Code, relating to returns and records;

(ii) Chapter 51 of the Internal Revenue Code, relating to distilled spirits, wines and beer;

(iii) Chapter 52 of the Internal Revenue Code relating to tobacco products, and cigarette papers and tubes; or

(iv) Chapter 53 of the Internal Revenue Code, relating to machine guns, destructive devices, and certain other firearms; and the regulations thereunder, on or before the date prescribed for filing (determined with regard to any extension of time for such filing), there shall be added to the tax required to be shown on the return the amount specified below unless the failure to file the return within the prescribed time is shown to the satisfaction of the regional director (compliance) to be due to reasonable cause and not to willful neglect. The amount to be added to the tax is 5 percent thereof if the failure is for not more than 1 month, with an additional 5 percent for each additional month or fraction thereof during which the failure continues, but not to exceed 25 percent in the aggregate. The amount of any addition under this subparagraph shall be reduced by the amount of the addition under paragraph (a)(2) of this section for any month to which an addition to tax applies under both paragraphs (a)(1) and (2) of this section.

(2) Failure to pay tax shown on return. In case of failure to pay the amount shown as tax on any return (required to be filed after December 31, 1969, without regard to any extension of time for filing thereof) specified in paragraph (a)(1) of this section, on or before the date prescribed for payment of such tax (determined with regard to any extension of time for payment), there shall be added to the tax shown on the return the amount specified below unless the failure to pay the tax within the prescribed time is shown to the satisfaction of the regional director (compliance) to be due to reasonable cause and not to willful neglect. The amount to be added to the tax is 0.5 percent of the amount of tax shown on the return if the failure is for not more than 1 month, with an additional 0.5 percent for each additional month or fraction thereof during which the failure continues, but not to exceed 25 percent in the aggregate.

(3) Failure to pay tax not shown on return. In case of failure to pay any amount in respect of any tax required to be shown on a return specified in paragraph (a)(1) of this section, which is not so shown (including an assessment made pursuant to section 6213(b)) within 10 days from the date of the notice and demand therefor, there shall be added to the amount stated in the notice and demand the amount specified below unless the failure to pay the tax within the prescribed time is shown to the satisfaction of the regional director (compliance) to be due to reasonable cause and not to willful neglect. The amount to be added to the tax is 0.5 percent of the amount stated in the notice and demand if the failure is for not more than one month, with an additional 0.5 percent for each additional month or fraction thereof during which the failure continues, but not to exceed 25 percent in the aggregate. The maximum amount of the addition permitted under this subparagraph shall be reduced by the amount of the addition under paragraph (a)(1) of this section, which is attributable to the tax for which the notice and demand is made and which is not paid within 10 days from the date of notice and demand. The preceding sentence applies to amounts assessed on or before December 31, 1986.

(4) For increases in penalties for failure to pay tax in certain cases, see section 6651(d) of the Internal Revenue Code.

(b) *Month defined.* (1) If the date prescribed for filing the return or paying tax is the last day of a calendar month, each succeeding calendar month or fraction thereof during which the failure to file or pay tax continues shall constitute a month for purposes of section 6651.

(2) If the date prescribed for filing the return or paying tax is a date other than the last day of a calendar month, the period which terminates with the date numerically corresponding thereto in the succeeding calendar month and each such successive period shall constitute a month for purposes of section 6651. If, in the month of February, there is no date corresponding to the date prescribed for filing the return or paying tax, the period from such date in January through the last day of February shall constitute a month for purposes of section 6651. Thus, if a return is due on January 30, the first month shall end on February 28 (or 29 if a leap year), and the succeeding months shall end on March 30, April 30, etc.

(3) If a return is not timely filed or tax is not timely paid, the fact that the date prescribed for filing the return or paying tax, or the corresponding date in any succeeding calendar month, falls on a Saturday, Sunday, or legal holiday is immaterial in determining the number of months for which the addition to the tax under section 6651 applies.

(c) *Showing of reasonable cause.* A taxpayer who wishes to avoid the addition to the tax for failure to file a

tax return or pay tax must make an affirmative showing of all facts alleged as a reasonable cause for the taxpayers failure to file such return or pay such tax on time in the form of a written statement containing a declaration that it is made under penalties of perjury. Such statement should be filed with the regional director (compliance) with whom the return is required to be filed. In addition, where special tax returns of liquor dealers are delivered to an ATF officer working under the supervision of the regional director (compliance), such statement may be delivered with the return. If the regional director (compliance) determines that the delinquency was due to a reasonable cause and not to willful neglect, the addition to the tax will not be assessed. If the taxpayer exercised ordinary business care and prudence and was nevertheless unable to file the return within the prescribed time, then the delay is due to a reasonable cause. A failure to pay will be considered to be due to reasonable cause to the extent that the taxpayer has made a satisfactory showing that the taxpayer exercised ordinary business care and prudence in providing for payment of the tax liability and was nevertheless either unable to pay the tax or would suffer an undue hardship (as described in 26 CFR 1.6161-1(b)) if paid on the due date. In determining whether the taxpayer was unable to pay the tax in spite of the exercise of ordinary business care and prudence in providing for payment of a tax liability, consideration will be given to all the facts and circumstances of the taxpayer's financial situation, including the amount and nature of the taxpayer's expenditures in light of the income (or other amounts) the taxpayer could, at the time of such expenditures, reasonably expect to receive prior to the date prescribed for the payment of the tax. Thus, for example, a taxpayer who incurs lavish or extravagant living expenses in an amount such that the remainder of assets and anticipated income will be insufficient to pay the tax, has not exercised ordinary business care and prudence in providing for the payment of a tax liability. Further, a taxpayer who invests funds in speculative or illiquid assets has not exercised ordinary business care and prudence in providing for the payment of a tax liability unless, at the time of the investment, the remainder of the taxpayer's assets and estimated income will be sufficient to pay the tax or it can be reasonably foreseen that the speculative or illiquid investment made by the taxpayer can be utilized (by sale or as security for a loan) to realize sufficient funds to satisfy the tax liability. A taxpayer will be considered to have exercised ordinary business care and prudence if such taxpayer made reasonable efforts to conserve sufficient assets in marketable form to satisfy a tax liability and nevertheless was unable to pay all or a portion of the tax when it became due.

(d) *Penalty imposed on net amount due*— (1) *Credits against the tax.* The amount of tax required to be shown on the return for purposes of section 6651(a)(1) and the amount shown as tax on the return for purposes of section 6651(a)(2) shall be reduced by the amount of any part of the tax which is paid on or before the date prescribed for payment of the tax and by the amount of any credit against the tax which may be claimed on the return.

(2) *Partial payments.* (i) The amount of tax required to be shown on the return for purposes of section 6651(a)(2) of the Internal Revenue Code shall, for the purpose of computing the addition for any month, be reduced by the amount of any part of the tax which is paid after the date prescribed for payment and on or before the first day of such month, and

(ii) The amount of tax stated in the notice and demand for purposes of section 6651(a)(3) of the Internal Revenue Code shall, for the purpose of computing the addition for any month, be reduced by the amount of any part of the tax which is paid before the first day of such month.

(e) *No addition to tax if fraud penalty assessed.* No addition to the tax under section 6651 of the Internal Revenue Code shall be assessed with respect to an underpayment of tax if an addition to the tax for fraud is assessed with respect to the same underpayment under section 6653(b). See section 6653(d) of the Internal Revenue Code.

(26 U.S.C. 6651)

§ 70.97 Failure to pay tax.

(a) *Negligence*—(1) *General.* If any part of any underpayment (as defined in paragraph (d) of this section) is due to negligence or disregard of rules or regulations, there shall be added to the tax an amount equal to the sum of 5 percent of the underpayment, and an amount equal to 50 percent of the interest payable under section 6601 of the Internal Revenue Code with respect to the portion of such underpayment which is attributable to negligence for the period beginning on the last date prescribed by law for payment of such underpayment (determined without regard to any extension) and ending on the date of the assessment of the tax (or if earlier, the date or the payment of the tax).

(2) Underpayment taken into account reduced by a portion attributable to fraud. There shall not be taken into account under paragraph (a) of this section any portion of an underpayment attributable to fraud with respect to which a penalty is imposed under paragraph (b) of this section.

(3) *Negligence.* For purposes of paragraph (a) of this section, the term "negligence" includes any failure to make a reasonable attempt to comply with the provisions of the Internal Revenue Code, and the term "disregard" includes any careless, reckless, or intentional disregard.

(4) The provisions of paragraph (a) apply to returns the due date for which (determined without regard to extensions) is after December 31, 1986.

(b) *Fraud*—(1) *General.* If any part of any underpayment (as defined in paragraph (d) of this section) of tax required to be shown on a return is due to fraud, there shall be added to the tax an amount equal to 50 percent of the portion of the underpayment which is attributable to fraud and an amount equal to 50 percent of the interest payable under section 6601 of the Internal Revenue Code with respect to such portion for the period beginning on the last day prescribed by law for payment of such underpayment (determined without regard to any extension) and ending on the date of the assessment of the tax or, if earlier, the date of the payment of the tax.

(2) The provisions of paragraph (b) of this section, apply to returns the due date for which (determined without regard to extensions) is on or before December 31, 1986.

(c) *Fraud*—(1) *General.* If any part of any underpayment (as defined in paragraph (d) of this section) of tax required to be shown on a return is due to fraud, there shall be added to the tax an amount equal to the sum of 75 percent of the portion of the underpayment which is attributable to fraud and an amount equal to 50 percent of the interest payable under section 6601 of the Internal Revenue Code with respect to such portion for the period beginning on the last day prescribed by law for payment of such underpayment (determined without regard to any extension) and ending on the date of the assessment of the tax or, if earlier, the date of the payment of the tax.

(2) Determination of portion attributable to fraud. If the regional director (compliance) establishes that any portion of an underpayment is

attributable to fraud, the entire underpayment shall be treated as attributable to fraud, except with respect to any portion of the underpayment which the taxpayer establishes is not attributable to fraud.

(3) The provisions of this paragraph (c) apply to returns the due date for which (determined without regard to extensions) is after December 31, 1986.

(d) *Definition of underpayment.* For purposes of this section, the term "underpayment" means the amount by which such tax imposed by the Internal Revenue Code exceeds the excess of—

(1) The sum of,

(i) The amount shown as the tax by the taxpayer upon the taxpayers return (determined without regard to any credit for an overpayment for any prior period, and without regard to any adjustment under authority of sections 6205(a) and 6413(a) of the Internal Revenue Code), if a return was made by the taxpayer within the time prescribed for filing such return (determined with regard to any extension of time for such filing) and an amount was shown as the tax by the taxpayer thereon, plus;

(ii) Any amount, not shown on the return, paid in respect of such tax, over—

(2) *The amount of rebates made.* For purposes of paragraph (d) of this section, the term "rebate" means so much of an abatement, credit, refund, or other repayment, as was made on the ground that the tax imposed was less than the excess of the amount specified in paragraph (d)(1) of this section over the rebates previously made.

(e) *No delinquency penalty if fraud assessed.* If any penalty is assessed under paragraph (b) or (c) of this section (relating to fraud) for an underpayment of tax which is required to be shown on a return, no penalty under section 6651 of the Internal Revenue Code (relating to failure to file such return or pay tax) shall be assessed with respect to the portion of the underpayment which is attributable to fraud.

(f) *Failure to pay stamp tax.* Any person who willfully fails to pay any tax which is payable by stamp or willfully attempts in any manner to evade or defeat any such tax or payment thereof, shall, in addition to other penalties provided by law, be liable to a penalty of 50 percent of the total amount of the underpayment of the tax.

(g) *Additional penalty.* For additional penalty for failure to pay certain liquor and tobacco taxes, see 27 CFR 70.102.

(26 U.S.C. 6653)

§ 70.98 Penalty for underpayment of deposits.

(a) *General rule.* If any person is required by the Internal Revenue Code or regulations prescribed thereunder to deposit any tax in a government depository that is authorized under section 6302(c) of the Internal Revenue Code to receive the deposit, and fails to deposit the tax within the time prescribed therefor, a penalty shall be imposed on such person unless the failure is shown to be due to reasonable cause and not due to willful neglect. The penalty shall be 5 percent of the amount of the underpayment without regard to the period during which the underpayment continues, except that, for penalties assessed after October 21, 1986, the penalty shall be 10 percent of the amount of the underpayment. For purposes of this section, the term "underpayment" means the amount of tax required to be deposited less the amount, if any, that was deposited on or before the date prescribed therefor. Section 7502(e) of the Internal Revenue Code applies in determining the date a deposit is made.

(b) *Assertion of reasonable cause.* To show that the underpayment was due to reasonable cause and not due to willful neglect, a taxpayer must make an affirmative showing of all facts alleged as a reasonable cause in a written statement containing a declaration that it is made under the penalties of perjury. The statement must be filed with the regional director (compliance) of the region in which the taxpayer is located. If the regional director (compliance) determines that the underpayment was due to reasonable cause and not due to willful neglect, the penalty will not be imposed.

(26 U.S.C. 6656)

§ 70.99 Penalty for overstated deposit claims.

(a) *General rule.* Any person who makes an overstated deposit claim on a return is subject to a penalty equal to 25 percent of such claim, unless it is shown that the overstated deposit claim is due to reasonable cause and not due to willful neglect. This penalty is in addition to any other penalty provided by law, such as the penalty provided by section 6656(a) of the Internal Revenue Code, relating to underpayment of deposits.

(b) *Overstated deposit claim.* An overstated deposit claim is the excess of—

(1) The amount of any internal revenue tax for any period that a person claims, in a return (including an amended return) filed after August 13, 1981, to have deposited in a government depositary authorized under section 6302(c) of the Internal Revenue Code to receive the deposit, over

(2) The aggregate amount for that period that the person has deposited, on or before the date such return for that period is filed, in a government depositary authorized under section 6302(c) to receive the deposit. An overstated deposit claim includes a claim that deposits have been made when no deposits have been made in an authorized government depositary. The existence or amount of an overstated deposit claim is not limited even though the amount described in paragraph (b)(1) of this section or the amount described in paragraph (b)(2) of this section exceeds the actual tax liability. For purposes of this paragraph, the date a return is considered to be filed is the later of the date the return is due to be filed (not including extensions) or the date the return is actually filed. Section 7502(e) of the Internal Revenue Code applies in determining the date a deposit is made.

(c) *Assertion of reasonable cause.* To show that an overstated deposit claim was due to reasonable cause and not due to willful neglect, a taxpayer must make an affirmative showing of all facts alleged as a reasonable cause in a written statement containing a declaration that is made under the penalties of perjury. The statement must be filed with the regional director (compliance) of the region in which the taxpayer is located. If the regional director (compliance) determines that the overstated deposit claim was due to reasonable cause and was not due to willful neglect, the penalty will not be imposed. The fact that a correct amended return has been filed may in some cases be evidence that an overstated deposit claim on the original return was due to reasonable cause and not due to willful neglect, but is not determinative of that issue.

(26 U.S.C 6656)

§ 70.100 Bad checks.

If any check or money order in payment of any amount receivable under Title 26 of the United States Code is not duly paid, in addition to any other penalties provided by law, there shall be paid as a penalty by the person who tendered such check, upon notice and demand, in the same manner as tax, an amount equal to 1 percent of the amount of such check, except that if the amount of such check is less than $500, the penalty under this section shall be $5 or the amount of such check, whichever is the lesser. This section shall not apply if the person establishes to the satisfaction

of the regional director (compliance) that such check was tendered in good faith and that such person had reasonable cause to believe that such check would be duly paid.

(26 U.S.C. 6657)

§ 70.101 Coordination with Title 11.

(a) *Certain failures to pay tax.* No addition to the tax shall be made under section 6651 of the Internal Revenue Code for failure to make timely payment of tax with respect to a period during which a case is pending under Title 11 of the United States Code—

(1) If such tax was incurred by the estate and the failure occurred pursuant to an order of the court finding probable insufficiency of funds of the estate to pay administrative expenses, or

(2) If such tax was incurred by the debtor before the earlier of the order for relief or (in the involuntary case) the appointment of a trustee and

(i) The petition was filed before the due date prescribed by law (including extensions) for filing a return of such tax, or

(ii) The date for making the addition to the tax occurs on or after the day on which the petition was filed.

(b) *Exception for collected taxes.* Paragraph (a) of this section shall not apply to any liability for an addition to the tax which arises from the failure to pay or deposit a tax withheld or collected from others and required to be paid to the United States.

(26 U.S.C. 6658)

§ 70.102 Failure to pay tax.

Whoever fails to pay any tax imposed by part I of Subchapter A of Chapter 51 of the Internal Revenue Code (liquor taxes) or by Chapter 52 (tobacco taxes) at the time prescribed shall, in addition to any other penalty provided in the Internal Revenue Code, be liable to a penalty of 5 percent of the tax due but unpaid. For additional penalties for failure to pay tax, see 27 CFR 70.97.

(26 U.S.C. 5684(a) and 5761(b))

Assessable Penalties

§ 70.103 Rules for application of assessable penalties.

(a) *Penalty assessed as tax.* The penalties and liabilities provided by Subchapter B, Chapter 68, of the Internal Revenue Code shall be assessed and collected in the same manner as taxes. Except as otherwise provided, any reference in the Internal Revenue Code to "tax" imposed thereunder shall also be deemed to refer to the penalties and liabilities provided by Subchapter B of Chapter 68.

(b) *Person defined.* For purposes of Subchapter B of Chapter 68 of the Internal Revenue Code, the term "person" includes an officer or employee of a corporation, or a member or employee of a partnership, who as such officer, employee, or member is under a duty to perform the act in respect of which the violation occurs.

(26 U.S.C. 6671)

§ 70.104 Failure to collect and pay over tax, or attempt to evade or defeat tax.

Any person required to collect, truthfully account for, and pay over any tax imposed by the Internal Revenue Code who willfully fails to collect such tax, or truthfully account for and pay over such tax, or willfully attempts in any manner to evade or defeat any such tax or the payment thereof, shall, in addition to other penalties, be liable to a penalty equal to the total amount of the tax evaded, or not collected, or not accounted for and paid over. The penalty imposed by section 6672 of the Internal Revenue Code applies only to the collection, accounting for, or payment over of taxes imposed on a person other than the person who is required to collect, account for, and pay over such taxes. No penalty under section 6653 of the Internal Revenue Code, relating to failure to pay tax, shall be imposed for any offense to which this section is applicable.

(26 U.S.C. 6672)

§ 70.105 Penalty for failure to supply taxpayer identification number.

(a) *In general.* Except as provided in paragraph (b) of this section, any person who is required by the regulations under section 6109 of the Internal Revenue Code to include the taxpayer identification number in any return, statement, or other document, fails to comply with such requirement at the time prescribed by such regulations, such person shall pay a penalty of $5 for each such failure, except that the total amount imposed on such person for all such failures during any calendar year shall not exceed $50,000. For returns having a due date (determined without regard to extensions) after December 31, 1986, the total amount imposed on such person for all such failures during any calendar year shall not exceed $100,000. Such penalty shall be paid in the same manner as tax upon the issuance of a notice and demand therefor.

(b) *Reasonable cause.* If any person who is required by the regulations under section 6109 of the Internal Revenue Code to supply a taxpayer identification number fails to comply with such requirement at the time prescribed by such regulations, but establishes to the satisfaction of the regional director (compliance) that such failure was due to reasonable cause, the penalty set forth in paragraph (a) of this section shall not apply.

(c) *Persons required to supply taxpayer identification numbers.* For regulations under section 6109 of the Internal Revenue Code relating to persons required to supply an identifying number, see the regulations relating to the particular tax.

(26 U.S.C. 6676)

§ 70.106 Penalties for aiding and abetting understatement of tax liability.

(a) *Imposition of penalty.* Any person—

(1) Who aids or assists in, procures, or advises with respect to, the preparation or presentation of any portion of a return, affidavit, claim, or other document in connection with any matter arising under the internal revenue laws,

(2) Who knows that such portion will be used in connection with any material matter arising under the internal revenue laws, and

(3) Who knows that such portion (if so used) will result in an understatement of the liability for tax of another person, shall pay a penalty with respect to each such document in the amount determined under paragraph (b).

(b) *Amount of penalty*—(1) *General.* Except as provided in paragraph (b)(2) of this section, the amount of the penalty imposed by paragraph (a) of this section shall be $1,000.

(2) *Corporations.* If the return, affidavit, claim, or other document relates to the tax liability of a corporation, the amount of the penalty imposed by paragraph (a) of this section shall be $10,000.

(3) *Only one penalty per person per period.* If any person is subject to a penalty under paragraph (a) of this section with respect to any document relating to any taxpayer for any taxable period (or where there is no taxable period, any taxable event), such person shall not be subject to a penalty under paragraph (a) of this section with respect to any other document relating to such taxpayer for such taxable period (or event).

(c) *Activities of subordinates*— (1) *General.* For purpose of paragraph (a) of this section, the term "procures" includes,

(i) Ordering (or otherwise causing) a subordinate to do an act, and

(ii) Knowing of, and not attempting to

prevent, participation by a subordinate in an act.

(2) For purposes of paragraph (c)(1) of this section, the term "subordinate" means any other person (whether or not a director, officer, employee, or agent of the taxpayer involved) over whose activities the person has direction, supervision, or control.

(d) *Taxpayer not required to have knowledge.* Paragraph (a) shall apply whether or not the understatement is with the knowledge or consent of the persons authorized or required to present the return, affidavit, claim, or other document.

(e) *Certain actions not treated as aid or assistance.* For purposes of paragraph (a)(1) of this section, a person furnishing typing, reproducing, or other mechanical assistance with respect to a document shall not be treated as having aided or assisted in the preparation of such document by reason of such assistance.

(f) *Penalty in addition to other penalties.* The penalty imposed by this section shall be in addition to any other penalty provided by law.

(26 U.S.C. 6701)

General Provisions Relating to Stamps, Marks, or Labels

§ 70.107 Authority for establishment, alteration, and distribution of stamps, marks, or labels.

The Director may establish, and from time to time alter, renew, replace, or change the form, style, character, material, and device of any stamp, mark, or label under any provision of the law relating to Subtitle E of the Internal Revenue Code (or to any provision of Subtitle F which relates to Subtitle E).

(26 U.S.C. 6801)

Jeopardy Assessment

§ 70.108 Jeopardy assessment of alcohol, tobacco, and firearms taxes.

(a) If the regional director (compliance) believes that the collection of any tax imposed under Subtitle E of the Internal Revenue Code (or any provision of Subtitle F which relates to Subtitle E) will be jeopardized by delay, the regional director (compliance) shall, whether or not the time otherwise prescribed by law for filing the return or paying such tax has expired, immediately assess such tax, together with all interest, additional amounts and additions to the tax provided by law. A regional director (compliance) will make an assessment under this section if collection is determined to be in jeopardy because at least one of the conditions described in 26 CFR 1.6851–1(a)(1) (i), (ii), or (iii) (relating to termination assessments) exists.

(b) The tax, interest, additional amounts, and additions to the tax will, upon assessment, become immediately due and payable, and the regional director (compliance) shall, without delay, issue a notice and demand for payment thereof in full.

(c) See section 7429 of the Internal Revenue Code with respect to requesting the regional director (compliance) to review the making of the jeopardy assessment.

(d) For provisions relating to stay of collection of jeopardy assessments, see 26 CFR 301.6863–1.

(26 U.S.C. 6862 and 6863)

Registration

§ 70.109 Registration of persons paying a special tax.

(a) *Persons required to register.* Every person engaged in a trade or business in respect of which a special tax is imposed by one of the following sections of the Internal Revenue Code is required to register with the Bureau of Alcohol, Tobacco and Firearms.

(1) Section 5091 (relating to special tax on brewers);

(2) Section 5111 (relating to special tax on wholesale dealers in liquors and wholesale dealers in beer);

(3) Section 5121 (relating to special tax on retail dealers in liquors and retail dealers in beer); or

(4) Section 5802 (relating to importers, manufacturers and dealers of National Firearms Act weapons). For provisions with respect to the registration of persons subject to the special tax imposed by section 5131, relating to the tax on persons claiming drawback on distilled spirits used in the manufacture of certain nonbeverage products, see section 5132 of the Internal Revenue Code and 27 CFR Part 197 (Regulations on Drawback on Distilled Spirits Used in Manufacturing Nonbeverage Products).

(b) *Procedure for registration.* The registration required of a person by reason of the person being engaged in a trade or business in respect of which one of the special taxes listed in paragraphs (a) (1) to (3) of this section is imposed shall be accomplished by executing and filing, in accordance with the instructions relating thereto, ATF F 5630.5, Annual Special Tax Registration and Return.

(26 U.S.C. 7011)

Para. 26. Subpart F is added immediately following the regulations in Subpart E to read as follows:

Subpart F—Procedural Rules Relating to Alcohol, Tobacco, Firearms, and Explosives

Provisions Relating to Distilled Spirits, Wines, and Beer

Sec.

70.111 Imposition of taxes, qualification requirements, and regulations.
70.112 Excise taxes.
70.113 Claims.
70.114 Preparation and filing of claims.
70.115 Offers in compromise.
70.116 Application for approval of interlocking directors and officers under section 8 of the Federal Alcohol Administration Act.
70.117 Rulings.
70.118 Conferences.
70.119 Representatives.
70.120 Forms.

Provisions Relating to Tobacco Products, and Cigarette Papers and Tubes

70.131 Imposition of taxes; regulations.
70.132 Qualification and bonding requirements.
70.133 Collection of taxes.
70.134 Assessments.
70.135 Claims.
70.136 Offers in compromise.
70.137 Rulings.
70.138 Forms.

Provisions Relating to Firearms and Explosives

70.141 Applicable laws.
70.142 Taxes relating to machine guns, destructive devices, and certain other firearms.
70.143 Commerce in firearms and ammunition.
70.144 Importation of arms, ammunition, and implements of war.
70.145 Commerce in explosives.
70.146 Rulings.
70.147 Assessments.
70.148 Claims.
70.149 Offers in compromise.

Seized Property

70.150 Seizure and forfeiture of personal property.

Offers in Compromise

70.151 Offers in compromise.

Rulings

70.152 Rulings.

Subpart F—Procedural Rules Relating to Alcohol, Tobacco, Firearms, and Explosives

Provisions Relating to Distilled Spirits, Wines, and Beer

§ 70.111 Imposition of taxes, qualification requirements, and regulations.

(a) *Imposition of taxes.* Subchapter A of Chapter 51 of the Internal Revenue Code of 1954 imposes taxes on distilled spirits (including alcohol), wine and beer. Occupational taxes are imposed upon brewers, dealers in liquors, and as a prerequisite for drawback under

section 5134 of the Internal Revenue Code, upon manufacturers of nonbeverage products.

(b) *Qualification requirements.* Distillers, winemakers, brewers, warehousemen, rectifiers, bottlers, dealers in specially denatured alcohol, users of tax-free and specially denatured alcohol, and wholesalers and importers of liquors, are required to qualify with ATF usually by filing notice or application and bond with, and procuring permit from, the regional director (compliance), of the ATF region in which operations are to be conducted. Detailed information respecting such qualification, including the forms to be used and the procedure to be followed, is contained in the respective regulations described in paragraph (c) of this section.

(c) *Regulations.* The procedural requirements with respect to matters relating to distilled spirits, wines, and beer which are within the jurisdiction of the ATF are published in the regulations described in this paragraph. These regulations contain full information as to the general course and method by which the functions concerning liquors are channeled and determined, including the nature and requirements of formal and informal procedures, the forms, records, reports, and other documents required, and the contents of applications, notices, registrations, permits, bonds, and other documents. Supplies of prescribed forms may be obtained from the office of any regional director (compliance). ATF Publication 1322.1, which contains a listing of alcohol, tobacco, and firearms public-use forms, may be obtained from the ATF Distribution Center, 7943 Angus Court, Springfield, Virginia 22153. The following is a brief description of the several regulations arranged according to the principal subjects and operations concerned:

(1) *Establishment and operation of distilled spirits plants.* Part 19 of Title 27 CFR contains the regulations relating to the location, qualification, construction, arrangement, equipment, and operations (including activities incident thereto) of distilled spirits plants for the production and/or warehousing (including denaturation), and bottling (including bottling in bond) of distilled spirits. Part 19 also contains the regulations relating to distilled spirits for fuel use and the production of vinegar by the vaporizing process.

(2) *Miscellaneous liquor transactions.* Part 170 of Title 27 CFR contains miscellaneous regulations relative to:

(i) Returns and records of the disposition of articles from which distilled spirits may be recovered, or substances of the character used in the manufacture of distilled spirits, and of containers of the character used for the packaging of distilled spirits;

(ii) Refunds of tax and duty paid on distilled spirits, wines, and beer lost as a result of floods, hurricanes, or other disasters;

(iii) Application of section 6423, Internal Revenue Code of 1954, as amended, to refund or credit of tax on distilled spirits, wines, and beer;

(iv) Manufacture, removal, and use of stills and condensers, and to the notice, registration, and recordkeeping requirements therefor;

(v) Manufacture and sale of certain compounds, preparations, and products containing alcohol;

(vi) Floor stocks tax on distilled spirits and imported perfumes held for sale on October 1, 1985; and

(vii) Temporary regulations respecting the withdrawal free of tax from bonded wine cellars, of wine, or wine products made from wine, when rendered unfit for beverage use.

(3) [Reserved]

(4) *Gauging of distilled spirits.* Part 30 of Title 27 CFR contains the regulations that. prescribe the gauging instruments, and methods or techniques to be used in measuring distilled spirits (including denatured spirits). Tables are provided for use in making the necessary computation from gauge data.

(5) *Rules of practice in permit proceedings.* Part 200 of Title 27 CFR contains the rules governing the procedure and practice in connection with the disapproval of applications for basic permits, and for the issuance of citations for the suspension, revocation, and annulment of such permits under sections 3 and 4 of the Federal Alcohol Acministration Act (27 U.S.C. 201 *et seq.*), and disapproval, suspension, and revocation of industrial use, operating, withdrawal, and tobacco permits under the Internal Revenue Code. Such rules also govern, insofar as applicable, any adversary proceeding involving adjudication required by statute to oe determined on the record, after opportunity for hearing, under laws administered by the Bureau of Alcohol, Tobacco and Firearms.

(6) *Basic permit requirements under the Federal Alcohol Administration Act.* 27 CFR Part 1, issued pursuant to the Federal Alcohol Administration Act, as amended, contains the requirements relative to the issuance under the Act of basic permits to producers, rectifiers, blenders, bottlers, warehousemen, importers, and wholesalers of distilled spirits, wine, or beer, and the amendment, duration, revocation, suspension, or annulment of such permits.

(7) *Bulk sales and bottling of distilled spirits.* 27 CFR Part 3, issued under the Federal Alcohol Administration Act, as amended, contains the requirements relative to bulk sales and bottling of distilled spirits under the Federal Alcohol Administration Act, including the terms of warehouse receipts for distilled spirits in bulk.

(8) *Labeling and advertising of distilled spirits.* 27 CFR Part 5, issued under the Federal Alcohol Administration Act, as amended, contains the requirements relative to the labeling and advertising of distilled spirits under the Federal Alcohol Administration Act, including standards of identity for distilled spirits, standards of fill for bottles of distilled spirits, withdrawal of bottled imported distilled spirits from customs custody, and the issuance of certificates of label approval and certificates of exemption from label approval.

(9) *American viticultural areas.* Part 9 of Title 27 CFR contains the regulations that relate to American viticultural areas. The viticultural areas described in these regulations are approved for use as appellations of origin in accordance with 27 CFR Part 4.

(10) *Production and removal of wine.* Part 240 of Title 27 CFR contains the regulations relative to the establishment and operation of bonded wine cellars, including bonded wineries, for the production, cellar treatment, and storage of wines, including amelioration, sweetening, addition of volatile fruit flavor concentrates, addition of wine spirits (including distillates containing aldehydes), blending, and other cellar treatment; removals; taxpayment; return of unmerchantable taxpaid wine; use of wine for distilling material and manufacture of vinegar; and record and report requirements.

(11) *Bottling or Packaging of taxpaid wine.* Part 231 of Title 27 CFR contains the regulations relative to the establishment, qualification, and operations of taxpaid wine bottling houses on premises other than those of a plant operated under Part 19 of Title 27 CFR, and to the bottling and packaging of taxpaid United States and foreign wines at such premises.

(12) *Nonindustrial use of distilled spirits and wine.* 27 CFR Part 2, issued under the Federal Alcohol Administration Act, as amended, specifies what uses of distilled spirits and wine are considered "nonindustrial," as that term is used in section 17 of the Federal Alcohol Administration Act.

(13) *Labeling and advertising of wine.* 27 CFR Part 4, issued under the Federal Alcohol Administration Act, as amended, contains the requirements relative to the labeling and advertising of wine under the Federal Alcohol Administration Act, including standards of identity for wine, standards of fill for containers of wine, the withdrawal of imported wine from customs custody, and the issuance of certificates of label approval and certificates of exemption from label approval.

(14) *Establishment and operations of breweries and experimental breweries.* Part 25 of Title 27 CFR contains the regulations relating to the production (including concentration and reconstitution incident thereto) and removal of beer and cereal beverages. The regulations cover the location, construction, equipment, and operations of breweries; and the qualification of such establishments, including the ownership, control, and management thereof, and the establishment and operations of experimental breweries.

(15) *Labeling and advertising of malt beverages.* 27 CFR Part 7, issued under the Federal Alcohol Administration Act, as amended, contains the requirements relative to the labeling and advertising of malt beverages (beer) under the Federal Alcohol Administration Act, including withdrawal of imported malt beverages from customs custody, and the issuance of certificates of label approval.

(16) *Liquor dealers.* Part 194 of Title 27 CFR contains the regulations relative to the special (occupational) taxes imposed on wholesale and retail dealers in liquors, wholesale and retail dealers in beer, and limited retail dealers; restrictions on purchases of distilled spirits; reuse or refilling of liquor bottles; sale or possession of refilled or used liquor bottles; repackaging of alcohol for industrial use; recordkeeping and reporting requirements; and provisions relating to entry of premises and inspection of records by ATF officers.

(17) *Drawback of tax on spirits used in nonbeverage products.* Part 197 of Title 27 CFR contains the regulations which relate to obtaining drawback of internal revenue tax on distilled spirits used in the manufacture or production of medicines, medicinal preparations, food products, flavors, or flavoring extracts, which are unfit for beverage purposes.

(18) *Production of volatile fruit-flavor concentrates.* Part 18 of Title 27 CFR contains the regulations relating to the manufacture, removal, sale, storage, transfer in bond, transportation, recordkeeping and reporting requirements, and use of volatile fruit flavor concentrates. It includes provisions regarding the location, qualification, use, and operations of concentrate plants.

(19) *"Tied-House."* 27 CFR Part 6, issued under the Federal Alcohol Administration Act, as amended, specifies practices which are prohibited by subsection (b) of section 5 of the Act and provides the exception to these prohibitions. This part applies only to transactions between industry members and retailers.

(20) *Exclusive outlets.* 27 CFR Part 8, issued under the Federal Alcohol Administration Act, as amended, specifies practices which are prohibited by subsection (a) of section 5 of the Act. This part applies only to transactions between industry members and retailers.

(21) *Commercial bribery.* 27 CFR Part 10, issued under the Federal Alcohol Administration Act, as amended, specifies practices which are prohibited by subsection (c) of section 5 of the Act. This part applies to transactions between industry members and employees, officers, or representatives of trade buyers.

(22) *Consignment sales.* 27 CFR Part 11, issued under the Federal Alcohol Administration Act, as amended, specifies sales arrangements prohibited by subsection (d) of section 5 of the Act and contains guidelines concerning the return of distilled spirits, wines, and malt beverages from a trade buyer. The regulations in this part apply to transactions between industry members and trade buyers.

(23) *Distribution and use of denatured alcohol and rum.* Part 20 of Title 27 CFR contains the regulations relating to the procurement, use, disposition, and recovery of denatured alcohol, specially denatured rum, and articles containing denatured spirits; and includes requirements in respect to industrial use and withdrawal permits; and the packaging, labeling, sales, rebottling, and reprocessing of articles containing specially denatured spirits.

(24) *Formulas for denatured alcohol and rum.* Part 21 of Title 27 CFR contains the regulations relating to the formulation of completely denatured alcohol, specially denatured alcohol, and specially denatured rum; to the use of specially denatured spirits; and to the specifications for denaturants. The procedural requirements relative to the production of denatured alcohol and specially denatured rum are prescribed in Part 19 of Title 27 CFR, and those relative to the distribution and use of denatured alcohol and specially denatured rum are prescribed in Part 20 of Title 27 CFR.

(25) *Distribution and use of tax-free alcohol.* Part 22 of Title 27 CFR contains the regulations relating to tax-free alcohol and covers the procurement, storage, use, and recovery of such alcohol; and included requirements in respect to industrial use and withdrawal permits.

(26) *Liquors and articles from Puerto Rico and the Virgin Islands.* Part 250 of Title 27 CFR contains the regulations relating to the production, bonded warehousing, and withdrawal of distilled spirits, and denatured spirits, and the manufacture of articles in Puerto Rico and the Virgin Islands to be brought into the United States free of tax and the collection of internal revenue taxes on taxable alcoholic products coming into the United States from Puerto Rico and the Virgin Islands. Regulations respecting spirits produced in Puerto Rico or the Virgin Islands and brought into the United States and transferred from customs custody to internal revenue bond are also contained in this part.

(27) *Importation of liquors.* Part 251 of Title 27 CFR contains the substantive and procedural requirements relative to the importation of distilled spirits, wines, and beer into the United States from foreign countries including special (occupational) and commodity taxes, permits, marking, branding, and labeling of containers and packages.

(28) *Exportation of liquors.* Part 252 of Title 27 CFR contains the regulations relating to exportation including, where applicable, lading for use on vessels and aircraft, transfer to a foreign-trade zone, or transfer to a manufacturing bonded warehouse, Class 6, of distilled spirits (including specially denatured spirits), beer (including beer concentrate), and wine, and transfer of distilled spirits and wine for deposit in a customs bonded warehouse, whether without payment of tax, free of tax, or with benefit of drawback. It includes requirements with respect to removal, shipment, lading, deposit, evidence of exportation, losses, claims, and bonds.

§ 70.112 Excise taxes.

(a) *Collection.* Taxes on distilled spirits, wines, and beer are paid by returns. If the person responsible for paying the taxes has filed a proper bond with the regional director (compliance), such person may file semimonthly returns, with proper remittances, to cover the taxes incurred on distilled spirits, wines, and beer during such semimonthly period. Payment must accompany the return unless required to be made by electronic fund transfer (EFT). If the taxpayer is not qualified to

defer taxpayment, or has been placed on a prepayment basis by the regional director (compliance), the taxpayer must prepay the tax on the distilled spirits, wines, or beer. Distilled spirits, wines, and beer tax returns are filed in accordance with the instruction on the return forms, which are furnished to industry members by ATF. Special tax stamps are issued to denote the payment of special (occupational) taxes by liquor dealers, brewers, and manufacturers of nonbeverage products. Detailed information respecting the payment of tax on liquors and the payment of occupational taxes, including the forms to be used and procedures to be followed, is contained in the respective regulations described in § 70.111(c).

(b) *Assessment.* If additional or delinquent tax liability is disclosed by an investigation, or by an examination of records, of a qualified plant or permittee, a notice (except where delay may jeopardize collection of the tax, or where the amount involved is nominal or the result of an evident mathematical error) is sent to the taxpayer advising of the basis and amount of the liability and affording the taxpayer an opportunity to submit a protest, with supporting facts, or to request a conference.

§ 70.113 Claims.

(a) *Claims for remission.* When distilled spirits (including distilling material and denatured spirits), wine, or beer on which the tax has not been paid or determined is lost, and the person liable for payment of the tax thereon desires to be relieved from such liability, such person may file claim on Form 5620.8 for remission of tax on the quantity that was lost. The regional director (compliance) may, in any event, require such a claim to be filed, and will require it if circumstances indicate that the loss was caused by theft or, in the case of distilled spirits (including distilling material), unauthorized voluntary destruction. On receipt of a claim the regional director (compliance) makes a factual determination, and notifies the claimant of allowance or rejection of the claim. If the claim is rejected, and circumstances so warrant, the regional director (compliance) will take appropriate steps to collect the tax.

(b) *Claims for abatement.* When the tax on distilled spirits, wines, or beer is assessed and the taxpayer thinks that the tax is not due under the law, such taxpayer may file a claim for abatement of the tax on Form 5620.8 with the regional director (compliance). Form 5620.8 may be procured from the regional director (compliance). The regional director (compliance) may call upon the taxpayer to file a bond in double the amount of the tax in order to insure collection of the tax if the claim is rejected. When the claim is acted upon, the taxpayer is notified of the allowance or rejection of the claim. If the claim is rejected, the regional director (compliance) will initiate action to collect the tax.

(c) *Claims for refund*— (1) *Taxes illegally, erroneously, or excessively collected.* A claim on Form 5620.8 for refund of taxes illegally, erroneously, or excessively collected may be filed by the taxpayer with the regional director (compliance). Such claim must be filed within three years (two years under certain circumstances) after the date of payment of the tax. If the claim is rejected, the taxpayer is notified of the rejection by registered or certified mail, and the taxpayer may then bring suit in the U.S. District Court or the Court of Claims for recovery of the tax. Such suits must be filed generally within two years from the date of mailing of the rejection notice. If the claim is allowed, a check for the amount of the refund and allowable interest is forwarded to the taxpayer; however, if there are other unpaid taxes outstanding against the taxpayer, the overpayment may be applied to the outstanding taxes and the balance, if any, refunded.

(2) *Taxes on liquors lost, destroyed, returned to bond, or taken as samples by the United States.* A taxpayer may, subject to the conditions in the appropriate regulations, file claim on Form 5620.8 with the regional director (compliance) for refund of tax paid on:

(i) Spirits returned to bonded premises, lost by accident or disaster, or taken as samples by the United States, or

(ii) Wine returned to bond as unmerchantable, or lost by disaster, or

(iii) Beer returned to a brewery or voluntarily destroyed, or lost, whether by theft or otherwise, or destroyed or otherwise rendered unmerchantable by fire, casualty, or act of God. If the claim is allowed, a check for the amount of the refund is forwarded to the claimant; except, that where there are any unpaid taxes outstanding against the claimant, the refund may be applied to the outstanding taxes and a check for the balance, if any, forwarded to the claimant. If the claim is rejected, a copy of the claim giving the reasons for rejection is forwarded to the claimant.

(d) *Claims for allowance, credit, or relief.* A qualified permittee, manufacturer, or proprietor may, subject to the conditions in the appropriate regulations, file claim on Form 5620.8 with the regional director (compliance) for allowance of loss, credit of tax, or relief from tax liability, as applicable, on

(1) Spirits returned to bonded premises, lost or destroyed on bonded premises, or in transit thereto, or lost by accident or disaster;

(2) Wine lost or destroyed on bonded premises or in transit thereto and unmerchantable domestic wine returned to bond;

(3) Beer returned to a brewery or voluntarily destroyed, or lost, whether by theft or otherwise, or destroyed or otherwise rendered unmerchantable by fire, casualty, or act of God;

(4) Denatured spirits lost or destroyed in bond, or lost on the premises of a qualified dealer or user or in transit to such premises; and

(5) Tax-free spirits lost on the premises of a qualified user or in transit to such premises.

(e) *Claims for payment-disaster losses.* When distilled spirits, wines, rectified products, or beer held or intended for sale is lost, rendered unmarketable, or condemned by a duly authorized official by reason of a "major disaster" as determined by the President of the United States, the person holding such product for sale at that time may, subject to the conditions in the appropriate regulations, file claim on Form 5620.8 with the regional director (compliance) of the region in which the product was lost, rendered unmarketable, or condemned, for payment of an amount equal to the internal revenue taxes paid or determined and any customs duties paid thereon. Claims must be filed within 6 months from the date on which the President makes the determination that the disaster has occurred. The determination date is construed to mean the date the Director, Office of Emergency Preparedness, identifies the specific disaster area.

§ 70.114 Preparation and filing of claims.

(a) *Distilled spirits at distilled spirits plants.* Procedural instructions in respect of claims for remission, abatement, credit, or refund of tax on spirits (including denatured spirits) lost or destroyed on or lost in transit to, or on spirits returned to, the premises of a distilled spirits plant are contained in Part 19 of Title 27 CFR or, as applicable, in Parts 170 and 19 of Title 27 CFR for Puerto Rico or Virgin Islands spirits lost in internal revenue bond. It is not necessary to file a claim for credit of tax on taxpaid samples taken by ATF officers from distilled spirits plants, as the regional director (compliance) will allow credit, without claim, for tax on such samples.

(b) *Specially denatured spirits.* Procedural instructions in respect of claims for allowance of loss on specially denatured spirits lost on the premises of a bonded dealer or user, or while in transit to such premises, are contained in Part 20 of Title 27 CFR.

(c) *Tax-free alcohol.* Procedural instructions in respect of claims for allowance of loss on tax-free alcohol lost on the premises of a qualified user, or while in transit to such premises, are contained in Part 22 of Title 27 CFR.

(d) *Wine spirits and wine at bonded wine cellar.* Procedural instructions in respect of claims for:

(1) Remission of tax on wine spirits lost on the premises of a bonded wine cellar or in transit thereto,

(2) Allowance of losses of wine in bond, and

(3) Credit or refund of tax paid on unmerchantable domestic wine returned to bond are contained in Part 240 of Title 27 CFR.

(e) *Beer.* Procedural instructions in respect of claims for refund or credit of tax which has been paid (or allowance, credit, or relief of tax liability if the tax has not been paid) on domestic beer returned to a brewery or voluntarily destroyed; or lost, whether by theft or otherwise, or destroyed or otherwise rendered unmerchantable by fire, casualty, or act of God are contained in Part 25 of Title 27 CFR.

(f) *Distilled spirits, wines, or beer for export.* Procedural instructions in respect of claims for:

(1) Drawback of internal revenue tax on distilled spirits, wines, or beer for export, use as supplies on certain vessels or aircraft, or deposit in a foreign-trade zone, or deposit of distilled spirits or wine in a customs bonded warehouse, and

(2) Remission of tax on distilled spirits, specially denatured spirits, wines, or beer, withdrawn without payment or free of tax and lost during transportation to the port of export, customs bonded warehouse (distilled spirits and wine only), manufacturing bonded warehouse, vessel or aircraft, or foreign-trade zone, as applicable, are contained in Part 252 of Title 27 CFR. Procedural instructions as to claims respecting export with benefit of drawback of tax on domestic distilled spirits products containing spirits from Puerto Rico or the Virgin Islands are contained in Parts 19 and 252 of Title 27 CFR.

(g) *Miscellaneous.* Procedural instructions are contained in Part 170 of Title 27 CFR in respect of claims for—

(1) Refund or credit of tax on distilled spirits, wines, or beer where such refund or credit is claimed on the grounds that tax was assessed or collected erroneously, illegally, without authority, or in any manner wrongfully, or on the grounds that such amount was excessive, and where such refund or credit is subject to the limitations imposed by section 6423 of the Internal Revenue Code.

(2) Payment of an amount equal to the internal revenue tax paid or determined and customs duties paid on distilled spirits, wines, rectified products, and beer previously withdrawn, which were lost, rendered unmarketable, or condemned by a duly authorized official by reason of a major disaster occurring in the United States after June 30, 1959.

(h) *Special taxes.* Procedural instructions in respect of claims for abatement of assessments or refund of overpayments of liquor dealers occupational taxes and penalties are contained in Part 194 of Title 27 CFR. When claim is filed for refund of an occupational tax for which a stamp was issued, the stamp (or a Certificate in Lieu of Lost or Destroyed Special Tax Stamp, accompanied by affidavits attesting to loss or destruction of the stamp) must be surrendered with the claim. Such claims must be submitted within 3 years from the date of payment of the tax.

(i) *Low wines at vinegar plants.* Procedural instructions in respect of claims for remission of tax on low wines (distilled spirits) lost at vinegar plants producing vinegar by the vaporizing process are contained in Part 19 of Title 27 CFR.

(j) *Distilled spirits used in nonbeverage products.* Procedural instructions in respect of claims:

(1) For drawback of tax on distilled spirits used in the manufacture of medicines, medicinal preparations, food products, flavors, or flavoring extracts which are unfit for beverage purposes, and

(2) For refund or adjustment of special (occupational) tax, are contained in Part 197 of Title 27 CFR.

(k) *Reopening claims.* A claimant who wishes to have a rejected claim reopened must, within the applicable statutory period of limitations, submit a written application to the regional director (compliance) for reconsideration of the claim. Such application must show that the additional evidence to be presented is new and material, and that such evidence was unknown to the claimant, or unobtainable by the claimant, when the claim was previously under consideration.

(l) *Claimant's rights under law and regulations.* Before final action has been taken on a claim, a claimant who, by reason of an oversight, misunderstanding of law and regulations, miscalculation, or other cause, did not claim the full amount of abatement, refund, credit, or drawback, as the case may be, of tax to which the claimant is legitimately entitled, may amend a valid claim, and statements filed in support thereof, in instances where such a claim is deficient in establishing the claimants eligibility to the rights extended to such claimant under law and regulations.

§ 70.115 Offers in compromise.

Procedure in the case of offers in compromise of liabilities under chapter 51 of the Internal Revenue Code and of penalties for violation of the Federal Alcohol Administration Act, is set forth in § 70.151.

§ 70.116 Application for approval of interlocking directors and officers under section 8 of the Federal Alcohol Administration Act.

Any person who is an officer or director of a corporation now engaged in business as a distiller, rectifier, or blender of distilled spirits, or of an affiliate thereof, who desires to take office in other companies similarly engaged, must obtain permission to do so from the Director. Applications for such permission to take office shall be prepared and filed in accordance with instructions available from the regional director (compliance) or from the Director, Bureau of Alcohol, Tobacco and Firearms, Washington, DC 20226.

§ 70.117 Rulings.

The procedure for rulings in alcohol tax matters is set forth in § 70.152.

§ 70.118 Conferences.

Any person desiring a conference in the office of the regional director (compliance) of the region in which such person is located or of the Director, in Washington, relative to any matter arising in connection with such person's operations, will be accorded such a conference upon request. No formal requirements are prescribed for such conference.

§ 70.119 Representatives.

Subpart E of Part 601, 26 CFR, conference and practice requirements, is applicable to all representatives of the taxpayer, in the office of the Director, or in the office of the regional director (compliance).

§ 70.120 Forms.

For forms to be used, see § 70.111(c).

Provisions Relating to Tobacco Products, and Cigarette Papers and Tubes

§ 70.131 Imposition of taxes; regulations.

(a) *Taxes.* Subchapter A of chapter 52 of the Internal Revenue Code of 1954, as amended, imposes taxes on tobacco products, and cigarette papers and tubes manufactured in or imported into the United States. Subchapter D of chapter 78 of the Internal Revenue Code imposes a tax (equal to the internal revenue tax imposed in the United States upon the like articles of merchandise of domestic manufacture) on tobacco products, and cigarette papers and tubes of Puerto Rican and Virgin Islands manufacture brought into the United States and withdrawn for consumption or sale.

(b) *Regulations.* The procedural requirements with respect to matters relating to tobacco products, and cigarette papers and tubes are contained in the regulations listed below:

(1) Part 200 of Title 27 CFR relates to the procedure and practice in connection with the disapproval of applications for permits, and the suspension and revocation of permits, under chapter 52 of the Internal Revenue Code.

(2) Part 270 of Title 27 CFR relates to the manufacture of tobacco products, the payment by manufacturers of tobacco products of internal revenue taxes imposed by chapter 52 of the Internal Revenue Code, and the qualification of and operations by manufacturers of tobacco products.

(3) Part 275 of Title 27 CFR relates to tobacco products, and cigarette papers and tubes imported into the United States from a foreign country or brought into the United States from Puerto Rico, the Virgin Islands, or a possession of the United States; the removal of cigars from a customs bonded manufacturing warehouse, Class 6; and the release of such articles from customs custody, without payment of internal revenue tax or customs duty attributable to the internal revenue tax.

(4) Part 285 of Title 27 CFR relates to the manufacture of cigarette papers and tubes, the payment by manufacturers of cigarette papers and tubes of internal revenue taxes imposed by chapter 52 of the Internal Revenue Code, and the qualification of and operations by manufacturers of such articles.

(5) Part 290 of Title 27 CFR relates to the exportation (including supplies for vessels and aircraft and transfers to a foreign-trade zone) of tobacco products, and cigarette papers and tubes, without payment of tax, or with benefit of drawback of tax, and the qualification of and operations by export warehouse proprietors.

(6) Part 295 of Title 27 CFR relates to the removal of tobacco products, and cigarette papers and tubes, without payment of tax, for use of the United States.

(7) Part 296 of Title 27 CFR relates to the provisions of a miscellaneous nature or not of continuing application. Included are regulations relating to:

(i) Limitations imposed by section 6423 of the Internal Revenue Code on the refund or credit of tax paid or collected on tobacco products, and cigarette papers and tubes;

(ii) Losses of tobacco products, and cigarette papers and tubes caused by disasters occurring in the United States on or after September 3, 1958; and

(iii) Purchase, receipt, possession, offering for sale, or sale or other disposition of tobacco products by dealers in such products.

§ 70.132 Qualification and bonding requirements.

(a) *Manufacturers of tobacco products and proprietors of export warehouses.* Every person, before commencing business as a manufacturer of tobacco products or as a proprietor of an export warehouse, is required to qualify with the Bureau of Alcohol, Tobacco and Firearms by making application for a permit and filing bond and other required documents with, and obtaining a permit from, the regional director (compliance) for the region in which operations are to be conducted.

(b) *Manufacturers of cigarette papers and tubes.* Every person, before commencing business as a manufacturer of cigarette papers and tubes, is required to qualify with the Bureau of Alcohol, Tobacco and Firearms by filing bond and other required documents with the regional director (compliance) for the region in which operations are to be conducted.

(c) *Puerto Rican manufacturers of tobacco products.* Every manufacturer of tobacco products in Puerto Rico who desires to defer payment in Puerto Rico of the internal revenue tax imposed by section 7652(a) of the Internal Revenue Code on tobacco products of Puerto Rican manufacture coming into the United States must file a bond with the regional director (compliance). Such bond is conditioned on the principal's paying, at the time and in the manner prescribed in the regulations, the full amount of tax computed on the tobacco products which are released for shipment to the United States. No bond is required if the tax is prepaid.

(d) *Proprietors of customs warehouses.* Every proprietor of a customs bonded manufacturing warehouse, Class 6, who desires to remove under Part 290 tax-exempt cigars for exportation (including supplies for vessels and aircraft), or for delivery for subsequent exportation, is required to file a bond with the regional director (compliance) for the region in which the customs warehouse is located. However, removal of cigars for sale or consumption in the United States is subject to customs regulations.

(e) *Drawback of tax.* Taxpaid tobacco products, and cigarette papers and tubes may be exported with benefit of drawback of tax. Drawback may be allowed only to the person who paid the tax on such articles and who files claim and otherwise complies with the provisions contained in the applicable regulations referred to in § 70.131. As a condition precedent to the allowance of any drawback claim, the claimant is required to file a bond in an amount not less than the amount of tax covered in the claim.

(f) *General.* Detailed information relating to the qualification and bonding requirements, including the forms to be used and the procedure to be followed, is fully set forth in the regulations referred to in § 70.131.

§ 70.133 Collection of taxes.

(a) *Tobacco products.* Taxes on tobacco products are paid by the manufacturer on the basis of a return. If the manufacturer has filed a proper bond, such manufacturer may defer payment at the time of removal and file semimonthly returns to cover the taxes. If the manufacturer has not filed such a bond or if the manufacturer has defaulted in any way in paying the taxes, the manufacturer is required to file a prepayment return prior to removal of such products, and to continue so doing until the regional director (compliance) finds that the revenue will not be jeopardized by deferred payment. Tax returns, with remittances, are filed by the domestic manufacturer with the appropriate regional director (compliance). Taxes on cigars produced in a customs bonded manufacturing warehouse, Class 6, are paid on the basis of a return to the director of customs in accordance with customs procedures and regulations. Taxes on tobacco products imported or brought into the United States from a foreign country, Puerto Rico, the Virgin Islands, or a possession of the United States are paid by the importer to the director of customs on the basis of a return made on the customs form by which release from customs custody is to be effected. However, taxes on tobacco products manufactured in Puerto Rico and brought into the United

States may be prepaid in Puerto Rico on the basis of a return. If a Puerto Rican manufacturer has filed a proper bond, such manufacturer may defer payment at the time of release for shipment to the United States and file a semimonthly return to cover the taxes. If the manufacturer has not filed such a bond or if such manufacturer has defaulted in any way in payment of taxes, the manufacturer must file a prepayment return prior to removal of such products for shipment to the United States, and continue to do so until the regional director (compliance) finds that the revenue will not be jeopardized by deferred payment. Tax returns in Puerto Rico, with remittances, are filed with the Chief, Puerto Rico Operations, in the Bureau of Alcohol, Tobacco and Firearms.

(b) *Cigarette papers and tubes.* Taxes on cigarette papers and tubes are paid by the manufacturer on the basis of a semimonthly return. Such returns, with remittances, are filed with the regional director (compliance) for the region in which the factory is located. Taxes on cigarette papers and tubes imported or brought into the United States from a foreign country, Puerto Rico, the Virgin Islands, or a possession of the United States are paid to the director of customs before removal on the basis of a return made on the customs form by which release from customs custody is effected. However, taxes on cigarette papers and tubes of Puerto Rican manufacture which are to be shipped to the United States may be prepaid in Puerto Rico on the basis of a return.

(c) *General.* Detailed information about the payment of taxes on tobacco products, and cigarette papers and tubes, including the forms to be used, records to be kept, and reports and inventories to be filed, is contained in the respective regulations referred to in § 70.131.

§ 70.134 Assessments.

When additional or delinquent tax liability on tobacco products, and cigarette papers and tubes is disclosed by an investigation or by an examination of the taxpayer's records, a notice (except where delay may jeopardize collection of the tax, or where the amount is nominal or the result of an evident mathematical error) is forwarded to the taxpayer indicating the basis for, and amount of, the liability and affording the taxpayer an opportunity to show cause, in writing, against assessment.

§ 70.135 Claims.

(a) *General.* Detailed requirements, including the procedure to be followed in the filing of a claim, the form to be used, the supporting documents which must be submitted, the time within which a claim may be filed, and any other limitations or instructions are contained in the applicable regulations referred to in § 70.131.

(b) *Abatement of assessment.* Abatement of the unpaid portion of an assessment of any tax on tobacco products, and cigarette papers and tubes, or any liability in respect thereof, may be allowed to the extent that such assessment is excessive in amount, is assessed after expiration of the applicable period of limitation, or is erroneously or illegally assessed.

(c) *Allowance of tax.* Relief from the payment of tax on tobacco products, and cigarette papers and tubes may be extended to a manufacturer by approval of a claim for allowance where such articles, after removal from the factory upon determination of tax and prior to the time for payment of such tax, are lost (otherwise than by theft) or destroyed by fire, casualty, or act of God, while in the possession or ownership of the manufacturer who removed such articles, or are withdrawn by the manufacturer from the market.

(d) *Remission of tax liability.* Remission of the tax liability on tobacco products, and cigarette papers and tubes may be extended to a manufacturer or export warehouse proprietor liable for the tax, where such articles in bond are lost (otherwise than by theft) or destroyed by fire, casualty, or act of God, while in the possession or ownership of the manufacturer or export warehouse proprietor.

(e) *Refund of tax.* Taxes paid on tobacco products, cigarette papers and tubes lost (otherwise than by theft) or destroyed by fire, casualty, or act of God, while in the possession or ownership of the manufacturer, importer, or export warehouse proprietor, or withdrawn from the market, may be refunded. Refunds may also be made within certain limitations for overpayments of tax on tobacco products, and cigarette papers and tubes.

(f) *Losses caused by disaster.* Payment of an amount equal to the amount of internal revenue taxes paid or determined and customs duties paid on tobacco products, and cigarette papers and tubes removed from the factory or released from customs custody, which are lost, rendered unmarketable, or condemned by a duly authorized official by reason of a "major disaster" as determined by the President of the United States may be made only if, at the time of the disaster, such articles were being held for sale by the claimant. Claims must be filed within 6 months from the date on which the President makes the determination that the disaster has occurred. The determination date is construed to mean the date the Director, Office of Emergency Preparedness, identifies the specific disaster area.

(g) *Drawback of tax.* Drawback may be allowed to the person who paid the tax on tobacco products, and cigarette papers and tubes which are shipped to a foreign country, Puerto Rico, the Virgin Islands, or a possession of the United States.

(h) *Credit of tax.* Taxes paid on tobacco products, and cigarette papers and tubes lost (otherwise than by theft) or destroyed by fire, casualty, or act of God, while in the possession or ownership of the manufacturer, or withdrawn from the market, may be credited upon approval of a claim.

(i) *Reopening claims.* A claimant who wishes to have a rejected claim reopened must, within the applicable statutory period of limitations, submit a written application to the regional director (compliance) for reconsideration of the claim. Such application must show that the additional evidence to be presented is new and material, and that such evidence was unknown to the claimant, or unobtainable by the claimant, when the claim was previously under consideration.

(j) *Claimant's rights under law and regulations.* Before final action has been taken on a claim, a claimant who, by reason of an oversight, misunderstanding of law and regulations, miscalculation, or other cause, did not claim the full amount of abatement, refund, credit, or drawback, as the case may be, of tax to which the claimant is legitimately entitled, may amend a valid claim, and statements filed in support thereof, in instances where such a claim is deficient in establishing the claimants eligibility to rights extended under law and regulations.

§ 70.136 Offers in compromise.

Procedure in the case of offers in compromise of liabilities under chapter 52 of the Internal Revenue Code is set forth in paragraph (a) of § 70.151.

§ 70.137 Rulings.

The procedure for rulings in tobacco tax matters is set forth in § 70.152.

§ 70.138 Forms.

Detailed information as to all forms prescribed for use in connection with tobacco taxes is contained in the

regulations referred to in § 70.131(b). Copies of all necessary forms, and instructions as to their preparation and filing, may be obtained from regional directors (compliance). ATF Publication 1322.1, which contains a listing of alcohol, tobacco, and firearms public-use forms, may be obtained from the ATF Distribution Center, 7943 Angus Court, Springfield, Virginia 22153. Such publication is available, for reference purposes, in Bureau of Alcohol, Tobacco and Firearms reading rooms.

Provisions Relating to Firearms and Explosives

§ 70.141 Applicable laws.

(a) Chapter 53 of the Internal Revenue Code (26 U.S.C. 5801–5872), the provisions of which are derived from the National Firearms Act Amendments of 1968 (82 Stat. 1227), imposes a tax on the making and transfer in the United States of machine guns, destructive devices, and certain other types of firearms, and an occupational tax upon every importer and manufacturer of, and dealer in, such firearms. Section 1(b) (2) of the act of August 9, 1939 (52 Stat. 1291; 49 U.S.C. 781–788), makes provision for the seizure and forfeiture of vessels, vehicles, and aircraft which are used to transport, carry, or possess, or to facilitate the same, any firearms with respect to which there has been committed any violation of the National Firearms Act or any regulations issued pursuant thereto.

(b) Title I, State Firearms Control Assistance (18 U.S.C., Chapter 44), of the Gun Control Act of 1968 (82 Stat. 1213), as amended by Pub. L. 99–308 (100 Stat. 449), Pub. L. 99–360 (100 Stat. 766) and Pub. L. 99–408 (100 Stat. 920), provides for the licensing of manufacturers and importers of firearms and ammunition, collectors of firearms, and dealers in firearms, and establishes controls for firearms and ammunition acquisitions and dispositions.

(c) Title I, State Firearms Control Assistance (18 U.S.C. Chapter 44), of the Gun Control Act of 1968 (82 Stat. 1213) as amended by Pub. L. 99–308 (100 Stat. 449) and Pub. L. 99–360 (100 Stat. 766), provides that no person may ship or transport any firearms or ammunition in interstate or foreign commerce, or receive any firearms or ammunition which has been shipped or transported in interstate or foreign commerce, or possess any firearms or ammunition in or affecting commerce, who (1) has been convicted of a crime punishable by imprisonment for a term exceeding 1 year, (2) is a fugitive from justice, (3) is an unlawful user of or addicted to any controlled substance (as defined in section 102 of the Controlled Substances Act, 21 U.S.C. 802), (4) has been adjudicated as a mental defective or has been committed to a mental institution, (5) is an alien illegally or unlawfully in the United States, (6) has been discharged from the Armed Forces under dishonorable conditions, or (7) having been a citizen of the United States, has renounced citizenship.

(d) Section 38 of the Arms Export Control Act (22 U.S.C. 2778) and regulations thereunder and Part 47 of this chapter are applicable to the registration and licensing of persons engaged in the business of manufacturing, importing or exporting arms, ammunition, or implements of war. The Secretary of the Treasury is authorized to control, in furtherance of world peace and the security and foreign policy of the United States, the import of articles enumerated on the U.S. Munitions Import List.

(e) Title XI, Regulation of Explosives (18 U.S.C. chapter 40) of the Organized Crime Control Act of 1970 (84 Stat. 922) provides for the licensing of manufacturers, importers, and limited manufacturers of, and dealers in, explosives in interstate or foreign commerce, and for issuance of permits for users who buy or transport explosives in interstate or foreign commerce.

§ 70.142 Taxes relating to machine guns, destructive devices, and certain other firearms.

Part 179 of Title 27 CFR contains the regulations relative to the:

(a) Payment of special (occupational) taxes by manufacturers and importers of and dealers in, machine guns, destructive devices, and certain other types of firearms,

(b) Payment of the tax on the making or transfer of such firearms,

(c) Registration, identification, importation, and exportation of such firearms,

(d) Keeping of books and records and rendering of returns, and

(e) The forfeiture and disposition of seized firearms under the provisions of the National Firearms Act.

§ 70.143 Commerce in firearms and ammunition.

Part 178 of Title 27 CFR contains the regulations relative to:

(a) The licensing of importers and manufacturers of firearms and ammunition, collectors of firearms, and dealers in firearms,

(b) The identification of firearms,

(c) The acquisition and disposition of firearms and ammunition,

(d) The records required to be kept by licensees, and

(e) The forfeiture and disposition of seized firearms and ammunition, under the provisions of title I of tne Gun Control Act of 1968, as amended, and also

(f) The restrictions regarding the receipt, possession, or transportation of firearms by certain persons.

§ 70.144 Importation of arms, ammunition, and implements of war.

Part 47 of Title 27 CFR implements Executive Order 11958 and supplements the import provisions contained in Parts 178 and 179 of Title 27 CFR. Part 47 establishes the U.S. Munitions Import List and contains the regulations relative to:

(a) The registration of importers in arms, ammunition, and implements of war,

(b) Import permit requirements,

(c) Import certification and verification,

(d) Import restrictions applicable to certain countries, and

(e) The forfeiture of seized arms, ammunition, and implements of war under the Arms Export Control Act.

§ 70.145 Commerce in explosives.

Part 55 of Title 27 CFR contains the regulations relative to:

(a) Licensing of manufacturers, importers, and limited manufacturers of, and dealers in, explosives,

(b) Permits for users who buy or transport explosives in interstate or foreign commerce,

(c) Construction of different types of storage facilities for three classes of explosive material,

(d) The identification of explosives,

(e) the acquisition and disposition of explosives,

(f) The records required to be kept by licensees and permittees,

(g) The forfeiture and disposition of seized explosive material, under the provision of Title XI of the Organized Crime Control Act of 1970,

(h) Operations by licensees or permittees and hearings procedure after denial or revocation of license or permit, and also

(i) Restrictions regarding the receipt, possession, or transportation of explosives by certain persons under the provisions of Title XI of the Organized Crime Control Act of 1970.

§ 70.146 Rulings.

The procedure for rulings in matters in the firearms and explosives area is set forth in § 70.152.

§ 70.147 Assessments.

Where the evidence disclosed by investigation establishes that additional

or delinquent tax liability has been incurred and not paid, the regional director (compliance) will list the tax as an assessment. Notification and demand for payment of assessed taxes will be issued to the taxpayer by the regional director (compliance).

§ 70.148 Claims.

The procedures applicable to the filing of claims under chapter 53 of the Internal Revenue Code are set forth below:

(a) Claims for refund of the making and transfer taxes, and of occupational taxes, whether paid pursuant to assessment or voluntarily paid, and claims for redemption of "National Firearms Act" stamps, are prepared and filed in accordance with the procedures set forth in Part 179 of Title 27 CFR.

(b) Claims for abatement of making and transfer taxes, and claims for abatement of occupational taxes and penalties erroneously assessed, are prepared and filed in accordance with the procedures set forth in § 70.113(b).

(c) Claims may be reopened or amended in accordance with the provisions of § 70.114 (k) and (l).

§ 70.149 Offers in compromise.

The procedure in the case of offers in compromise of liability under chapter 53 of the Internal Revenue Code is set forth in paragraph (a) of § 70.151.

Seized Property

§ 70.150 Seizure and forfeiture of personal property.

Part 72 of Title 27 CFR contains the regulations relative to the personal property seized by officers of the Bureau of Alcohol, Tobacco and Firearms as subject to forfeiture as being used, or intended to be used, to violate certain Federal laws; the remission or mitigation of such forfeiture; and the administrative sale or other disposition, pursuant to forfeiture, of such seized property other than firearms seized under the National Firearms Act and firearms and ammunition seized under title I of the Gun Control Act of 1968, as amended. For disposal of firearms under the National Firearms Act, see 26 U.S.C. 5872(b). For disposal of firearms and ammunition under title I of the Gun Control Act of 1968, see 18 U.S.C. 924(d). For disposal of explosives under title XI of Organized Crime Control Act of 1970, see 18 U.S.C. 844(c).

Offers in Compromise

§ 70.151 Offers in compromise.

(a) *Liabilities (other than forfeiture) under Internal Revenue Code.* Persons desiring to submit offers in compromise in order to avoid prosecution proceedings, and taxpayers who disclaim liability in whole or in part for taxes or claim inability to pay the taxes in full, may submit offers in compromise to the regional director (compliance). If the offer in compromise is based on inability to pay, the proponent should include in the financial statement on Form 433 (see 26 CFR 601.203(b)) appropriate amounts to reflect an interest, if any, in jointly owned property, the loan value of life insurance, and future income from trusts and similar sources. Each regional director (compliance) has the authority to accept or reject offers in compromise of:

(1) Tax liabilities arising from:

(i) The illegal production of untaxpaid distilled spirits, wines, or beer,

(ii) The failure to file returns of, or to pay, occupational taxes with respect to distilled spirits, wines, beer, or firearms, and

(iii) The failure to pay firearms making or transfer taxes; and

(2) Criminal liabilities of retail dealers in liquor arising from violations of the internal revenue laws relating to liquor, including the reuse or refilling of liquor bottles. The Associate Director (Compliance Operations), has the authority to accept or reject offers in compromise of civil liability (of less than $100,000) and criminal liability arising under chapters 51, 52, and 53 of the Internal Revenue Code in cases not subject to compromise by regional directors (compliance). The Director accepts or rejects all other offers in compromise except those in compromise of liabilities listed in paragraphs (b) and (c) of this section. In civil cases involving liability of $500 or over and in criminal cases the functions of the General Counsel under section 7122(b) of the Internal Revenue Code are performed by the Chief Counsel of the Bureau of Alcohol, Tobacco and Firearms. Form 5640.1 is used in all cases arising under this paragraph, regardless of whether the amount of the offer is tendered in full at the time the offer is filed or the amount of the offer is to be paid by deferred payment or payments. When final action has been taken, the regional director (compliance), when applicable, and the proponent are notified of the acceptance or rejection of the offer. If the offer is rejected, the sum submitted with the offer is returned to the proponent, and prosecution or collection proceedings are resumed. If the offer is accepted, the proponent is notified and the case is closed. Acceptance of an offer in compromise of civil liabilities does not remit criminal liabilities, nor does acceptance of an offer in compromise of criminal liabilities remit civil liabilities.

(b) *Violations of Federal Alcohol Administration Act.* The Federal Alcohol Administration Act provides penalties for violations of its provisions. The Associate Director (Compliance Operations), Bureau of Alcohol, Tobacco and Firearms is authorized to compromise such liabilities. Persons desiring to submit offers in compromise may submit such offers on Form 5640.2 to the regional director (compliance) or an ATF officer. Such offers are considered by the regional director (compliance) and are forwarded to the Associate Director (Compliance Operations) for final action. When the offer is acted upon, the proponent and the regional director (compliance) are notified of the acceptance or rejection of the offer. If the offer is rejected, the sum submitted with the offer in compromise is returned to the proponent. If the offer is accepted, the proponent is notified and the case is closed.

(c) *Forfeiture liabilities.* The Director or his delegate is authorized to compromise liabilities to administrative forfeiture of personal property seized under the laws administered and enforced by the Bureau of Alcohol, Tobacco and Firearms. Persons desiring to submit offers in compromise of such liabilities may submit such offers on Form 656–E to the Director or his delegate. When the offer is acted upon, the proponent is notified of the acceptance or rejection of the offer. If the offer is rejected, the sum submitted with the offer in compromise is returned to the proponent. If the offer is accepted, the proponent is notified and the case is closed. Acceptance of an offer in compromise of civil liabilities does not remit criminal liabilities, nor does acceptance of an offer in compromise of criminal liabilities remit civil liabilities.

Rulings

§ 70.152 Rulings.

(a) *Requests for rulings.* Any person who is in doubt as to any matter arising in connection with:

(1) Operations or transactions in the alcohol tax area or under the Federal Alcohol Administration Act,

(2) Operations or transactions in the tobacco tax area, or

(3) The taxes relating to machine guns, destructive devices, and certain other firearms imposed by chapter 53 of the Internal Revenue Code; the registration by importers and manufacturers of, and dealers in, such firearms; the registration of such firearms; the licensing of importers and

manufacturers of, and dealers in, firearms and ammunition, and collectors of firearms and ammunition curios and relics under chapter 44 of title 18 of the United States Code; the licensing of manufacturers, importers, limited manufacturers of, and dealers in, explosives and issuance of permits for users of explosives under chapter 40 of title 18 of the United States Code; and registration of Importers of, and permits to import, arms, ammunition, and implements of war, under section 38 of the Arms Export Control Act of 1976, may request a ruling thereon by addressing a letter to the Director, Bureau of Alcohol, Tobacco and Firearms, Washington, DC 20226, or to the regional director (compliance), of the ATF region in which the inquirer's business is located. Since a ruling can issue only from the Bureau Headquarters, any such request made to the regional director (compliance) will be referred to the Director for reply unless the issues involved are clearly covered by currently effective rulings or come within the plain intent of the statutes or regulations. If a request for a ruling is signed by a representative, or if the representative is to appear before the Bureau of Alcohol, Tobacco and Firearms, such representative must present a tax information authorization or a power of attorney, signed by the taxpayer, authorizing the representative to receive or inspect confidential information in the matter. (See Subpart E, 26 CFR Part 601.) All rulings will be published in the Alcohol, Tobacco and Firearms Quarterly Bulletin as provided in 26 CFR 601.601.

(b) *Routine requests for information.* Routine requests for information should be addressed to the regional director (compliance) of the region in which the inquirer is located.

PART 170—MISCELLANEOUS REGULATIONS RELATING TO LIQUORS

Para. 27. The authority citation for Part 170 continues to read as follows:

Authority: 26 U.S.C. 5001, 5002, 5064, 5111, 5121, 5171, 5205, 5291, 5301, 5362, 7805; 31 U.S.C. 9304, 9306.

§ 170.77 [Amended]

Para. 28. Section 170.77(a) is amended by replacing in the second sentence the phrase "IRS Form 843" with the phrase "Form 2635 (5620.8)."

§ 170.91 [Amended]

Para. 29. Section 170.91 is amended by replacing in the first sentence the phrase "IRS Form 843" with the phrase "Form 2635 (5620.8)."

§ 170.305 [Amended]

Para. 30. Section 170.305(a) is amended by replacing the phrase "IRS Form 843" with the phrase "Form 2635 (5620.8)."

§ 170.305a [Amended]

Para. 31. Section 170.305a is amended by replacing in paragraphs (a)(1), (b)(1) and (c)(1) the phrase "IRS Form 843" with the phrase "Form 2635 (5620.8)."

§ 170.306 [Amended]

Para. 32. Section 170.306(b) is amended by replacing the phrase "IRS Form 843" with the phrase "Form 2635 (5620.8)."

PART 179—[AMENDED]

Para. 33. The authority citation for Part 179 continues to read as follows:

Authority: 26 U.S.C. 5801, 5802, 5811, 5812, 5821, 5822, 5841–5849, 5851–5854, 5861, 5871, 5872.

§§ 179.35, 179.36, 179.42, 179.46 and 179.47 [Amended]

Para. 34. Sections 179.35, 179.36, 179.42, 179.46, and 179.47 are amended by replacing the phrases "Form 11" and "IRS Form 11" wherever they appear in the sections with the phrase "Form 5630.5."

§ 179.34 [Amended]

Para. 35. Section 179.34 is amended by removing "(a) *General.*" from the beginning of the paragraph, by replacing in the second sentence of the paragraph the phrase "with the director of the service center serving the internal revenue district in which the taxpayer's principal place of business is located" with the phrase "with ATF in accordance with the instructions on the form", by removing paragraph (b), and by replacing the phrase "IRS Form 11" or "Form 11" wherever it appears with the phrase "Form 5630.5".

§ 179.37 [Amended]

Para. 36. Section 179.37 is amended by replacing in the first and second sentence of the paragraph the phrase "Director of the Service Center" with the phrase "regional director (compliance)."

§ 179.38 [Amended]

Para. 37. Section 179.38 is amended by replacing in the last sentence of the paragraph the phrase "Director of the Service Center serving the internal revenue district" with the phrase "regional director (compliance) for the region."

§ 179.42 [Amended]

Para. 38. Section 179.42 is amended by replacing in the second sentence of the paragraph the phrase "the director of the service center serving the internal revenue district in which the business is located" with the phrase "ATF in accordance with the instructions on the form", and by removing the third sentence of the paragraph.

§ 179.43 [Amended]

Para. 39. Section 179.43 is amended by replacing in the last sentence of the paragraph the phrase "the Director of the Service Center serving the internal revenue district in which the business is located" with the word "ATF."

§ 179.46 [Amended]

Para. 40. Section 179.46 is amended by replacing in the first sentence of the paragraph the phrase "the Director of the Service Center serving the internal revenue district in which the special tax stamp was issued" with the word "ATF", and in the second sentence of the paragraph the phrase "Director of the Service Center" with the phrase "regional director (compliance)."

§ 179.47 [Amended]

Para. 41. Section 179.47 is amended by replacing in the first sentence of the paragraph the phrase "the Director of the Service Center serving the internal revenue district in which the special tax stamp was issued" with the word "ATF", and in the second sentence of the paragraph the phrase "Director of the Service Center" with the phrase "regional director (compliance)."

§ 179.50 [Amended]

Para. 42. Section 179.50 is amended by replacing in the first sentence of the paragraph the phrase "District Director or the Director of the Service Center, whichever is designated to receive the return (Form 11)," with the phrase "regional director (compliance)", and by replacing the phrase "Form 11" wherever it appears with the phrase "Form 5630.5."

§ 179.171 [Amended]

Para. 43. Section 179.171 is amended by replacing in the paragraph the phrase "Form 843" with the phrase "ATF Form 2635 (5620.8)."

§ 179.172 [Amended]

Para. 44. Section 179.172 is amended by replacing in the paragraph the phrase "Form 843" with the phrase "ATF Form 2635 (5620.8)" and in the fourth sentence of the paragraph the phrase "Director of the Service Center serving the internal revenue district in which the tax was paid" with the phrase "regional director (compliance)."

PART 194—[AMENDED]

Para. 45. The authority citation for Part 194 continues to read as follows:

Authority: 26 U.S.C. 5001, 5002, 5111–5117, 5121–5124, 5142, 5143, 5145, 5146, 5205–5207, 5301, 5352, 5555, 5613, 5681, 5691, 6001, 6011, 6051, 6061, 6065, 6071, 6091, 6109, 6311, 6314, 6402, 6511, 6601, 6657, 6676, 7011, 7805.

Para. 46. The table of contents to 27 CFR Part 194 is amended by removing 194.106d. In addition, the undesignated center heading preceeding § 194.106 and the heading to section 194.107 are amended by replacing the phrase "Form 11" with the phrase "Form 5630.5."

§§ 194.104, 194.106a, 194.106b, 194.107, 194.109, 194.121, 194.121a, 194.135, and 194.106 [Amended]

Para. 47. Sections 194.104, 194.106a, 194.106b, 194.107, 194.109, 194.121, 194.121a, 194.135, and the heading in Subpart H before section 194.106 are amended by replacing the phrases "Form 11" and "IRS Form 11" wherever they appear in the sections or headings with the phrase "Form 5630.5."

Para. 48. Section 194.27 is amended by replacing the phrase "Form 11" wherever it appears with the phrase "Form 5630.5" and by revising the last two sentences of the paragraph to read as follows:

§ 194.27 Limited retail dealer; persons eligible.

* * * Application on Form 5630.5 and payment of special tax at the rate specified in § 194.101 shall be submitted to ATF in accordance with the instructions on the form before any sales are made. If requested on Form 5630.5, ATF may issue the special tax stamp under the designation of (a) limited retail dealer in distilled spirits, if distilled spirits only are to be sold, (b) limited retail dealer in wine, if wine only is to be sold, or (c) limited retail dealer in beer, if beer only is to be sold.

§ 194.94 [Amended]

Para. 49. Section 194.94 is amended by replacing in the first sentence of the paragraph the phrase "the director of the service center who issued the stamp" with the word "ATF."

Para. 50. Section 194.104a is revised to read as follows:

§ 194.104a Place for filing return.

Form 5630.5 with remittance of tax shall be filed with ATF in accordance with the instructions on the form.

§ 194.105 [Amended]

Para. 51. Section 194.105 is amended by replacing in the first sentence of the paragraph the phrase "Internal Revenue Service" with the phrase "Bureau of Alcohol, Tobacco and Firearms."

§ 194.106 [Amended]

Para. 52. Section 194.106 is amended by removing from the first sentence of the paragraph the phrase "from the director of the service center, from any internal revenue district director, or" and by replacing the phrase "IRS Form 11" and "Form 11" wherever it appears with the phrase "Form 5630.5."

§ 194.106a [Amended]

Para. 53. Section 194.106a is amended by replacing the citation "§ 301.7701–12 of this chapter" with the citation "26 CFR 301.7701–12", and by replacing the citation "§ 301.6676–1 of this chapter" with the citation "§ 70.105."

§ 194.106d [Removed]

Para. 54. Section 194.106d is removed from the part.

Para. 55. Section 194.111 is amended by removing the third sentence of the paragraph and revising the fourth sentence to read as follows:

§ 194.111 Waiver of penalties.

* * * If the regional director (compliance) determines that the delinquency was due to a reasonable cause and not to willful neglect or gross negligence, the addition to the tax will not be assessed. * * *

§ 194.121a [Amended]

Para. 56. Section 194.121a is amended by replacing in the second sentence of the paragraph the phrase "director of the service center" with the phrase "regional director (compliance)" and by replacing in the last sentence of the paragraph the phrase "the director of the service center" with the word "ATF."

§ 194.123 [Amended]

Para. 57. Section 194.123 is amended by replacing in the first sentence of the paragraph the phrase "Directors of service centers" with the phrase "Regional directors (compliance)."

§ 194.124 [Amended]

Para. 58. Section 194.124 is amended by replacing in the third sentence of the paragraph the phrase "the Internal Revenue Service" with the word "ATF" and by replacing the phrase "Form 11" wherever it appears with the phrase "Form 5630.5."

§ 194.126 [Amended]

Para. 59. Section 194.126 is amended by replacing in the paragraph the phrase "the Internal Revenue Service" with the word "ATF" and by replacing the phrase "Form 11" wherever it appears with the phrase "Form 5630.5."

§ 194.127 [Amended]

Para. 60. Section 194.127 is amended by replacing in the last sentence of the paragraph the phrase "director of the service center" with the phrase "regional director (compliance)."

§ 194.132 [Amended]

Para. 61. Section 194.132 is amended by replacing in the first and second sentence of the paragraph the phrase "director of the service center" with the phrase "regional director (compliance)."

§ 194.133 [Amended]

Para. 62. Section 194.133 is amended by replacing in the first sentence of the paragraph the phrase "director of the service center" with the phrase "regional director (compliance)."

§ 194.134 [Amended]

Para. 63. Section 194.134 is amended by replacing in each sentence of the paragraph the phrase "director of the service center" with the phrase "regional director (compliance)" and by replacing the phrase "Form 11" wherever it appears with the phrase "Form 5630.5."

§ 194.136 [Amended]

Para. 64. Section 194.136 is amended by replacing in the first sentence of the paragraph the phrase "the district director or director of the service center with whom the original Form 11 was filed" with the phrase "ATF in accordance with the instructions on the Form 5630.5" and by replacing the phrase "Form 11" wherever it appears with the phrase "Form 5630.5."

§ 194.137 [Amended]

Para. 65. Section 194.137 is amended by replacing in the last sentence of the paragraph the phrase "director of the service center" with the phrase "regional director (compliance)" and by replacing the phrase "Form 11" wherever it appears with the phrase "Form 5630.5."

§ 194.139 [Amended]

Para. 66. Section 194.139 is amended by replacing in the first and second sentence of the paragraph the phrase "director of the service center" with the phrase "regional director (compliance)", by replacing in the second sentence of the paragraph the phrase "Form 843" with the phrase "ATF Form 2635 (5620.8)" and by replacing the phrase "Form 11" wherever it appears with the phrase "Form 5630.5."

Para. 67. Section 194.151 is amended by revising the section heading, by revising paragraph (a), by replacing in two places in paragraph (b) the phrase "director of the service center" with the phrase "regional director (compliance)," by replacing in five places in paragraph (b) the phrase "Form 4440" with the phrase "Form 5100.29", and by replacing the phrase "Form 11" wherever it appears with the phrase "Form 5630.5." As revised, § 194.151 heading and paragraph (a) reads as follows:

§ 194.151 Amended return, Form 5630.5; endorsement on stamp.

(a) *General.* A dealer who, during the taxable period for which special tax was paid, removes the business to a place other than that specified on the original special tax return on Form 5630.5, and stated on the special tax stamp, shall, within 30 days from the date the dealer begins to carry on such business at the new location, register the change with ATF by filing a new return on Form 5630.5, designated "Amended Return", setting forth the time when and the place to which such removal was made, and shall surrender the special tax stamp with the Form 5630.5 for endorsement of the change in location: *Provided,* That a dealer who filed an original return, Form 5630.5, under the provisions of § 194.106(b) may deliver the amended return and the stamp at any ATF office, or to any ATF officer inspecting the business, in lieu of mailing them to ATF: *Provided further,* That a dealer who filed an original return under the provisions of § 194.106(c) shall forward with the amended return an attachment showing both the old and new address of any place of business which has been relocated, and the special tax stamp covering the location from which the business was removed. The regional director (compliance) or the ATF officer receiving such return or stamp shall, if the return is submitted within the 30-day period, enter the proper endorsement on the stamp and return it to the taxpayer.

§ 194.152 [Amended]

Para. 68. Section 194.152 is amended by replacing in the first sentence of the paragraph the phrase "the director of the service center who issued the stamp" with the word "ATF."

Para. 69. Section 194.169 is amended by revising the concluding paragraph of the section as follows:

§ 194.169 Change of control, persons having right of succession.

* * * * *

In order to secure such right, the person or persons continuing the business shall file with ATF, within 30 days from the date on which the successor begins to carry on the business, an amended special tax return on Form 5630.5, showing the basis of the succession, and shall surrender the unexpired special tax stamp or stamps for endorsement of the change in control: *Provided,* That, if the original return, Form 5630.5, was filed under the provisions of § 194.106(b), the person succeeding to the business may deliver the amended return and stamp to any ATF office, or to any ATF officer inspecting the business, in lieu of mailing them to ATF. If the applicant has the right of succession and the return and stamp are submitted on time, the regional director (compliance) or other ATF officer receiving them will enter the proper endorsement on the stamp and return it to the successor.

Para. 70. Section 194.201 is revised as follows:

§ 194.201 Claims.

Claims for abatement of assessment of special tax (including penalties and interest), or for refund of an overpayment of special tax (including interest and penalties), shall be filed on Form 2635 (5620.8). Claims shall be filed with the regional director (compliance) serving the region in which the special tax was paid or assessed. Each claim shall set forth in detail each ground on which it is made and shall contain facts sufficient to apprise the Bureau of Alcohol, Tobacco and Firearms of the exact basis thereof. If the claim is for refund of special tax for which a stamp was issued, such stamp shall be attached to and made a part of the claim, or the claimant shall include in the claim evidence satisfactory to the Bureau of Alcohol, Tobacco and Firearms that the stamp cannot be submitted.

PART 197—[AMENDED]

Para. 71. The authority citation for Part 197 continues to read as follows:

Authority: 5 U.S.C. 552; 26 U.S.C. 5131–5134, 5143, 5146, 5206, 5273, 6065, 6091, 6109, 6402, 6511, 6676, 7213, 7805; 31 U.S.C. 9301, 9303, 9304, 9306.

Para. 72. The table of contents to 27 CFR Part 197 is amended by removing § 197.29d.

§§ 197.29a, 197.29b, 197.30, 197.31, 197.40, and 197.40a [Amended]

Para. 73. Sections 197.29a, 197.29b, 197.30, 197.31, 197.40, 197.40a, and the undesignated center heading preceding section 197.29 are amended by replacing the phrases "Form 11" and "IRS Form 11" wherever they appear in the sections and in the heading with the phrase "Form 5630.5."

§ 197.28 [Amended]

Para. 74. Section 197.28 is amended by replacing in paragraph (a) the phrase "the director of the service center serving the internal revenue district in which the place of manufacture is located" with the phrase "ATF in accordance with the instructions on the form," and in paragraph (b) by replacing the phrase "the director of the service center serving the internal revenue district in which the taxpayer's principal place of business (or principal office in the case of a corporate taxpayer) is located" with the phrase "ATF in accordance with the instructions on the form", and by replacing the phrases "Form 11" and "IRS Form 11" wherever they appear with the phrase "Form 5630.5."

§ 197.29 [Amended]

Para. 75. Section 197.29 is amended by replacing in the introductory text the phrase "director of the service center or from any district director" with the phrase "regional director (compliance)" and by replacing the phrase "Form 11" wherever it appears with the phrase "Form 5630.5."

§ 197.29a [Amended]

Para. 76. Section 197.29a is amended by replacing in the first sentence of the paragraph the citation "§ 301.7701–12 of this chapter" with the citation "26 CFR 301.7701–12", and by replacing in the second sentence of the paragraph the citation "§ 301.6676–1 of this chapter" with the citation "§ 70.105."

§ 197.29d [Amended]

Para. 77. Section 197.29d is removed from the part.

§ 197.41 [Amended]

Para. 78. Section 197.41 is amended by replacing in the first sentence of the paragraph the phrase "director of the service center" with the phrase "regional director (compliance)."

§ 197.42 [Amended]

Para. 79. Section 197.42 is amended by replacing in four places in the paragraph the phrase "director of the service center" with the phrase "regional director (compliance)" and by replacing the phrase "Form 11" wherever it appears with the phrase "Form 5630.5."

§ 197.43 [Amended]

Para. 80. Section 197.43 is amended by replacing in two places in the paragraph the phrase "the director of the service center who issued the stamp" with the

word "ATF" and by replacing the phrase "Form 11" wherever it appears with the phrase "Form 5630.5."

§ 197.46 [Amended]

Para. 81. Section 197.46 is amended by replacing the phrase "the director of the service center" with the word "ATF."

§ 197.48 [Amended]

Para. 82. Section 197.48 is amended by replacing in the second sentence of the paragraph the phrase "the director of the service center who issued the stamp" with the word "ATF" and by replacing the phrase "Form 11" with the phrase "Form 5630.5."

§ 197.50 [Amended]

Para. 83. Section 197.50 is amended by replacing the phrase "the director of the service center" with the word "ATF."

Para. 84. Section 197.55 is revised to read as follows:

§ 197.55 Change to higher rate.

A manufacturer of nonbeverage products who pays a special tax of $25 per annum and has filed or intends to file a claim or claims for drawback covering distilled spirits in excess of 25 proof gallons used during the tax year for which the special tax was paid shall pay special tax of $50 or $100, as the case may be, and obtain a stamp therefor. On payment of the special tax at the higher rate, the manufacturer may surrender the special tax stamp showing payment of $25, with a claim on Form 2635 (5620.8) for refund. Claims shall be filed with the regional director (compliance) serving the region in which the special tax was paid. Similar procedure will govern in the case of a manufacturer of nonbeverage products who pays special tax of $50 and has filed or intends to file claim for drawback covering distilled spirits used in excess of 50 proof gallons.

§ 197.56 [Amended]

Para. 85. Section 197.56 is amended by replacing in the first sentence of the paragraph the phrase "Form 843" with the phrase "Form 2635 (5620.8)."

Para. 86. Section 197.58 is revised to read as follows:

§ 197.58 Filing of claims.

Claim for refund of special tax shall be filed on ATF Form 2635 (5620.8). Claims shall be filed with the regional director (compliance) serving the region in which the special tax was paid. The claim shall set forth in detail and state each ground upon which it is made, and facts sufficient to apprise the regional director (compliance) of the exact basis thereof. The special tax stamp shall be attached to the claim.

§ 197.106 [Amended]

Para. 87. Section 197.106 is amended by replacing in the first sentence of the paragraph the phrase "Form 843 (original only)" with the phrase "Form 2635 (5620.8)."

Para. 88. Section 197.111 is revised to read as follows:

§ 197.111 Identification of special tax stamp.

If special tax has been paid, the claim shall be accompanied by a statement identifying the special tax stamp by serial number, denomination, and fiscal year for which issued.

PART 240—[AMENDED]

Para. 89. The authority citation for Part 240 continues to read as follows:

Authority: 5 U.S.C. 552(a); 26 U.S.C. 5001, 5008, 5041, 5042, 5044, 5061, 5062, 5111–5113, 5121, 5122, 5142, 5143, 5173, 5206, 5214, 5215, 5351, 5353, 5354, 5356–5357, 5361, 5362, 5364–5373, 5381–5388, 5391, 5392, 5551, 5552, 5661, 5662, 5684, 6065, 6091, 6109, 6301, 6302, 6311, 6651, 6676, 7011, 7302, 7342, 7502, 7503, 7606, 7805, 7851; 31 U.S.C. 9301, 9303, 9304, 9306.

Para. 90. The table of contents to 27 CFR Part 240 is amended by removing § 240.345.

§ 240.340 [Amended]

Para. 91. Section 240.340 is amended by replacing the phrase "Form 11" in the section with the phrase "Form 5630.5."

Para. 92. Section 240.343 is revised to read as follows:

§ 240.343 Annual special tax.

The special tax year commences on July 1 and ends on June 30 of the next year. All persons liable for special tax shall file Form 5630.5 in accordance with the instructions on the form and pay the special tax on or before July 1 of each tax year. If the Form 5630.5, with remittance, is not actually delivered on or before July 1, the date of the postmark stamped on the cover in which such return is mailed, if made by a United States post office, shall be deemed to be the date of filing.

Para. 93. Section 240.344 is revised to read as follows:

§ 240.344 Business commenced after July.

Where business is commenced after July, the tax will be prorated from the first day of the month in which the business was commenced to June 30 following. In such case, if the Form 5630.5, with remittance, is not actually delivered on or before the day on which the business was commenced, the date of the postmark stamped on the cover in which such return is mailed, if made by the United States Postal Service, shall be deemed to be the date of filing.

§ 240.345 [Removed]

Para. 94. Section 240.345 is removed from the part.

§ 240.591 [Amended]

Para. 95. Section 240.591 is amended by replacing in paragraph (a) the citation "26 CFR 301.6311–1" with the citation "§ 70.66."

§ 240.591a [Amended]

Para. 96. Section 240.591a(c)(1) is amended by replacing in the sentence the phrase "the director of the service center, district director, or regional director (compliance)" with the word "ATF."

§ 240.594 [Amended]

Para. 97. Section 240.594 is amended by replacing in the second sentence of paragraph (a) the phrase "filed by forwarding or delivering it to the district director or the director of the service center" with the phrase "mailed to ATF" and by replacing in paragraph (b) the phrase "the district director, the director of the service center, or the regional director (compliance)" with the word "ATF."

Para. 98. Section 240.594c is amended by revising the second sentence of the paragraph to read as follows:

§ 240.594c Execution of Form SS–4. * * * * * * The application shall be filed with the director of the service center as instructed on the Form SS–4.

§ 240.595 [Amended]

Para. 99. Section 240.595 is amended by replacing in the paragraph the citation "26 CFR 301.6311–1" with the citation "§ 70.66."

§ 240.596 [Amended]

Para. 100. Section 240.596 is amended by replacing in the first sentence of paragraph (a) the phrase "with remittance to the office of the district director or without remittance to the director of the service center" with the phrase "with or without remittance to ATF."

§ 240.807 [Amended]

Para. 101. Section 240.807 is amended by replacing in the third sentence of the paragraph the phrase "Form 843 (original only)" with the phrase "Form 2635."

PART 250—[AMENDED]

Para. 102. The authority citation for Part 250 continues to read as follows:

Authority: 5 U.S.C. 552(a); 26 U.S.C. 5001, 5007, 5008, 5041, 5051, 5061, 5111, 5112, 5114, 5121, 5122, 5124, 5146, 5205, 5207, 5232, 5301,

5314, 5555, 6301, 6302, 6804, 7101, 7102, 7651, 7652, 7805; 31 U.S.C. 9301, 9303, 9304, 9306.

Para. 103. The table of contents to 27 CFR Part 250 is amended by revising the title to section 250.37 to read as follows:

PART 250—LIQUORS AND ARTICLES FROM PUERTO RICO AND THE VIRGIN ISLANDS

Subpart A—Introduction

Sec.

* * * * *

250.37 *United States Bureau of Alcohol, Tobacco and Firearms office.*

* * * * *

Para. 104. Section 250.11 is amended by removing from the definitions *Officer-in-Charge* and *United States Internal Revenue Service Office* and adding a definition *United States Bureau of Alcohol, Tobacco and Firearms office* to read as follows:

§ 250.11 Meaning of terms.

* * * * *

United States Bureau of Alcohol, Tobacco and Firearms office. The Bureau of Alcohol, Tobacco and Firearms office in Puerto Rico operating under the direction of the Regional Director (Compliance), North Atlantic Region, New York, NY 10048.

* * * * *

Para. 105. Section 250.37 is revised to read as follows:

§ 250.37 United States Bureau of Alcohol, Tobacco and Firearms office.

The United States Bureau of Alcohol, Tobacco and Firearms office is authorized to collect internal revenue taxes on liquors and articles subject to tax, which are to be shipped to the United States. Whenever the internal revenue tax is paid in Puerto Rico, other than by tourists in accordance with Subpart F of this part, the tax shall be paid to the United States Bureau of Alcohol, Tobacco and Firearms office as defined in this part and as provided in Subpart E of this part.

§ 250.44 [Amended]

Para. 106. Section 250.44 is amended by replacing in the paragraph the phrase "the director of the service center serving the internal revenue district in which the business is located" with the phrase "ATF in accordance with the instructions on the form" and the phrase "IRS Form 11" with the phrase "Form 5630.5."

§ 250.52 [Amended]

Para. 107. Section 250.52(c) is amended by replacing the term "quintuplicate" with the term "quadruplicate" and by removing the phrase "forward one copy to the Officer-in-Charge,."

§ 250.54 [Amended]

Para. 108. Section 250.54 is amended by replacing in the first sentence of the paragraph the term "quintuplicate" with the term "quadruplicate" and by removing in the second sentence the phrase "one copy to the Officer-in-Charge,."

Para. 109. Section 250.61 is revised to read as follows:

§ 250.61 General.

Every person filing a bond under this subpart, or consent of surety on such bond, shall file it with the regional director (compliance). Any bond or consent of surety approved prior to July 1, 1987, by the Officer-in-Charge, United States Internal Revenue Service shall continue to be valid until terminated as provided in this subpart.

§ 250.62a [Amended]

Para. 110. Section 250.62a is amended by replacing the phrase "Officer-in-Charge" with the phrase "regional director (compliance)."

§ 250.65 [Amended]

Para. 111. Section 250.65 is amended by replacing the phrase "Officer-in-Charge" with the phrase "regional director (compliance)."

§ 250.70 [Amended]

Para. 112. Section 250.70 is amended by replacing the phrase "Officer-in-Charge" with the phrase "regional director (compliance)" in the first sentence.

§ 250.70a [Amended]

Para. 113. Section 250.70a is amended by replacing the phrase "Officer-in-Charge" with the phrase "regional director (compliance)."

§ 250.71 [Amended]

Para. 114. Section 250.71 is amended by replacing the phrase "Officer-in-Charge" wherever it appears with the phrase "regional director (compliance)."

§ 250.72 [Amended]

Para. 115. Section 250.72 is amended by replacing the phrase "Officer-in-Charge" wherever it appears with the phrase "regional director (compliance)."

§ 250.74 [Amended]

Para. 116. Section 250.74 is amended by replacing the phrase "Officer-in-Charge" wherever it appears with the phrase "regional director (compliance)."

§ 250.75 [Amended]

Para. 117. Section 250.75 is amended by replacing the phrase "Officer-in-Charge" with the phrase "regional director (compliance)" in the first and third sentence of the paragraph and by removing the second sentence of the paragraph.

§ 250.78 [Amended]

Para. 118. Section 250.78 is amended by replacing in the first sentence the term "sextuplicate" with the term "quintuplicate."

§ 250.79 [Amended]

Para. 119. Section 250.79 is amended by replacing in paragraph (a) the term "quintuplicate" with the term "quadruplicate."

§ 250.81 [Amended]

Para. 120. Section 250.81 is amended by replacing the phrase "Officer-in-Charge" wherever it appears with the phrase "Chief, Puerto Rico Operations."

§ 250.93 [Amended]

Para. 121. Section 250.93 is amended by replacing in the first sentence the term "sextuplicate" with the term "quintuplicate" and by replacing in the last sentence the phrase "four copies" with the phrase "three copies."

§ 250.96 [Amended]

Para. 122. Section 250.96 is amended by replacing wherever it appears the phrase "Officer-in-Charge" with the phrase "Chief, Puerto Rico Operations" and by replacing at the end of the last sentence in paragraph (b) the phrase "each form for his files" with the phrase "Form 2928."

§ 250.102 [Amended]

Para. 123. Section 250.102 is amended by replacing in the first sentence the term "sextuplicate" with the term "quintuplicate" and by replacing in the last sentence the phrase "four copies" with the phrase "three copies."

§ 250.105 [Amended]

Para. 124. Section 250.105 is amended by replacing wherever it appears the phrase "Officer-in-Charge" with the phrase "Chief, Puerto Rico Operations" and by replacing at the end of the last sentence in paragraph (b) the phrase "each form for his files" with the phrase "Form 2930."

§ 250.110 [Amended]

Para. 125. Section 250.110 is amended by replacing wherever it appears the phrase "Officer-in-Charge" with the phrase "Chief, Puerto Rico Operations", by removing at the end of the second sentence the phrase "of each for his file", and by removing the third sentence.

Para. 126. Section 250.112 is amended by revising paragraphs (e) and (g) to read as follows:

§ 250.112 Taxes to be collected by returns for semimonthly periods.

* * * * *

(e) *Filing.* (1) The original and two copies of returns on Forms 5110.52, 2927 (5120.23), or 2929 (5130.17), with remittance covering the full amount of the tax, shall be filed with the Chief, Puerto Rico Operations not later than the 14th day after the last day of the return period, except as provided by paragraph (f) of this section. If the due date falls on a Saturday, Sunday, or legal holiday, the return and remittance shall be due on the immediately preceding day which is not a Saturday, Sunday, or legal holiday.

(2) The tax shall be paid in full by remittance at the time the return is filed, unless the proprietor is required to make remittances by electronic fund transfer in accordance with § 250.112a.

(3) The remittance may be in any form the Chief, Puerto Rico Operations is authorized to accept under the provisions of § 70.66 (payment by check or money order) and which is acceptable to the Chief, Puerto Rico Operations. A remittance by check or money order shall be made payable to the "Bureau of Alcohol, Tobacco and Firearms."

(4) When the return and remittance are delivered by U.S. Mail to the office of the Chief, Puerto Rico Operations, the date of the official postmark of the U.S. Postal Service stamped on the cover in which the return and remittance were mailed shall be treated as the date of delivery.

* * * * *

(g) *Default.* Where a taxpayer has defaulted in any payment of tax under this section, during the period of such default and until the regional director (compliance) finds that the revenue will not be jeopardized by deferred payment of tax under this section, the tax shall be prepaid by such taxpayer in accordance with the provisions of § 250.113. During such period, distilled spirits, wine, or beer shall not be released from bonded premises before the proprietor of the bonded premises has paid the tax thereon. In the event of default, the Chief, Puerto Rico Operations shall immediately notify the Secretary and the revenue agent at the premises that the tax is to be prepaid until further notice, and upon a finding that the revenue will not be jeopardized by resumption of deferred payment of tax under this section, the Chief, Puerto Rico Operations shall notify the Secretary and the revenue agent that deferred payment may be resumed.

§ 250.112a [Amended]

Para. 127. Section 250.112a(c)(1) is amended by replacing in the paragraph the phrase "Officer-in-Charge" with the phrase "Chief, Puerto Rico Operations."

§ 250.113 [Amended]

Para. 128. Section 250.113(a) is amended by replacing in the paragraph the phrase "Officer-in-Charge" with the phrase "Chief, Puerto Rico Operations."

§ 250.119 [Amended]

Para. 129. Section 250.119 is amended by replacing in the paragraph the phrase "U.S. Internal Revenue Service officer" and "Officer-in-Charge" with the phrase "Chief, Puerto Rico Operations."

§ 250.126 [Amended]

Para. 130. Section 250.126 is amended by replacing the phrase "U.S. Internal Revenue Service office" wherever it appears with the phrase "Chief, Puerto Rico Operations", and by replacing in the second sentence of the paragraph the phrase "internal revenue receipt" with the phrase "an ATF receipt."

Para. 131. Section 250.128 is revised to read as follows:

§ 250.128 Taxpayment at port of arrival.

If the internal revenue tax on liquors and articles is not paid in Puerto Rico, it shall be paid by the tourist at the port of arrival prior to release of the liquors or articles from customs custody. The tax may be paid to the regional director (compliance), and an ATF receipt obtained, or the tax may be paid to the director of customs, who will issue a customs receipt. If payment is to be made to the regional director (compliance), the director of customs will notify the region of the amount of tax due. On payment of the tax to the director of customs, or on submission of the ATF receipt for the tax, the director of customs will release the liquors or articles.

§ 250.210 [Amended]

Para. 132. Section 250.210 is amended by replacing in the paragraph the phrase "the director of the service center serving the internal revenue district in which the business is located" with the phrase "ATF in accordance with the instructions on the form", and by replacing the phrase "IRS Form 11" with the phrase "Form 5630.5."

PART 251—[AMENDED]

Para. 133. The authority citation for Part 251 is revised to read as follows:

Authority: 5 U.S.C 552(a); 19 U.S.C 81c, 1202; 26 U.S.C. 5001, 5007, 5008, 5041, 5051, 5054, 5061, 5111, 5112, 5114, 5121, 5122, 5124, 5201, 5205, 5207, 5232, 5273, 5301, 5313, 5555, 6302, 7805.

§ 251.11 [Amended]

Para. 134. Section 251.11 is amended by removing the definitions for *Director of the service center and District director.*

§ 251.30 [Amended]

Para. 135. Section 251.30 is amended by replacing in the paragraph the phrase "the director of the service center serving the internal revenue district in which the business is located" with the phrase "ATF in accordance with the instructions on the form" and by replacing the phrases "IRS Form 11" and "Form 11" wherever they appear with the phrase "Form 5630.5."

PART 270—[AMENDED]

Para. 136. The authority citation for Part 270 continues to read as follows:

Authority: 5 U.S.C. 552(a); 26 U.S.C 5701, 5703, 5704, 5705, 5707, 5711, 5712, 5713, 5721, 5722, 5723, 5741, 5751, 5753, 5761, 5762, 6109, 6301, 6302, 6311, 6313, 6402, 6404, 6423, 6676, 7212, 7325, 7342, 7502, 7503, 7606, 7805; 31 U.S.C. 9301, 9303, 9304, 9306.

§ 270.44 [Amended]

Para. 137. Section 270.44 is amended by replacing in the fourth sentence of the paragraph the phrase "district director" with the phrase "regional director (compliance)."

§ 270.162 [Amended]

Para. 138. Section 270.162 is amended by replacing in the second sentence of the paragraph the phrase "the district director or the director of the service center" with the word "ATF."

Para. 139. Section 270.165 is amended by revising the first sentence of paragraph (c) to read as follows:

§ 270.165 Times for filing semimonthly return.

* * * * *

(c) *Postmark.* The official postmark of the U.S. Postal Service stamped on the cover in which the return was mailed shall be considered the date of delivery of the tax return and, if the return was accompanied by a remittance, the date of delivery of the remittance.

§ 270.165a [Amended]

Para. 140. Section 270.165a(c)(1) is amended by replacing in the paragraph the phrase "the director of the service center, district director, or regional director (compliance)" with the word "ATF."

§ 270.166 [Amended]

Para. 141. Section 270.166 is amended by replacing in the last sentence of the paragraph the citation "26 CFR 301.6311–1" with the citation "§ 70.66."

§ 270.167 [Amended]

Para. 142. Section 270.167 is amended by replacing in paragraph (a) the phrase "the district director, director of the service center, or regional director (compliance)" with the word "ATF" and by replacing in paragraph (b) the phrase "and filing it, as instructed on the return, with the district director, director of the service center, or regional director (compliance)" with the phrase "and filing it with ATF."

§ 270.168 [Amended]

Para. 143. Section 270.168 is amended by replacing in the second sentence of the paragraph the phrase "district director" with the phrase "regional director (compliance)" and the citation "26 CFR 301.6311–1" with the citation "§ 70.66" and by replacing in the third sentence of the paragraph the phrase "Internal Revenue Service" with the phrase "Bureau of Alcohol, Tobacco and Firearms."

§ 270.281 [Amended]

Para. 144. Section 270.281 is amended by replacing in the second sentence of the paragraph the phrase "Form 843" with the phrase "Form 2635 (5620.8)."

Para. 145. Section 270.283 is amended by replacing in the paragraph the phrase "Form 843" wherever it appears with the phrase "Form 2635 (5620.8)" and by revising the second sentence of the paragraph to read as follows:

§ 270.283 Credit or refund of tax.

* * * Any claim for credit or refund under this section shall be prepared on Form 2635 (5620.8), in duplicate. * * *

§ 270.286 [Amended]

Para. 146. Section 270.286 is amended by replacing in the paragraph the phrase "Form 843" with the phrase "Form 2635 (5620.8)."

Para. 147. Section 270.311 is amended by revising the second sentence of paragraph (b) to read as follows:

§ 270.311 Action by claimant.

* * * * *

(b) * * * For each claim involving large cigars withdrawn from the market the manufacturer shall include a certification on either Form 3069 (5200.7) or Form 2635 (5620.8) to read as follows:

* * * * *

Para. 148. Section 270.313 is amended by replacing in the paragraph the phrase "Form 843" with the phrase "Form 2635 (5620.8)" and revising the last sentence of the paragraph to read as follows:

§ 270.313 Disposition of cigars and cigarettes and schedule.

* * * In connection with a claim for allowance the officer shall return one copy of the schedule to be included in the manufacturers records, and in connection with a claim for credit or refund, the officer shall return the original and one copy of the schedule to the manufacturer, the original of which the manufacturer shall attach to the claim, Form 2635 (5620.8), filed under § 270.283.

PART 275—[AMENDED]

Para. 149. The authority citation for Part 275 continues to read as follows:

Authority: 5 U.S.C. 552(a); 26 U.S.C. 5701, 5703, 5704, 5705, 5708, 5722, 5723, 5741, 5762, 5763, 6301, 6302, 6313, 6404, 7101, 7212, 7342, 7606, 7652, 7652(a), 7805; 31 U.S.C. 9301, 9303, 9304, 9306.

§ 275.11 [Amended]

Para. 150. Section 275.11 is amended by revising the definition for *Officer-in-Charge.*

§ 275.105 [Amended]

Para. 151. Section 275.105 is amended by removing the definition for *Officer-in-*Charge" wherever it appears with the phrase "Chief, Puerto Rico Operations", replacing the term "triplicate" with the term "duplicate" in the first sentence of the paragraph, and replacing at the end of the second sentence of the paragraph the phrase "retain one copy, and forward the remaining copy to the Regional Director (compliance), Bureau of Alcohol, Tobacco and Firearms, New York, NY" with the phrase "and retain one copy."

§ 275.108 [Amended]

Para. 152. Section 275.108 is amended by replacing the phrase "Regional Director (compliance), Alcohol, Tobacco and Firearms, New York, New York" with the phrase "Chief, Puerto Rico Operations."

§ 275.109 [Amended]

Para. 153. Section 275.109 is amended by replacing the phrase "Officer-in-Charge" with the phrase "regional director (compliance)."

§ 275.110 [Amended]

Para. 154. Section 275.110 is amended by replacing in the first sentence of the paragraph the phrase "six copies of Form 2987" with the phrase "five copies of Form 2987 (5210.8)."

§ 275.111 [Amended]

Para. 155. Section 275.111 is amended by replacing in the first sentence of the paragraph the phrase "six copies of the Form 2987" with the phrase "five copies of the Form 2987 (5210.8)", by removing paragraph (a), by redesignating paragraphs (b), (c), (d), and (e) as paragraphs (a), (b), (c), and (d) respectively, and by replacing in the redesignated paragraph (d) the words "one copy" with the words "the original."

Para. 156. Section 275.112 is amended by revising the second sentence of the paragraph to read as follows:

§ 275.112 Tax return.

* * * The bonded manufacturer of such products shall prepare ATF Form 2988 in duplicate, and file the original with the Chief, Puerto Rico Operations, and maintain one copy for the file for each semimonthly return period. * * *

Para. 157. Section 275.114 is amended by revising paragraph (c) to read as follows:

§ 275.114 Time of filing.

* * * * *

(c) *Postmark.* If the return, and remittance as the case may be, are delivered by U.S. Mail to the office of the Chief, Puerto Rico Operations, the date of the official postmark of the U.S. Postal Service stamped on the cover in which the return, and remittance as the case may be, were mailed shall be treated as the date of delivery.

* * * * *

§ 275.114a [Amended]

Para. 158. Section 275.114a is amended by replacing in paragraphs (a) and (c) the phrase "Officer-in-Charge" with the phrase "regional director (compliance)."

§ 275.115 [Amended]

Para. 159. Section 275.115 is amended by replacing the phrase "Officer-in-Charge" with the phrase "Chief, Puerto Rico Operations." and the citation "26 CFR 301.6311–1" with the citation "§ 70.66."

§ 275.115a [Amended]

Para. 160. Section 275.115a is amended by replacing in paragraph (c)(1) the phrase "Officer-in-Charge" with the phrase "Chief, Puerto Rico Operations."

§ 275.116 [Amended]

Para. 161. Section 275.116 is amended by replacing the phrase "Officer-in-Charge" with the phrase "regional director (compliance)."

§ 275.118 [Amended]

Para. 162. Section 275.118 is amended by replacing the phrase "Regional Director (compliance), Alcohol, Tobacco and Firearms, New York, New York" with the phrase "Chief, Puerto Rico Operations."

§ 275.123 [Amended]

Para. 163. Section 275.123 is amended by replacing the phrase "Officer-in-Charge" wherever it appears with the phrase "regional director (compliance)."

§ 275.125 [Amended]

Para. 164. Section 275.125 is amended by replacing the phrase "Officer-in-Charge" wherever it appears with the phrase "regional director (compliance)."

§ 275.126 [Amended]

Para. 165. Section 275.126 is amended by replacing the phrase "Officer-in-Charge" wherever it appears with the phrase "regional director (compliance)."

§ 275.127 [Amended]

Para. 166. Section 275.127 is amended by replacing the phrase "Officer-in-Charge" wherever it appears with the phrase "regional director (compliance)."

§ 275.129 [Amended]

Para. 167. Section 275.129 is amended by replacing the phrase "Officer-in-Charge" wherever it appears with the phrase "regional director (compliance)."

§ 275.137 [Amended]

Para. 168. Section 275.137 is amended by replacing in the fourth sentence of the paragraph the phrase "Supervisor in Charge, Alcohol and Tobacco Tax, Puerto Rico" with the phrase "Chief, Puerto Rico Operations."

§ 275.161 [Amended]

Para. 169. Section 275.161 is amended by replacing in the paragraph the phrase "Form 843" with the phrase "Form 2635 (5620.8)."

§ 275.163 [Amended]

Para. 170. Section 275.163 is amended by replacing in the paragraph the phrase "Form 843" with the phrase "Form 2635 (5620.8)."

§ 275.170 [Amended]

Para. 171. Section 275.170(b) is amended by removing from the paragraph the phrase "For each claim involving large cigars withdrawn from the market the importer shall include a certification on either ATF Form 3069 (5200.7), ATF Form 2635 (5620.8), or IRS Form 843, to read as follows:" with the phrase "For each claim involving large cigars withdrawn from the market the importer shall include a certification on either ATF Form 3069 (5200.7) or ATF Form 2635 (5620.8) to read as follows:"

§ 275.172 [Amended]

Para. 172. Section 275.172(b) is amended by removing from the paragraph the phrase "For each claim involving large cigars withdrawn from the market the importer shall include a certification on either ATF Form 3069 (5200.7), ATF Form 2635 (5620.8), or IRS Form 843, to read as follows:" with the phrase "For each claim involving large cigars withdrawn from the market the importer shall include a certification on either ATF Form 3069 (5200.7) or ATF Form 2635 (5620.8) to read as follows:".

PART 285—[AMENDED]

Para. 173. The authority citation for Part 285 continues to read as follows:

Authority: 5 U.S.C. 552(a); 26 U.S.C. 5701, 5703–5705, 5711, 5721–5723, 5741, 5751, 5753, 5761–5763, 6109, 6302, 6402, 6404, 6676, 7212, 7325, 7342, 7606; 31 U.S.C. 9301, 9303, 9304, 9306.

§ 285.25 [Amended]

Para. 174. Section 285.25(d) is amended by replacing in the paragraph the phrase "the district director, director of the service center, or regional director (compliance)" with the word "ATF."

§ 285.26 [Amended]

Para. 175. Section 285.26 is amended by replacing in the paragraph the phrase "Form 843" with the phrase "Form 2635 (5620.8)."

§ 285.27 [Amended]

Para. 176. Section 285.27(c) is amended by replacing in the paragraph the phrase "the director of the service center, district director, or regional director (compliance)" with the word "ATF."

§ 285.34 [Amended]

Para. 177. Section 285.34 is amended by replacing in the fourth sentence of the paragraph the phrase "district director" with the phrase "regional director (compliance)."

§ 285.171 [Amended]

Para. 178. Section 285.171 is amended by replacing in the paragraph the phrase "Form 843" with the phrase "Form 2635 (5620.8)."

Para. 179. Section 285.173 is amended by revising the second and fifth sentence of the paragraph to read as follows:

§ 285.173 Credit or refund.

* * * Any claim for credit or refund under this section shall be prepared on Form 2635 (5620.8), in duplicate.

* * * The original and one copy of Form 2635 (5620.8) shall be filed with the regional director (compliance) for the region in which the tax was paid, or where the tax was paid in more than one region with the regional director (compliance) for any one of the regions in which the tax was paid. * * *

Para. 180. Section 285.193 is amended by revising the fourth sentence of the paragraph to read as follows:

§ 285.193 Disposition of cigarette papers and tubes and schedule.

* * * In connection with a claim for credit or refund, the manufacturer shall attach the original of the schedule to the claim, Form 2635 (5620.8), filed under § 285.173. * * *

PART 290—[AMENDED]

Para. 181. The authority citation for Part 290 continues to read as follows:

Authority: 5 U.S.C. 552(a); 26 U.S.C. 5701, 5703–5705, 5711, 5721–5723, 5741, 5751, 5753, 5761–5763, 6109, 6301, 6302, 6313, 6402, 6404, 6676, 7101, 7212, 7325, 7342, 7606, 7805; 31 U.S.C. 9301, 9303, 9304, 9306.

§ 290.67 [Amended]

Para. 182. Section 290.67 is amended by replacing in the second sentence of paragraph (a) the phrase "the district director of internal revenue, for the district in which the factory or export warehouse is located" with the word "ATF" and by replacing the phrase "ATF Form 4640 (5600.5)" with the phrase "ATF Form 5000.24" in the last sentence of paragraph (a).

§ 290.153 [Amended]

Para. 183. Section 290.153 is amended by replacing in the paragraph the phrase "Form 843" with the phrase "Form 2635 (5620.8)."

§ 290.154 [Amended]

Para. 184. Section 290.154 is amended by replacing in the paragraph the phrase "Form 843" with the phrase "Form 2635 (5620.8)."

PART 295—[AMENDED]

Para. 185. The authority citation for Part 295 continues to read as follows:

Authority: 5 U.S.C. 552(a); 26 U.S.C. 5701, 5703–5705, 5711, 5721–5723, 5741, 5751, 5753, 5761–5763, 6109, 6301, 6302, 6313, 6402, 6404, 6676, 7212, 7325, 7342, 7606, 7805; 31 U.S.C. 9301, 9303, 9304, 9306.

§ 295.36 [Amended]

Para. 186. Section 295.36 is amended by replacing in the first sentence of the paragraph the phrase "district director, for the district" with the phrase "regional director (compliance), for the region."

PART 296—[AMENDED]

Para. 187. The authority citation for Part 296 continues to read as follows:

Authority: 5 U.S.C. 552(a); 26 U.S.C. 5701, 5703–5705, 5711, 5721–5723, 5741, 5751, 5753, 5761–5763, 6109, 6301, 6302, 6313, 6402, 6404, 6676, 7101, 7212, 7325, 7342, 7606, 7805; 31 U.S.C. 9301, 9303, 9304, 9306.

§ 296.7 [Amended]

Para. 188. Section 296.7 is amended by replacing in the paragraph the phrase "Form 843" with the phrase "Form 2635 (5620.8)."

§ 296.74 [Amended]

Para. 189. Section 296.74 is amended by replacing in the paragraph the phrase "Internal Revenue Service Form 843" with the phrase "Form 2635 (5620.8)."

Signed: April 23, 1987.

W.T. Drake,

Acting Director.

Approved: May 1, 1987.

John P. Simpson,

Acting Assistant Secretary (Enforcement).

[FR Doc. 87-11152 Filed 5-21-87; 8:45 am]

BILLING CODE 4810-31-M

DEPARTMENT OF THE INTERIOR

National Park Service

36 CFR Part 7

Buffalo National River, Arkansas; Fishing Regulations

AGENCY: National Park Service, Interior.

ACTION: Final rule.

SUMMARY: These special regulations allow fishing activities to continue at Buffalo National River in the traditional manner in accordance with State of Arkansas regulations except when the Superintendent may designate otherwise. It will allow the gigging of rough fish, use of attended trot lines, and noncommercial capture of bait fish, using traps or seines. It will also allow the collection and possession of terrestrial and acquatic insects by hand or hand net for use as bait. It will allow the taking of frogs, turtles and crayfish by traditional methods as designated by the Superintendent. These traditional activities were no longer allowed after April 30, 1984, when the new general regulations for the National Park Service became effective. These special regulations permit a level of public use and enjoyment of park resources consistent with the establishment of Buffalo National River to provide for both preservation and recreational use.

EFFECTIVE DATE: June 22, 1987.

FOR FURTHER INFORMATION CONTACT: Alec Gould, Superintendent, Buffalo National River, P.O. Box 1173, Harrison, Arkansas 72602–1173, Telephone: (501) 741–5443.

SUPPLEMENTARY INFORMATION:

Background

These regulations authorize recreational fishing methods that are now prohibited by the general regulations. In order to relax restrictions on fresh water recreational fishing, the regulations apply fishing methods that are allowed under State laws as appropriate. They allow visitors to Buffalo National River to continue the traditional, recreational activities that have occurred along the Buffalo River for many years. These activities are consistent with the purposes for which the park was established and will not, in the opinion of the National Park Service, have an adverse impact on the ecosystem, other species of wildlife or the reproductive potential of the species involved. These activities were legitimate recreational activities until the revised general regulations of the National Park Service became effective on April 30, 1984.

This regulation will allow the use of trot lines and limb lines along the river as long as the owner of these lines is present in the area and the lines are not placed in a manner hazardous to canoeists and are removed when the owner leaves. It will also allow the continued use of seines and minnow traps to capture native bait fish for bait. This will help prevent the introduction of exotic fish species into the river since most commercial bait fish dealers do not sell native minnows. It will not allow commercial bait fish operations to operate within the park. They will also authorize the capture of crayfish and both terrestrial and aquatic insects for use as bait, and the gigging of rough fish as defined by State regulations. Visitors will also be permitted to capture frogs, turtles and crayfish for personal consumption as well.

Conditions for collection of insects will restrict capture techniques to hand capture or the use of hand nets. Similar restrictions will be applied to the capture of crayfish which can be captured by hand, hand-held net or seine or by baited hand lines. Neither insects, frogs, turtles nor crayfish can be captured for commercial purposes and the Superintendent may restrict these activities as necessary.

Also, as part of this rulemaking, the National Park Service is redesignating as Paragraph (c) the existing text in § 7.35 that pertains to the use of motors on boats. Although some editorial changes have been made for the purpose of clarification, the regulatory provisions remain the same and do not constitute new provisions.

The National Park Service, Department of the Interior, published in the **Federal Register** (51 FR 23616) on October 20, 1986, and provided a 30-day public review and comment period. No comments were received. As a result, the proposed rule is published unchanged as a final rule.

Drafting Information

The following persons participated in the writing of these regulations: Carl E. Hinrichs, Chief, Resource Management and Visitor Protection, and Keith A. Whisenant, Resource Management Specialist, both of Buffalo National River.

Paperwork Reduction Act

This rule does not contain information collection requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.*

Compliance with Other Laws

The Department of the Interior has determined that this document is not a major rule under Executive Order 12291 (February 19, 1981), 46 FR 13193, and certifies that this document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The economic effects of this rulemaking are negligible. The regulations do not impose additional costs on individuals using Buffalo National River.

The Service has determined that this rulemaking will not have a significant effect on the quality of the human environment, health and safety because it is not expected to:

a. Increase public use to the extent of compromising the nature and character of the area or causing physical damage to it.

b. Introduce noncompatible uses which might compromise the nature and characteristics of the area, or cause physical damage to it.

c. Conflict with adjacent ownerships or land uses; or

d. Cause a nuisance to adjacent owners or occupants.

Based on this determination, this rulemaking is categorically excluded from the procedural requirements of the National Environmental Policy Act (NEPA) by Departmental Regulations in 516 DM6, (49 FR 21438). As such, neither an Environmental Assessment nor an

Environmental Impact Statement has been prepared.

List of Subjects in 36 CFR Part 7

National Parks, Reporting and recordkeeping requirements.

In consideration of the foregoing, 36 CFR Chapter 1, is amended as follows:

PART 7—SPECIAL REGULATIONS, AREAS OF THE NATIONAL PARK SYSTEM

1. The authority citation for 36 CFR, Part 7 Continues to read as follows:

Authority: 16 U.S.C. 1, 3, 9a, 462(k); §7.96 also issued under D.C. Code 8–137 (1981) and D.C. Code 40–721 (1981).

2. By revising §7.35 to read as follows:

§ 7.35 Buffalo National River.

(a) *Fishing.* (1) Unless otherwise designated by the Superintendent, fishing in a manner authorized under applicable State law is allowed.

(2) The Superintendent may designate times when and locations where and establish conditions under which the digging of bait for personal use is allowed.

(3) The Superintendent may designate times when and locations where and establish conditions under which the collection of terrestrial and aquatic insects for bait for personal use is allowed.

(4) Violating a designation or condition established by the Superintendent is prohibited.

(b) *Frogs, Turtles* and *Crayfish.* (1) The Superintendent may designate times and locations and establish conditions governing the taking of frogs, turtles and crayfish for personal use.

(2) Violating a designation or condition established by the Superintendent is prohibited.

(c) *Motorized Vessels.* (1) Except for a vessel propelled by a gasoline, diesel or other internal combustion engine with a rating of 10 horsepower or less, operating a motorized vessel from Erbie Ford to the White River is prohibited.

(2) Operating a vessel propelled by a motor is prohibited above Erbie Ford.

(3) The provisions of Paragraph (c) do not apply to a vessel operated for official use by an agency of the United States, the State of Arkansas or one of its political subdivisions.

Dated: May 5, 1987.

Susan Recce

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 87–11770 Filed 5–21–87; 8:45 am]

BILLING CODE 4310–70–M

36 CFR Part 7

Shenandoah National Park, Fishing Regulation

AGENCY: National Park Service, Interior.

ACTION: Final Rule.

SUMMARY: On October 1, 1986, the National Park Service, Department of the Interior, published in the **Federal Register** (51 FR 35009) a proposed rule to change the fishing regulations at Shenandoah National Park. This proposal was made available for public review and comment for a period of thirty (30) days ending on November 1, 1986. These revisions will (1) close to public fishing all streams except those designated in the park's Fishery Management Plan as having sufficient year-round flow of water and populations of native brook trout to sustain both the expected fishing pressure and natural population pressures, e.g., drought, flood, predation; (2) add the North Fork of the Moormans River to the Park's fish-for-fun program; and (3) allow the removal of non-native game fishes from designated trout streams in Shenandoah National Park consistent with applicable state fishing regulations. The need to change the park's fishing regulations was determined when the park's active stream monitoring program identified several preservation concerns. With these revisions in place, Shenandoah National Park will be able to better manage the fishery resources.

EFFECTIVE DATE: June 22, 1987.

FOR FURTHER INFORMATION CONTACT: David A. Haskell, Resource Management Specialist, Shenandoah National Park, Rt. 4, Box 292, Luray, Va. 22835, Telephone 703–999–2243, ext. 404.

SUPPLEMENTARY INFORMATION:

Background

This rulemaking revises the fishing regulations for Shenandoah National Part (36 CFR Part 7.15(a)). These regulations had been in effect since 1965 and permitted only trout fishing in all waters of the park and limited the fish-for-fun program to the Rapidan and Staunton Rivers.

Since 1982, the National Park Service (NPS) has been engaged in the sampling of all streams having a trout population. Forty-five streams were identified and sampled. Prior to 1982 only sporadic monitoring of the trout streams had been conducted by the U.S. Fish and Wildlife Service (USFWS) and the Virginia Commission of Game and Inland Fisheries (VCGIF). Qualitative date from the recent sampling such as relative abundance, age class distribution, and growth rates have been analyzed.

The findings of the latest analysis are that most of the park's larger streams are highly productive and are capable of sustaining a limited native brook trout harvest; however, some of the smaller or less productive streams are severely influenced by natural pressures (drought, floods, natural predators) and do not consistently produce sufficient exess native brook trout to allow harvest by angling. The few fish present in these marginal streams are needed to maintain the ecological balance of the aquatic ecosystems. Natural predators such as mink, raccoons, watersnakes, and kingfishers are dependent on these fish for their survival. Fishing of these streams could, during years of low native brook trout production, cause an unacceptable disruption of ecosystem dynamics, and could contribute to the total loss of a stream's native brook trout population during extreme conditions.

The goal of Shenandoah National Park's fishery management program is two-fold: (1) To preserve and perpetuate the native brook trout as an integral component of the park's aquatic ecosystems; and (2) to provide quality angling experiences. Therefore, angling will be permitted only on those streams which consistently sustain adequate native brook trout populations. The park's current fish-for-fun program is one way to provide a quality angling experience while serving to protect the native brook trout population from excessive harvest. Fish returned to the stream are available to be caught by other anglers, thus enhancing overall angling success.

The park's two fish-for-fun streams (Rapidan and Staunton Rivers) were established in 1968. Since that time, the popularity of these streams as quality native brook trout fishing waters has greatly increased. These two streams are utilized heavily on a daily basis during the spring and early summer. The popularity of angling for its sport and recreational experience has continued to grow to the point that an additional fish-for-fun stream is desirable to accomodate public demand. This will disperse anglers over more miles of stream, reduce the handling of trout, reduce soil compaction along stream banks and lessen other ecological impacts.

Eastern brook trout is the only species of trout native to Shenandoah waters. The exotic brown trout and rainbow trout have been found in park streams during recent years. These exotic species of trout are being found in

increasing numbers and may be threatening the existence of the native brook trout in parts of certain streams. In other eastern national parks, such as the Great Smoky Mountains National Park, these exotic species of trout have successfully replaced the native brook trout in many streams in spite of all efforts to control their spread. Of special concern is the spread of these exotic trout species in Shenandoah's fish-for-fun streams.

In other cases, exotic species of warm water game fishes are found in the boundary sections of some park streams. Smallmouth bass and sunfish are the most common species found. Although these species pose little threat to native brook trout populations, they do interact with other species of native fishes, resulting in a disruption of the natural stream ecosystem. Current regulations prohibit the harvest of these exotic warm water fishes. It is the policy of the National Park Service to protect native flora and fauna from encroachment by exotic species and to eradicate exotic species which pose any possible threat to native species or park ecosystem balances.

This rulemaking will permit the removal of exotic fish from Park trout streams according to size and creel limits established by applicable State law. Removal of exotics will reduce their competition with the native brook trout populations.

Summary of Comments

The National Park Service received a total of four written comments during the 30-day comment period. Of these, two were from private individuals, one from the Virginia Game Commission, and one from the Virginia Chapter of Trout Unlimited. One individual supported the proposed rule. The other three respondents supported all of the rule except that portion concerning the closure of all streams except those listed in Shenandoah's Fisheries Management Plan.

The objections to the open waters section were all very similar in that the respondents held that there is no scientific proof that legal angling pressure has any significant impact on native brook trout populations in park streams. They further stated that closing the very marginal streams which routinely exhibit very poor water levels and are subject to extreme natural fluctuations in trout populations would make matters even worse by enhancing the possibility that illegal fish poachers could operate with less likelihood of being seen. One respondent also commented that the number of fish caught and removed from these marginal streams was so small that it would have very little impact on the natural predators which rely, in part, on these fish for food.

The response of the National Park Service to these comments is as follows: There have been very few scientific studies on naturally reproducing native brook trout populations in streams similar to those found in Shenandoah National Park. Most of the research in the field of native brook trout population dynamics has been done on larger and more productive streams. Consequently, although there may be little scientific information in the existing literature to indicate that legal harvest might have an impact on marginal streams, there also is very little data to support the belief that the harvest of the larger fish will *not* have an impact under some circumstances. The native brook trout population monitoring program, which has been conducted on park streams annually since 1982, has shown that at least two streams have developed abnormally low native brook trout populations that cannot be explained by activities of natural processes alone. One stream, Lands Run, has shown such a drastic reduction in population that even after being closed to fishing in 1985, the stream's native trout population has yet to recover. The National Park Service may never be able to scientifically determine for certain what has caused the drastic population decline in Lands Run; however, management steps must be taken to assure that this and other similar streams which, at the best, contain only marginal trout populations will eventually be reopened to recreational fishing.

The few marginal streams which are proposed to be closed make up a very small percentage of the available park trout waters. The National Park Service feels that the addition of another major park stream to the current fish-for-fun program more than compensates for the small loss of fishable waters which have been proposed to be closed.

The question as to whether the closure of a stream would make it more vulnerable to illegal poaching has been carefully considered. Park Ranger patrols of these marginal streams indicate that legal fishing activity is very light. The number of anglers is so small that they could not have had any appreciable effect on the level of fish poaching by keeping the illegal poachers away. Most of the documented illegal fishing activity in the park has been found on the large popular streams where large numbers of fish can be caught. The presence of legal anglers on these large popular streams does not seem to have been any deterrent to illegal activity in the past. Therefore, we feel that this concern is unfounded.

The last concern to be addressed is whether the removal of some of the larger adult trout from a very small population would have any effect on the total aquatic ecosystem, especially the fish predators. One respondent stated that the number of fish removed from these streams was small and that the predators were not completely dependent on them for survival; that they could find other prey. The NPS agrees with the fact that the number of fish removed might be small, however, they are often the largest and most dominant fish. Aside from these fish being prey for larger animals, it is quite possible that these dominant trout may be quite important to the long term maintenance of aquatic ecosystems by functioning in the role of predator themselves. Mountain streams are complex ecosystems. It is very risky to assume that the removal of the largest individuals of the most prominent species will not effect ecosystem balance. In a national park setting where the protection and perpetuation of natural systems is the dominant management objective, the National Park Service must, whenever possible or feasible, act in the best interest of the resource. In this case there is enough information to seriously doubt the desirability of allowing recreational angling to remove fish from these marginal streams.

After careful consideration of all of the respondents' comments, the National Park Service finds no new information that would lead to any changes in the original proposed rulemaking.

Drafting Information

The following persons participated in the writing of these regulations: Larry L. Hakel, Chief Park Ranger and David A. Haskell, Resource Management Specialist, both of Shenandoah National Park.

Paperwork Reduction Act

This rulemaking does not contain information collection requirements that require approval by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.*

Compliance with Other Laws

The Department of the Interior has determined that this document is not a major rule under Executive Order 12291 (February 19, 1981), 46 FR 13193, and certified that this document will not have a significant economic effect on a substantial number of small entities

under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.). The economic effects of this rulemaking are local in nature and negligible in scope. The National Park Service has determined that this rulemaking will not have a significant effect on the quality of the human environment, health and safety because it is not expected to:

(a) Increase public angling to the extent of adversely affecting the aquatic ecosystem;

(b) Introduce noncompatible uses which might compromise the nature and characteristics of the area, or cause physical damage to it;

(c) Conflict with adjacent ownerships or land uses; or

(d) Cause a nuisance to adjacent owners or occupants. Based on this determination, this rulemaking is categorically excluded from the procedural requirements of the National Environmental Policy Act (NEPA) by Departmental regulations in 516 DM 6, (49 FR 21438). As such, neither an Environmental Assessment nor an Environmental Impact Statement has been prepared.

Lists of Subjects in 36 CFR Part 7

National Parks, Reporting and recordkeeping requirements.

In consideration of the foregoing, 36 CFR Chapter 1 is amended as follows:

PART 7—SPECIAL REGULATIONS, AREAS OF THE NATIONAL PARK SERVICE

1. The authority citation continues to read as follows:

Authority: 16 U.S.C. 1, 3, 9a, 462(k); § 7.96 also issued under D.C. Code 8–137 (1981) and D.C. Code 40–721 (1981).

2. By revising paragraph (a) of § 7.15 to read as follows:

§ 7.15 Shenandoah National Park.

(a) *Fishing*—(1) *Open Waters.* All streams are closed to fishing except those designated by the superintendent as trout streams.

(2) *Applicability.* The provisions of paragraphs (a)(3) through (a)(7) and (a)(9) of this section apply to all designated trout streams except fish-for-fun streams and portions of streams that form the park boundary line. Fishing in fish-for-fun streams is subject to the provisions of paragraphs (a)(4), (a)(8) and (a)(9) of this section and fishing in portions of streams that form the park boundary is governed solely by applicable State law.

(3) *Season.* The opening date of the trout season and the hours during which trout fishing is allowed are those established by applicable State law. trout season closes October 15 except for designated fish-for-fun streams.

(4) *License.* Fishing license requirements imposed by applicable State law apply to persons fishing in park waters.

(5) *Size limit.* Trout eight (8) inches or longer may be retained. Trout under eight (8) inches in length shall be immediately and carefully returned to the water. There is no size limit on other species of game fishes.

(6) *Creel limits.* No person may retain more than five (5) trout per day nor have more than five (5) trout in possession. Creel limits on other species of game fishes are those established by applicable State law.

(7) *Lures; bait.* Fishing is restricted to an artificial fly or lure having a single hook.

(8) *Fish-for-fun.* Trout streams managed in the fish-for-fun program are designated by the superintendent. These streams are open to trout fishing all year. Fishing is governed by applicable State law except as follows:

(i) Fishing is restricted to an artificial fly or lure having a single barbless hook;

(ii) No trout of any size may be retained. All trout caught shall be handled carefully and returned immediately to the water; and

(iii) All other species of game fishes may be kept. The season and creel limit for species other than trout are governed by applicable State law.

(9) The following are prohibited:

(i) Violating a fishing closure, designation, use or activity restriction or condition or limit established in this paragraph;

(ii) Violating a provision of applicable State law.

* * * * *

Dated: May 1, 1987.

William P. Horn,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 87–11771 Filed 5–21–87; 8:45 am]

BILLING CODE 4310–70–M

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36 CFR Part 7

Yellowstone National Park, Fishing Regulations

AGENCY: National Park Service, Interior.

ACTION: Final rule.

SUMMARY: The National Park Service has modified the fishing regulations in Yellowstone National Park. The rule changes allow fishing in streams and lakes in Yellowstone National Park as designated by the Superintendent pursuant to authority provided by National Park Service general regulations. The park's active monitoring program has identified preservation concerns. The changes to the regulations address these concerns and will correct on an annual basis, problems identified with the current regulations. With these changes in place, the park staff will be able to more effectively manage the fishery resources. Effects of the rules are expected to be minimal. This rulemaking will not alter to any degree the number of angler days presently occurring.

EFFECTIVE DATE: June 22, 1987.

FOR FURTHER INFORMATION CONTACT: Kenneth Czarnowski, Resource Management Specialist, P.O. Box 168, Yellowstone National Park, Wyoming 82190, Telephone (307) 344–7381, ext. 2238.

SUPPLEMENTARY INFORMATION:

Background

The present Yellowstone National Park fishing regulations are codified in 36 CFR 7.13(e). They permit fishing in selected waters of the park with a variety of regulations covering specific lakes and streams.

Technical fishery assistance has been provided to Yellowstone National Park by the U.S. Fish and Wildlife Service and its predecessors for 96 years. The present objectives have evolved since the late 1930's to closely coincide with the park's primary purpose, which is to preserve natural environments and native plant and animal life, and to provide for the enjoyment of the same in ways that maintain natural conditions. Thus, the specific objectives of the park's fishery program are:

1. To manage the fishery as an integral part of the park's ecosystem

2. To preserve and restore native species and aquatic habitats.

3. To provide recreational fishing for the enjoyment of the park visitors when consistent with the two previous objectives.

Attainment of these objectives requires that angler harvests do not alter natural replenishment rates or age structure, or significantly reduce numbers, biomass, or sizes, from those occurring in unfished populations. This management policy necessitates both a philosophical and literal distinction between recreational angling and removing fish for consumption. Protective policies of the National Park Service that have prevented significant degradation of the aquatic habitat have also restricted the use of maintenance stocking in park waters. Given these constraints, special angling regulations

have become the primary means to accomplish park fishery objectives.

Regulations used to protect fish and maintain angling quality have included manipulating season dates, bait and terminal gear restrictions, and the use of creel and size limits (including catch-and-release). Additionally, seven waters have been closed to angling in order to protect public water supply facilities, threatened species, nesting birds, or provide scenic vistas with undistrubed wildlife and fish.

Of 120 lakes and streams which are annually utilized by park anglers, 30 incur most of the fishing pressure. The quality of at least six of these fisheries has gained national recognition.

Because of the extremely heavy fishing pressure on Yellowstone's waters, the park staff must be able to respond rapidly to changes that occur in a dynamic ecosystem resulting from human activities.

The new park fishing regulations allow the Superintendent the ability to make routine changes in the regulations locally and in a timely manner. This will afford greater protection to the park's fishery resources, be more responsive to public needs, and allow the park managers greater flexibility in responding to specific situations. Permanent closures of park waters will continue to be listed in Title 36, Sec. 7.13 of the Code of Federal Regulations and will be subject to the rulemaking requirements of that process as described in 36 CFR 1.5(b).

The National Park Service published a proposed rulemaking in the **Federal Register** on February 17, 1987 (52 FR 4785) and provided a 30-day period for public comments on the proposed revisions. No comments were received. Therefore, the proposed rules are published, unchanged, in final.

The park's fishing regulations will be reviewed at least annually by park staff and the U.S. Fish and Wildlife Service, and recommendations for changes, if any, will be made to the Superintendent.

Drafting Information

The primary authors of these regulations were Dan Sholly, Chief Park Ranger, and Ken Czarnowski, Resource Management Specialist, both of Yellowstone National Park.

Paperwork Reduction Act

This rulemaking does not contain information collection requirements that require approval by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.*

Compliance with Other Laws

The Department of Interior has determined that this document is not a major rule under Executive Order 12291 (February 19, 1981), 46 FR 13193, and certifies that this document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The economic effects of this rulemaking are local in nature and negligible in scope. The National Park Service has determined that this rulemaking will not have a significant effect on the quality of the human environment, health, and safety because it is not expected to:

(a) Increase public angling to the extent of impacting the aquatic ecosystem.

(b) Introduce noncompatible uses which might compromise the nature and characteristics of the area, or cause physical damage to it.

(c) Conflict with adjacent ownerships or land uses.

(d) Cause a nuisance to adjacent owners or occupants.

Based on this determination, this rulemaking is categorically excluded from the procedural requirements of the National Environmental Policy Act (NEPA) by Departmental regulations in 516 DM 6, (49 FR 21438). As such, neither an Environmental Assessment nor an Environmental Impact Statement has been prepared.

List of Subjects in 36 CFR Part 7

National Parks, Reporting and recordkeeping requirements.

In consideration of the foregoing, 36 CFR Chapter 1 is amended as follows:

PART 7—SPECIAL REGULATIONS, AREAS OF THE NATIONAL PARK SYSTEM

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

Authority: 16 U.S.C 1, 3, 9a, 462(k); § 7.96 also issued under D.C. Code 8–137 (1981) and D.C. Code 40–721 (1981).

2. By revising paragraph (e) of § 7.13 to read as follows:

§ 7.13 Yellowstone National Park.

* * * * *

(e) *Fishing.* (1) Fishing restrictions, based on management objectives described in the park's Resources Management Plan, are established annually by the superintendent.

(2) The superintendent may impose closures and establish conditions or restrictions, in accordance with the criteria and procedures of §§ 1.5 and 1.7 of this chapter, on my activity pertaining to fishing, including, but not limited to, seasons and hours during which fishing may take place, size, creel and possession limits, species of fish that may be taken and methods of taking.

(3) *Closed waters.* The following waters of the park are closed to fishing and are so designated by appropriate signs:

(i) Pelican Creek from its mouth to a point two miles upstream.

(ii) The Yellowstone River and its tributary streams from the Yellowstone Lake outlet to a point one mile downstream.

(iii) The Yellowstone River and its tributary streams from the confluence of Alum Creek with the Yellowstone River upstream to the Sulphur Caldron.

(iv) The Yellowstone River from the top of the Upper Falls downstream to a point directly below the overlook known as Inspiration Point.

(v) Bridge Bay Lagoon and Marina and Grant Village Lagoon and Marina and their connecting channels with Yellowstone Lake.

(vi) The shores of the southern extreme of the West Thumb thermal area along the shore of Yellowstone Lake to the mouth of Little Thumb Creek.

(vii) The Mammoth water supply reservoir.

(4) Fishing in closed waters or violating a condition or restriction established by the superintendent is prohibited.

* * * * *

Dated: May 8, 1987.

William P. Horn,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 87–11772 Filed 5–21–87; 8:45 am]

BILLING CODE 4310–70–M

DEPARTMENT OF AGRICULTURE

Forest Service

36 CFR Part 261

Possession, Storage, and Transportation of Food Materials; Prohibitions

AGENCY: Forest Service, USDA.

ACTION: Final rule.

SUMMARY: Part 261 of Title 36 of the Code of Federal Regulations sets forth acts that are prohibited within the National Forest System. This final rule amends Part 261 to provide forest officers authority to prohibit or regulate the possession, storage, or transport of food, refuse, and plant and animal

material that attracts bears. The rule is particularly needed in National Forest areas inhabited by grizzly bears, a threatened species. The rule may also be used to manage black bears, or other resources in specific areas. The intended effect is to reduce conflicts between bears and National Forest users and the unacceptable risk to each that results when such conflicts occur.

EFFECTIVE DATE: June 22, 1987.

FOR FURTHER INFORMATION CONTACT: Glen Contreras, Threatened and Endangered Species Program Manager, Wildlife and Fisheries Staff (703) 235–8015.

SUPPLEMENTARY INFORMATION: On April 17, 1986 at 51 FR 12291, the Forest Service published an interim rule to authorize forest officers to prohibit or otherwise regulate the possession, storage, or transport of food, refuse and plant and animal material that attracts bears. Public comment was invited. Only one written comment was received—a very general statement of support for the rule.

Part 261 lists prohibited acts within the National Forest System that are necessary to protect public health, safety, and forest resources. Subpart B authorizes Forest Service line officers to close or restrict the use of specific areas under their jurisdiction. Section 261.58 sets forth the various activities involved in occupancy and use of National Forest System lands that a line officer may prohibit.

This rule amends the list of prohibited acts to permit forest officers to prohibit the storage of animals or animal parts and tree or plant material and to prohibit the possession or storage of any food or refuse in designated areas, as specified in the order.

The absence of these prohibitions from the rule is a long-standing oversight which has come to the agency's attention as forest officers have sought effective means of reducing conflicts between humans and bears in National Forests. This need is particularly critical for reducing conflicts between forest users and recovery management for the grizzly bear.

The grizzly bear is listed as a Federally threatened species and as such requires affirmative management action by the Forest Service to protect the bear. The Forest Service is equally responsible for protecting public health and safety on National Forest lands. An important aspect of meeting both responsibilities is to reduce the likelihood of conflicts between bears and humans. This rule provides the necessary mechanism to restrict or prohibit altogether and enforce how hunters, campers, and other National Forest users store and transport materials that are a food source for bears, and therefore, attractive to them. The authority provided by the rule will play an important role in providing public safety and meeting recovery efforts for the grizzly bear in the Yellowstone grizzly bear ecosystem and in other National Forest areas where conflicts with other species of bear require administrative action. When needed, these orders will be posted for public review at access points to bear use areas, Forest Supervisor, and Ranger District offices.

In view of the fact that no suggestions for revising the rule were received, and feedback from Forest Service personnel following the 1986 field season indicated that the interim rule was effective, the provisions of the final rule are identical to those of the interim rule.

Regulatory Impacts and Review

This rule has been reviewed for its regulatory impact pursuant to E.O. 12291, the Regulatory Flexibility Act (5 U.S.C. 601 et seq.), and implementing Departmental procedures. The Assistant Secretary of Agriculture for Natural Resources and Environment has determined that this regulation is not a major rule and will not have a signficant economic impact on a substantial number of small entities. To the best of the agency's knowledge, this rule will have, at most, only minor economic effect on the public or user groups as a result of requirements to store or move food and refuse. Basically, the rule fills an enforcement gap that resource management and public safety needs now dictate be corrected.

It has also been determined that this rule will not have any significant impact on the quality of the environment and that this determination is categorically excluded from documentation in an environmental assessment or impact statement.

This rule contains no information collection requirements as defined in 5 CFR Part 1320.

List of Subjects in 36 CFR Part 261

Law enforcement, National forests.

Therefore, for the reasons set forth above, Part 261 of Title 36 of the Code of Federal Regulations is amended as follows:

PART 261—PROHIBITIONS

1. The authority citation for Part 261 continues to read as follows:

Authority: 30 Stat. 35, as amended (16 U.S.C. 551); 33 Stat. 628 (16 U.S.C. 472); 50 Stat. 526, as amended (7 U.S.C. 1011(f)); 82 Stat. 916 (16 U.S.C. 1281); 82 Stat. 925, (16 U.S.C. 1246 (i)) 92 Stat. 1650, as amended (16 U.S.C. 1133(c)–(d)(1)), unless otherwise noted.

§ 261.58 Occupancy and use.

2. In § 261.58, revise paragraphs (s), (t) and (cc) so that these paragraphs read as follows:

* * * * *

(s) Possessing, storing, or transporting any bird, fish, or other animal or parts thereof, as specified in the order.

(t) Possessing, storing, or transporting any part of a tree or other plant, as specified in the order.

* * * * *

(cc) Possessing or storing any food or refuse, as specified in the order.

* * * * *

Dated: May 11, 1987.

Douglas W. MacCleery,

Deputy Assistant Secretary for Natural Resources and Environment.

[FR Doc. 87–11801 Filed 5–21–87; 8:45 am]

BILLING CODE 3410–11–M

VETERANS ADMINISTRATION

38 CFR Part 3

Evidence Other Than Evidence of Service—Acceptability of Photocopies

AGENCY: Veterans Administration.

ACTION: Final rule.

SUMMARY: The Veterans Administration (VA) has amended its adjudication regulations to permit the acceptance of photocopies of documentary evidence in certain cases. These amendments are necessary to alleviate the burden and reduce the cost to claimants and beneficiaries who are required to submit documentary evidence to establish birth, death, marriage or relationship in connection with claims for veterans' benefits. The effect of these amendments will be to increase the sources of acceptable photocopied evidence while clarifying the categories of individuals who will be authorized to perform the certification function.

DATE: These regulations are effective June 22, 1987.

FOR FURTHER INFORMATION CONTACT: Robert M. White, Chief, Regulations Staff, Compensation and Pension Service, Department of Veterans Benefits, Veterans Administration, 810 Vermont Avenue, NW., Washington, DC 20420 (202) 233–3005.

SUPPLEMENTARY INFORMATION: On pages 35667–68 of the **Federal Register** of October 7, 1986, the VA published proposed regulatory amendments on the

acceptability of photocopied evidence of birth, death, marriage and relationship. Interested persons were invited to submit comments, suggestions or objections by November 5, 1986. The proposal erroneously indicated that the amendments were proposed to be effective on November 6, 1986. The notice of proposed rulemaking should have provided that the amendments would be effective 30 days after the date of publication of the final rules.

A total of 15 comments were received, all of which supported the proposal to varying degrees. Along with the support, however, were a number of suggestions for further amendment which we have carefully considered.

One commenter suggested that certifying officials at educational institutions and rehabilitation facilities be issued standardized instruments, such as stamps, for certifying documents. While this suggestion is procedural in nature and does not affect the actual regulation change, it would be costly to implement and would not be necessary. Certifying officials at such institutions and facilities are only permitted to certify documents submitted with claims for benefits because of training. If the signature on the enrollment certificate is the same as that on the photocopied evidence, a separate stamp is not necessary.

Another commenter suggested that VA should accept any photocopied evidence. We cannot agree as this would seriously impact on program integrity.

In the same vein, however, eight other commenters suggested expansion of the list of those individuals authorized to certify photocopies. They suggested that State, County, Municipal, Chapter, and Post Service Officers and Office Managers of the Veterans Administration Readjustment Counseling Service (VET Center Program) be allowed to certify photocopies. We cannot agree with respect to State, County, Municipal, Chapter and Post Service Officers who are not accredited under 38 CFR Part 14, nor with notarized photocopies in general. As indicated in the notice of proposed rulemaking this expansion of acceptable sources of photocopied evidence should be limited, for purposes of program integrity, to those against whom administrative sanctions, such as adverse personnel actions or derecognition of their status as claims representatives, can be readily invoked by the VA. State, County, Municipal Chapter and Post Service Officers who are not accredited under 38 CFR Part 14 and notaries public in general are not readily subject to such sanctions by the VA.

We do not believe that Vet Center Office Managers require independent recognition as individuals authorized to certify photocopies. Such individuals are VA employees who are under the jurisdiction of specific VA Medical Center Directors. If a Medical Center Director authorizes a Vet Center Office Manager to administer oaths, then such a person would clearly fall within the first category of individuals authorized to certify photocopies.

One commenter suggested clarification of which veterans' service organization representatives were accredited under 38 CFR Part 14. It was suggested that clarification would reduce misinterpretation by VA employees as to who, in fact, is authorized to certify photocopies. We do not believe further clarification is necessary for the following reason. In January of each year, the VA General Counsel publishes an information bulletin containing the names of all service representatives who are accredited under 38 CFR Part 14. Supplements are issued monthly listing new accreditations and cancellations.

The latest edition of this Information Bulletin is IB 2–151 with its subsequent monthly supplements, and it is available at all VA Regional Offices. While we do not believe that clarifying language is necessary in the actual regulation, we will, nevertheless, make special reference to the information bulletin in the transmittal sheet that will accompany the VA's loose-leaf printing of the final rules. This should virtually eliminate any misinterpretation by VA employees.

The same commenter also suggested clarification of whether the term "original documents," as used in the proposed rule, included certified copies of official documents issued by custodians of public records. Such certified copies are already acceptable as evidence and in many cases are the most official documents obtainable. We agree that photocopies of such documents certified by one of the four categories of authorized individuals would be acceptable as evidence, and we have amended the proposed rule by adding paragraph (c)(3) to § 3.204 to indicate that certified copies of official documents issued by a custodian of public records are included in the term "original documents."

The proposed amendment, as modified herein, is adopted. We appreciate the suggestions and support received in connection with this rule change.

The Administrator hereby certifies that these final regulations will not have a sufficient economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. Therefore, pursuant to 5 U.S.C. 605(b), these final regulations are exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604. The reason for this certification is that these regulations impose no regulatory burdens on small entities, and only claimants for VA benefits will be directly affected.

In accordance with Executive Order 12291, Federal Regulation, the VA has determined that these final regulations are non-major for the following reasons:

(1) They will not have an annual effect on the economy of $100 million or more.

(2) They will not cause a major increase in costs or prices.

(3) They will not have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Catalog of Federal Domestic Assistance program numbers are 64.100, 64.101, 64.104, 64.105, 64.109, 64.110, 64.116, 64.117 and 64.125.

List of Subjects in 38 CFR Part 3

Administrative practice and procedure, Claims, Handicapped, Health care, Pensions, Veterans, Veterans Administration.

Approved: April 27, 1987.

Thomas K. Turnage,

Administrator.

PART 3—[AMENDED]

38 CFR Part 3, Adjudication, is amended to read as follows:

1. In § 3.202 paragraph (c) is amended to read as follows:

§ 3.202 Evidence from foreign countries.

* * * * *

(c) Photocopies of original documents meeting the requirements of this section will be accepted if certified in accordance with § 3.204(c) of this part. (38 U.S.C. 210(c)

2. In § 3.204 paragraph (c) is revised to read as follows:

§ 3.204 Evidence other than evidence of service.

* * * * *

(c) *Acceptability of photocopies.* (1) Photocopies of original documents necessary to establish birth, death,

marriage or relationship under the provisions of §§ 3.205 through 3.215 of this part are acceptable as evidence if an individual described in paragraph (c)(2) of this section has viewed the original document to be copied, is satisfied as to the document's genuineness and freedom from alteration, and certifies that the photocopy submitted as evidence is a true and exact copy of the original document viewed.

(2) For purposes of this paragraph, individuals authorized to certify photocopies of original documents are limited to:

(i) Any VA employee who is authorized to administer oaths.

(ii) Any representative of a veterans' service organization who is accredited under the provisions of Part 14 of this title.

(iii) Military personnel appointed on orders for this purpose by the commander of a military installation.

(iv) Any official of an approved educational institution or rehabilitation facility who is authorized to certify enrollments when such documentary evidence is submitted in connection with a claim for benefits under 38 U.S.C. chapters 30, 31 or 34.

(3) For purposes of this paragraph, the term "original documents" includes certified copies of official documents issued by custodians of public records. (38 U.S.C. 210(c))

§§ 3.205, 3.208 and 3.214 [Amended]

3. In §§ 3.205(c), 3.208 and 3.214 remove the words "widow or widower," "widows," or "widow" wherever they appear and add, in their place, the words "surviving spouse".

§ 3.209 [Amended]

4. In § 3.209 remove the words "Secondary evidence" in the cross reference at the end of the section and add, in their place, the words "Evidence other than evidence of service."

5. In § 3.210 paragraph (c)(2) is revised to read as follows:

§ 3.210 Child's relationship.

* * * * *

(c) * * *

(2) As to a child adopted by the veteran's surviving spouse after the veteran's death, the statement of the adoptive parent or custodian of the child will be accepted in absence of information to the contrary, to show that the child was a member of the veteran's household at the date of the veteran's death and that recurring contributions were not being received for the child's maintenance sufficient to provide for the major portion of the child's support, from any person other than the veterans or surviving spouse or from any public or private welfare organization which furnished services or assistance to children. (Pub. L. 86–195)

* * * * *

§ 3.212 [Amended]

6. In § 3.212(a) remove the word "his" wherever it appears and add, in its place, the words "his or her".

7. In § 3.213, paragraphs (a)(1), (a)(2) and (a)(3) are revised to read as follows:

§ 3.213 Change of status affecting entitlement.

(a) * * *

(1) *Veteran.* A statement by the veteran setting forth the month and year of death of a spouse, child, or dependent parent.

(2) *Surviving Spouse.* A statement by the surviving spouse or remarried surviving spouse setting forth the month and year of remarriage and any change of name. (An award for a child or children who are otherwise entitled may be made to commence the day following the date of discontinuance of any payments to the surviving spouse.)

(3) *Child.* A statement by the veteran or surviving spouse (where an additional allowance is being paid to the veterans or surviving spouse for a child), or fiduciary, setting forth the month and year of the child's death, marriage, or discontinuance of school attendance. A similar statement by a child who is receiving payments direct will be accepted to establish the child's marriage or the discontinuance of school attendance. Where appropriate, the month and year of discontinuance of school attendance will be required in addition to the month and year of death or marriage of a child. (38 U.S.C. 210(c))

* * * * *

8. Section 3.215 is revised to read as follows:

§ 3.215 Termination of marital relationship or conduct.

On or after January 1, 1971, benefits may be resumed to an unmarried surviving spouse upon filing of an application and submission of satisfactory evidence that the surviving spouse has ceased living with another person and holding herself or himself out openly to the public as that person's spouse, or that the surviving spouse has terminated a relationship or conduct which had created an inference or presumption of remarriage of related to open or notorious adulterous cohabitation or similar conduct. Such evidence may consist of, but is not limited to, the the surviving spouse's certified statement of the fact. (38 U.S.C. 103(d); sec. 5, Pub. L. 91–376)

§§ 3.205, 3.206, 3.207, 3.208, 3.210, 3.211, 3.212, 3.213, 3.214, and 3.215 [Amended]

9. In §§ 3.205, 3.206, 3.207, 3.208, 3.210, 3.211, 3.212, 3.213, 3.214, and 3.215 add the following cross reference after the section or at the end of the existing cross references:

Cross Reference: Evidence other than evidence of service. See § 3.204

[FR Doc. 87–11665 Filed 5–21–87; 8:45 am]

BILLING CODE 8320-01-M

POSTAL SERVICE

39 CFR Part 111

Second-Class In-County Rates

AGENCY: Postal Service.

ACTION: Final rule.

SUMMARY: This final rule amends § 482.1, Domestic Mail Manual, to provide express notice that publishers are responsible for ensuring that all second-class in-county postal rates claimed are correct and that all copies qualify for the rates claimed. Requirements which had been proposed for submission of additional information to the Postal Service to establish compliance are not adopted .

EFFECTIVE DATE: August 7, 1987.

FOR FURTHER INFORMATION CONTACT: Ernest Collins, (202) 268–5316.

SUPPLEMENTARY INFORMATION: On March 14, 1986, the Postal Service published for comment a proposed change in section 482, Domestic Mail Manual, to require publishers of second-class publications to file a Form 3541–B at the time of mailing (50 FR 8857–8859). Interested persons were invited to submit written comments concerning the proposed change by April 14, 1986.

The proposed change in procedures was to facilitate the enforcement of the additional statutory restrictions of Pub. L. No. 99–190 (described below) that were placed on the copies that can be mailed at second-class in-county rates, which are preferred rates supported by appropriations. It was believed that the change would help the Postal Service to determine at the time of mailing whether copies of an issue qualify for mailing at the second-class in-country rates, and thus to avoid the creation of postage deficiencies by publishers who incorrectly claim the in-county rates at the time of mailing.

A Continuing Resolution for Fiscal Year 1986, Pub. L. No. 99–190, established new requirements for in-

county second-class rates of postage. It specified that copies of an issue of a second-class publication could qualify for the rates only if the total paid circulation of such issue was less than 10,000 copies, or if the number of paid copies of such issue distributed within the county of publication was at least two more than one-half of the total paid circulation of such issue. In addition, it specified that during a calendar year the total weight of nonsubscriber copies mailed at the in-county rates might not exceed 10 percent of the weight of subscribers' copies of the publication mailed at the in-county rates.

Written comments were received from one trade association and four individuals. All respondents opposed requiring the completion of an additional form to establish or certify eligibility for the in-county rates.

Two commenters suggested that the reporting requirements be incorporated in an existing form. One commenter stated that the proposed form appeared to be a burden for the publications that do qualify for the in-county rates, and that the burden should be directed instead toward those publications which are unqualified or have doubtful qualifications. One commenter suggested that the Postal Service simply require the publisher to sign an affidavit stating that the issue qualifies for in-county rates. One commenter stated that many items of information requested on the proposed Form 3541-B were no longer needed because the subsequent passage of the Consolidated Omnibus Budget Reconciliation Act of 1985, Pub. L. 99-272, significantly changed the requirements from those that were in the Continuing Resolution, Pub. L. 99-190.

Current § 411.32 Domestic Mail Manual, which became effective April 20, 1986, contains the applicable provisions of Pub. L. 99-272:

411.32 In-County rates.

.321 Subscriber Copies. In-county rates apply to subscribers' copies of any issue of a second-class publication (except a requester publication) when they are entered within the county of publication for delivery to addresses within that county if either of the following conditions is met:

a. The total paid circulation of such issue is less than 10,000 copies.

b. The number of copies of such issue distributed within the county of publication is at least one more than one-half of the total paid circulation of such issue.

.322 Nonsubscriber Copies. During a calender year, the total number of nonsubscriber copies mailed at the in-county rates may not exceed 10 percent of the number of the subscribers' copies of the publication mailed at the in-county rates.

In order to determine at the time of mailing whether copies of an issue of a second-class publication can qualify for in-county rates under these new restrictions, the Postal Service must rely on information maintained and furnished by the publisher. This reliance is complicated by the fact that qualification for in-county rates is based on the total circulation of an issue, regardless of method. When a mailer distributes copies of a second-class publication at postage rates other than second-class rates, or by means outside the mailstream such as newspaper carriers, newsstands, or news agents, the Postal Service has no way to determine at the time of mailing how many copies are distributed outside the mailstream, how many copies are nonsubscribers' copies, and where the copies are distributed, whether within or outside the county of publication. The Postal Service periodically verifies the circulation of a randomly-selected issue of each second-class publication, but is is not feasible for the Postal Service to verify all issues of every second-class publication.

The Postal Service recognizes that the enactment of Pub. L. 99-272 has modified the types of information necessary to establish a publication's eligibility for in-county rates. In particular, the 10 pecrent limitation on in-county nonsubscriber copies is now based on the number, not the weight, of in-county subscribers' copies. The Postal Service also desires, to the extent consistent with responsible financial practices, to minimize the official paperwork burden imposed on publishers. After consideration of the comments received in response to its proposed rule, the Postal Service believes that this objective can be attained by proper screening by the mailer to assure that mailings are entitled to the rates claimed, and by a closer, and in some cases more frequent, scrutiny by the Postal Service of the record already maintained by publishers, coupled with diligent enforcement of the penalties for supplying false information to secure more favorable postage rates.

Accordingly, instead of requiring a new form to be completed for each mailing, the Postal Service is adding at the end of § 482.1 of the Domestic Mail Manual the following sentence: "The publisher is responsible for ensuring that all postal rates claimed on Form 3541 or 3541-A are correct and that all copies qualify for the rates claimed." This is consistent with the commenters' request that no new forms be required and the suggestion that mailers certify that a mailing qualifies for the rates claimed. The forms are being revised to require certification that the information submitted is accurate and truthful and that the matter submitted for mailing qualifies for the rates of postage claimed.

List of Subjects in 39 CFR Part 111

Postal Service.

PART 111—[AMENDED]

1. The authority citation for 39 CFR Part 111 is revised to read as follows:

Authority: 5 U.S.C. 552(a); 39 U.S.C. 101, 401, 403, 404, 3001-3011, 3201-3219, 3403-3406, 3621, 5001.

CHAPTER 4—SECOND-CLASS MAIL

* * * * *

PART 480—PAYMENT OF POSTAGE

In 482, revise 482.1 to read as follows:

482 Mailing Statement (See Exhibit 482).

482.1 Computing postage.

Second-class postage is computed on Form 3541, *Statement of Mailing-Second-Class Publications* or Form 3541-A, *Statement of Mailing-Second-Class (Requester) Publications*. These mailing statements must be submitted by the publisher with the first mailing of each issue, except that postmasters will, upon request, authorize publishers of publications which are regularly printed on sheets of uniform weight to submit one mailing statement at the end of each calendar month for mailings made during that month. The publisher is responsible for ensuring that all postal rates claimed on Form 3541 or 3541-A are correct, and that all copies qualify for the rates claimed.

A transmittal letter making this change in the pages of the Domestic Mail Manual will be published and will be transmitted to subscribers automatically. Notice of issuance of the transmittal letter will be published in the **Federal Register** as provided in 39 CFR 111.3.

Fred Eggleston,

Assistant General Counsel, Legislative Division.

[FR Doc. 87-11758 Filed 5-21-87; 8:45 am]

BILLING CODE 7710-12-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Public Land Order 6646

[AK-960-07-4220-10; A-062396]

Partial Revocation of Public Land Order No. 3776 for Selection of Lands by the State of Alaska

AGENCY: Bureau of Land Management, Interior.

ACTION: Public land order.

SUMMARY: This order partially revokes a public land order insofar as it affects 43.3 acres of national forest land withdrawn for use by the Forest Service, Department of Agriculture as the administrative site for the Maybeso Experimental Forest. This action makes the land available for selection by the State of Alaska, if the land is otherwise available. If the land is not selected by the State, this order opens the lands to the mining laws.

EFFECTIVE DATE: May 22, 1987.

FOR FURTHER INFORMATION CONTACT: Sue A. Wolf, BLM Alaska State Office, 701 C Street, Box 13, Anchorage, Alaska 99513, 907–271–5477.

By virtue of the authority vested in the Secretary of the Interior by section 204(a) of the Federal Land Policy and Management Act of 1976, 90 Stat. 2571, 43 U.S.C. 1701, 1714(a), it is ordered as follows:

1. Public Land Order No. 3776, dated August 10, 1965, which reserved land in the Tongass National Forest for an administrative site for the Maybeso Experimental Forest, is hereby revoked as to the following described lands:

Tongass National Forest

Maybeso Experimental Forest Administrative Site; Cooper River Meridian, AK

Located within Section 4, T. 74 S., R. 84 E., and Section 33, T. 73 S., R. 84 E. more specifically described as:

Commencing at U.S. Coast and Geodetic Triangulation Station "FLEA" located at latitude 55°28'39.282" N., and longitude 132°37'30.258" W., proceed N. 57°19'58" W., 69.40 chains to W.C.M.C. for corner No. 1, U.S. Survey No. 6640, thence N. 9°25' W. 1.06 chains to a point on the south right-of-way of the Hollis Highway which is corner No. 1, the true point of beginning of this description:

thence N. 9°25' W., 34.62 chains to corner No. 2, identical to corner No. 2 of PLO No. 3776;

thence N. 88°15' W., 10.10 chains to corner No. 3, identical to corner No. 3 of PLO No. 3776;

thence S. 10°20' W., approximately 20 chains to a point 1 chain past the centerline of the Hollis Highway on the south right-of-way of the highway which is corner No. 4;

thence approximately S. 42°50' E. approximately 12.5 chains to a point which is S. 47°10' W. 1 chain from corner No. 3 of U.S. Survey 6640, said point is corner No. 5;

thence a curve curving to the left having a radius of 8.08 chains and an arc distance of approximately 9.12 chains and closing on corner No. 1, the true point of beginning.

The area described contains approximately 43.3 acres.

2. Subject to valid existing rights, the land described above is hereby made available for selection by the State of Alaska under the provisions of section 6(a) of the Alaska Statehood Act of July 7, 1958, 72 Stat. 339, *et seq.*; 48 U.S.C. prec. 21, if such land is otherwise available.

3. Under the provisions of section 6(g) of the Alaska Statehood Act, supra, the State of Alaska is provided a preference right of selection for the land herein described for a period of ninety-one (91) days from the date of publication of this order. Any land described herein that is not selected by the State of Alaska will continue to be subject to the terms and conditions of the Tongass National Forest reservation and any other withdrawals of record.

4. At 10:00 a.m. on Aug. 21, 1987, subject to valid existing rights, the provisions of existing withdrawals and the requirement of applicable laws, the land described in paragraph one above will be opened to such forms of disposition as may by law be made of national forest lands, including location and entry under the United States mining laws. Appropriation of any land described in this order under the general mining laws prior to the date and the time of restoration is unauthorized. Any such attempted appropriation, including attempted adverse possession under 30 U.S.C. 38, shall vest no rights against the United States. Acts required to establish a location and to initiate a right of possession are governed by State law where not in conflict with Federal law. The Bureau of Land Management will not intervene in disputes between rival locators over possessory rights since Congress has provided for such determinations in local courts.

J. Steven Griles,

Assistant Secretary of the Interior.

May 11, 1987.

[FR Doc. 87–11575 Filed 5–21–87; 8:45 am]

BILLING CODE 4310–JA–M

43 CFR Public Land Order 6647

[AK-932-07-4220-10; F-013669, F-014046]

Revocation of Public Land Order Nos. 1491 and 1641 for Selection of Lands by the State of Alaska

AGENCY: Bureau of Land Management, Interior.

ACTION: Public land order.

SUMMARY: This order revokes two public land orders (PLO's) insofar as they affect approximately 1,015.10 acres of public land withdrawn for military purposes. This action will also classify the land as suitable for selection by the State of Alaska, if such land is otherwise available. The land will remain closed to all other forms of appropriation and disposition under the public land laws, including the mining and mineral leasing laws, pursuant to PLO 5187, as amended.

EFFECTIVE DATE: May 22, 1987.

FOR FURTHER INFORMATION CONTACT: Sue A. Wolf, BLM Alaska State Office, 701 C Street, Box 13, Anchorage, Alaska 99513, 907–271–5477.

By virtue of the authority vested in the Secretary of the Interior by section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751; 43 U.S.C. 1714, and section 17(d)(1) of the Alaska Native Claims Settlement Act of December 18, 1971, 85 Stat. 708 and 709; 43 U.S.C. 1616(d)(1), it is ordered as follows:

1. Public Land Order No. 1491, dated September 9, 1957, and PLO No. 1641, dated May 22, 1958, as corrected, which withdrew land for use by the military, are hereby revoked insofar as they affect the following described lands:

Fairbanks Meridian

T. 1N., R. 1 W.,
Sec. 32, that portion of the W½W½, described by metes and bounds as follows:

Starting at the common corner of Sections 29, 30, 31, and 32 thence 900 feet South following the section line between Sections 32 and 31 to the point of beginning;

Thence 1,000 feet East on a line parallel to the section line common to Sections 29 and 32;

Thence 2,400 feet South following a line parallel to the section line common to Sections 31 and 32;

Thence 1,000 feet West on a line parallel to the section line common to Sections 29 and 32;

Thence 2,400 feet North following the section line common to Sections 31 and 32 to the point of beginning.

T. 2 N., R. 2 W.,
Sec. 22, E½E½SE¼;
Sec. 23, S½N½, S½NE¼NW¼, S½N½NE¼, SW¼, S½SE¼, W½NW¼SE¼;
Sec. 24, S½NW¼NW¼, SW¼NW¼, W½SE¼NW¼, W½NE¼SW¼, W½SW¼, NW¼SE¼SW¼;
Sec. 25, NW¼NW¼NW¼;
Sec. 26, N½NE¼NE¼, NW¼NE¼, N½NW¼, NW¼SE¼NW¼;
Sec. 27, NE¼NE¼NE¼, SE¼NE¼, S½NE¼NE¼, N½NE¼SE¼.

The lands described aggregate approximately 1,015.10 acres.

2. Subject to valid existing rights, the lands described above are hereby classified as suitable for and opened to selection by the State of Alaska under either the Alaska Statehood Act of July 7, 1958, 72 Stat. 339, et seq.; 48 U.S.C. prec. 21, or section 906(b) of the Alaska National Interest Lands Conservation Act of December 2, 1980, 94 Stat., 2437–2438.

3. As provided by section 6(g) of the Alaska Statehood Act, the State of Alaska is provided a preference right of selection for the lands described above for a period of ninety-one (91) days from the date of publication of this order, if the lands are otherwise available. Any of the lands described herein that are not selected by the State of Alaska will continue to be subject to the terms and conditions of PLO 5187, as amended, and other withdrawals of record.

J. Steven Griles,

Assistant Secretary of the Interior.

May 11, 1987.

[FR Doc. 87-11574 Filed 5-21-87; 8:45 am]

BILLING CODE 4310-JA-M

43 CFR Public Land Order 6644

[OR-943-07-4220-10; OR-36355]

Public Land Order No. 6624, Correction; Withdrawal of Public Lands for the Burns Junction Administrative Site, Oregon

AGENCY: Bureau of Land Management, Interior.

ACTION: Public land order.

SUMMARY: This order corrects an error in the land description contained in Public Land Order No. 6624 of September 18, 1986.

EFFECTIVE DATE: May 22, 1987.

FOR FURTHER INFORMATION CONTACT: Champ Vaughan, BLM Oregon State Office, P.O. Box 2965, Portland, Oregon 97208, 503–231–6905.

By virtue of the authority vested in the Secretary of the Interior by section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751; 43 U.S.C. 1714, it is ordered as follows:

The land description in Public Land Order No. 6624 of September 18, 1986, in FR Doc. 86–21673, published on page 34086 in the issue of Thursday, September 25, 1986, is hereby corrected as follows:

In paragraph 1 under T. 32 S., R. 40 E., Sec. 18, which reads "E½NW¼, N½NE¼SE¼" is corrected to read "E½NW¼, N½NE¼SW¼,."

April 30, 1987.

J. Steven Griles,

Assistant Secretary of the Interior.

[FR Doc. 87-11629 Filed 5-21-87; 8:45 am]

BILLING CODE 4310-JA-M

43 CFR Public Land Order 6645

[OR-943-07-4220-10; GP-07-085; OR-38420(WASH)]

Public Land Order No. 6632, Correction; Withdrawal of Mineral Estate for Protection of the Department of Energy Hanford Site

AGENCY: Bureau of Land Management, Interior.

ACTION: Public land order.

SUMMARY: This order corrects errors in the land description contained in Public Land Order No. 6632 of November 17, 1986.

EFFECTIVE DATE: May 22, 1987.

FOR FURTHER INFORMATION CONTACT: Champ Vaughan, BLM Oregon State Office, P.O. Box 2965, Portland, Oregon 97208, 503–231–6905.

By virtue of the authority vested in the Secretary of the Interior by section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751; 43 U.S.C. 1714, it is ordered as follows:

The land description in Public Land Order No. 6632 of November 17, 1986, in FR Doc. 86–26717, published on page 43003 in the issue of Friday, November 28, 1986, is hereby corrected as follows:

In paragraph 1 under T. 13 N., R. 25 E., which reads "Sec. 20, lots 1 and 3, and E½NW¼." is corrected to read "Sec. 30, lots 1 and 2, and E½NW¼."

April 30, 1987.

J. Steven Griles,

Assistant Secretary of the Interior.

[FR Doc. 87-11630 Filed 5-21-87; 8:45 am]

BILLING CODE 4310-33-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 652

[Docket No. 61109-7026]

Atlantic Surf Clam and Ocean Quahog Fisheries

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

ACTION: Notice of adjustment in surf clam fishing time.

SUMMARY: NOAA issues this notice to increase allowable fishing time for surf clams to 30 hours for the second quarter of 1987 for vessels harvesting surf clams in the Mid-Atlantic Area of the exclusive economic zone. This action will provide flexibility to operators in the use of fishing time during the period. The intended effect is to match fishing effort to the available quota for the area.

EFFECTIVE DATE: April 5 through July 2, 1987.

FOR FURTHER INFORMATION CONTACT: Bruce Nicholls, 617–281–3600 ext. 263.

SUPPLEMENTARY INFORMATION: Regulations implementing the Fishery Management Plan for the Atlantic Surf Clam and Ocean Quahog Fisheries contain at § 652.22(a)(3) a provision allowing the Regional Director to revise allowable fishing times to promote fishing for surf clams throughout the year with a minimum of changes. The Regional Director during the first quarter of 1987 decided, with the unanimous support of the Council, to allocate fishing time by quarter and allow each operator the maximum flexibility possible to schedule that time to his best advantage. That program was continued in the second quarter with some modifications required to promote enforcement.

At the start of the second quarter, 24 hours of fishing time was allocated, with the provision that, should harvest rates allow, additional time would be provided. Landings from the fishery through May 2, 1987, indicate that an additional 6 hours can be allocated. Thus, by this notice, each operator is allotted a total of 30 hours of fishing time for the second quarter. That time must be scheduled in five 6-hour fishing periods, which, counting those already taken since April 5, may be taken on any five separate days during the normal surf clam fishing times. The procedures specified at the beginning of the second quarter (52 FR 10763, April 3, 1987) for selection and confirmation of fishing periods continue to apply.

Other Matters

This action is taken under the authority of 50 CFR Part 652 and is taken in compliance with Executive Order 12291.

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

List of Subjects in 50 CFR Part 652

Fisheries, Reporting and recordkeeping requirements.

Dated: May 19, 1987.

James E. Douglas, Jr.,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 87-11805 Filed 5-19-87; 4:31 pm]

BILLING CODE 3510-22-M

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50 CFR Part 661

[Docket No. 70485-7085]

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

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

ACTION: Notice of 1987 fishery management measures and request for comments; correction and clarification.

SUMMARY: This document clarifies ambiguous language and corrects an error which appeared in Table 1 of the final 1987 fishery management measures for the ocean salmon fisheries off the coasts of Washington, Oregon, and California, which appear in the **Federal Register** on May 6, 1987 (52 FR 17422).

EFFECTIVE DATE: May 19, 1987.

FOR FURTHER INFORMATION CONTACT: Rolland A. Schmitten at 206-526-6150; or E. Charles Fullerton at 213-514-6196.

In rule document 87-10247 beginning on page 17264, the following corrections are made to Table 1 under the "Restrictions and exceptions" heading, in the last column:

1. On page 17268 for the area from Cape Falcon to Cascade Head, during the all-species season beginning July 15, in the last column, line 13 of that entry after "chinook-only loads" insert "south of Cape Falcon. See footnote [b] for restrictions on deliveries north of Cape Falcon."

2. On the same page for the area from Cascade Head to Cape Perpetua, during the all-species season beginning July 15, in the last column, line 9 of that entry after "chinook-only loads" insert "south of Cape Falcon. See footnote [b] for restrictions on deliveries north of Cape Falcon."

3. On page 17269 for the area from Cape Blanco to Point Delgada, during the all-species season beginning June 1, in the last column, line 4 of that entry "2 coho" should read "1 coho".

4. On the same page, for the area from Cape Blanco to Point Delgada, under the subheading Trinidad Head to Punta Gorda, in the last column, line 1 of that entry after "Barbless Hooks." the sentence should read "Open only within 6 nautical miles of the shore." On line 3 of this same entry after "this" insert "period as".

5. On the same page, footnote [b], line 4 after "that" insert "chinook". On line 5 after north insert "of Cape".

Other Matters

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

Authority: 16 U.S.C. 1801 *et seq.*

List of Subjects in 50 CFR Part 661

Fisheries, Fishing, Indians.

Dated: May 18, 1987.

Carmen J. Blondin,

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

[FR Doc. 87-11664 Filed 5-19-87; 4:32 pm]

BILLING CODE 3510-22-M

Proposed Rules

Federal Register
Vol. 52, No. 99
Friday, May 22, 1987

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Part 226

Child Care Food Program; Documentation and Verification of Eligibility

AGENCY: Food and Nutrition Service, USDA.

ACTION: Proposed rule.

SUMMARY: The Department proposes to amend the regulations governing the documentation and verification of eligibility for free and reduced price meal benefits in the Child Care Food Program (CCFP). Specifically, the Department proposes: (1) To provide automatic free meal eligibility and simplified verification procedures for children from households receiving food stamps or from "assistance units" receiving Aid to Families with Dependent Children (AFDC) benefits; (2) to make several discretionary changes to the procedures governing the application for free or reduced price benefits and verification of eligibility in the CCFP; and (3) to eliminate "institution visits" as a means of verifying applicants' income information. The first action is necessary to implement the categorical eligibility provisions mandated by the School Lunch and Child Nutrition Amendments of 1986; and discretionary changes proposed in this rulemaking are necessary to bring about greater consistency between the documentation and verification procedures used in the CCFP and the comparable procedures used in the National School Lunch Program (NSLP), the School Breakfast Program (SBP), and the Special Milk Program (SMP).

DATE: To be assured of consideration comments must be postmarked on or before July 21, 1987.

ADDRESS: Comments should be addressed to Mr. Lou Pastura, chief, Policy and Program Development Branch, Child Nutrition Division, Food and Nutrition Service, United States Department of Agriculture, 3101 Park Center Drive, Room 509, Alexandria, Virginia 22302.

FOR FURTHER INFORMATION CONTACT: Mr. Lou Pastura or Mr. James C. O'Donnell at the above address or by telephone at (703) 756-3620.

SUPPLEMENTARY INFORMATION:

Classification

This action has been reviewed under Executive Order 12291 and has been classified *not major* because it will not have an annual effect on the economy of $100 million; will not cause a major increase in costs or prices for program participants, individual industries, Federal agencies, State or local government agencies, or geographic regions; and will have a significant economic impact on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or foreign markets.

This rule has also been reviewed with regard to the requirements of Pub. L. 96-354, the Regulatory Flexibility Act (5 U.S.C. 601 through 612). Pursuant to this review, Ms. S. Anna Kondratas, the Acting Administrator of the Food and Nutrition Service, has certified that this proposed rule does not have a significant economic impact on a substantial number of small entitles.

In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3507), the reporting and recordkeeping requirements that are included in §§ 226.9, 226.15, 226.17, 226.19 and 226.23 of this proposed rule have been approved by the Office of Management and Budget (OMB) under clearance 0584-0055.

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.558 and is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. (Cite 7 CFR Part 3015, Subpart V, 48 FR 29112, June 24, 1983; 49 FR 22675, May 31, 1984; 50 FR 14088, April 10, 1985, as appropriate, and any subsequent notices that may apply.)

Background

The School Lunch and Child Nutrition Amendments of 1986, as reflected in Pub. L. 99-500 and Pub. L. 99-551, mandate changes in the procedures used to document and verify eligibility for free meal benefits under the CCFP and other child nutrition programs. Applications for free and reduced price meal benefits are taken in child care centers and outside-school-hours care centers where meal reimbursements to institutions are based on the income eligibility of participating children. In addition, such applications are taken in day care homes when providers wish to receive meal benefits for their own children. This proposed rulemaking deals with the mandated changes in the CCFP; a separate rulemaking action will incorporate the mandatory changes in the free meal application procedures for the NSLP, the SBP, and the SMP. Because the Department is proposing a number of other discretionary changes to the application/verification process, this rule is issued as a proposed rule. Implementation of the categorical eligibility requirements of Pub. L. 99-500 and Pub. L. 99-591 is nondiscretionary. Commenters should be aware of the mandatory nature of these provisions.

This rulemaking also proposes several discretionary changes to the procedures used to document and verify eligibility for free or reduced price meal benefits in the CCFP. Since the publication of a final rulemaking on documentation and verification of eligibility in the CCFP (50 FR 19305, May 8, 1985), changes to the procedures for documenting and verifying eligibility in the school programs (the NSLP, SBP, and SMP) have created areas of inconsistency between the CCFP and these programs. These inconsistencies present problems in 39 of the 53 States or territories offering the CCFP, where the same State agency administers both the CCFP and the school programs. For these State agencies, administrative efficiency could be improved, administrative costs and burden lowered, and cross-training of State personnel facilitated by the elimination of unnecessary procedural discrepancies between the CCFP and the school programs.

Proposed Changes to Application and Documentation Requirements

I. Categorical Eligibility and Application Requirements

Section 323 of Pub. L. 99-500 and Pub. L. 99-591 provide categorical eligibility

for free CCFP meal benefits to children from households receiving food stamps of from "assistance units" receiving AFDC benefits, provided that the latter benefits are not made available to assistance units with income greater than 130 percent of the poverty level. Currently, no State's AFDC "need standard" or AFDC payments exceeds 130 percent of poverty. Consequently, AFDC recipiency will automatically qualify children to receive free meal benefits in all States and territories where the CCFP operates. The law's categorical eligibility provisions are intended to simplify free meal application procedures for children from households whose need for food assistance has already been established by their participation in other Federal assistance programs. The categorical eligibility provisions will necessitate several changes to the way in which childrens' eligibility for free meal benefits is determined in the CCFP. Currently, households are required to provide, at a minimum, information which includes the names of all household members, the social security numbers of all adult household members, and the total income received by the household. Eligibility determinations for free or reduced price meals are based on the household's total income as compared to the Department's income Eligibility Guidelines. The Department recognizes, however, that this definition of "household" is not entirely consistent with the definition of "household" utilized in the Food Stamp Program or the definition of an "assistance unit" in the AFDC program.

The Department believes that the law's intent was to provide simplified application procedures as well as automatic free meal eligibility for children from households or assistance units receiving food stamp or AFDC benefits. Therefore, the Department proposes to authorize institutions to begin accepting abbreviated applications from households on behalf of children who are members of food stamp households and AFDC assistance units. In order to establish these children's eligibility in the simplest manner possible, the Department proposes to authorize institutions to accept current food stamp or AFDC case numbers to document a child's eligibility without requiring any additional information concerning other household members or income. In such cases, eligibility for free meals will be determined on a "child" rather than a "household" basis. The decision to apply for free meal benefits for a child by providing a food stamp or AFDC case number would rest entirely with the household.

However, if an application for free or reduced price benefits is made for any child who is *not* a member of a food stamp household or an AFDC assistance unit, even if that child resides in a household with other children who are food stamp or AFDC recipients, such application must include income information for *all* household members. In these cases, the value of welfare benefits paid in cash (such as AFDC) shall be counted as income in determining the child's eligibility for free or reduced price benefits; however, as provided in section 8(b) of the Food Stamp Act (Pub. L. 95–113), the value of food stamp benefits shall *not* be counted as income. Accordingly, this rulemaking proposes to add definitions of an"AFDC assistance unit" and a "Food Stamp household" to § 226.2 so that special application and verification procedures for them can be easily described in § 226.23. Thus, whenever special procedures apply to food stamp households or AFDC assistance units, the food stamp household and AFDC assistance unit are specifically mentioned in the regulatory language.

In addition, this rulemaking proposes to amend §§ 226.23(c) and 226.23(d) in regard to pricing institutions' free and reduced price policies and media releases and to amend § 226.23(e) in regard to the required methods of establishing eligibility for free meal benefits in the CCFP. These latter changes merely reflect the special procedures which apply to children who are categorically eligible for free meal benefits. Finally, a number of other conforming amendments have been made (see §§ 226.4, 226.6, 226.9, 226.11, 226.15, 226.17, 226.18 and 226.19 below) to reflect that, instead of basing free and reduced price eligibility on the Secretary's income standards alone, there is now an additional means of determining eligibility for some (i.e., categorically eligible) free meal recipients.

The Department believes that these new procedures will provide simplified procedures for households applying on behalf of those children who are designated as automatically eligible in Pub. L. 99–500 and Pub. L. 99–591. At the same time, the continuation of current application procedures for households on behalf of all other children will ensure that automatic eligibility is not inadvertently extended to persons other than those specified by these laws. In order to assist in implementing the new application procedures under this rule, the Department will revise and reissue the handbook entitled "Verification Guidance in the Child Care Food Program."

II. Discretionary Changes to Applications and Documentation Requirements

In addition to those changes necessitated by the implementation of categorical eligiblity, the Department is also proposing several discretionary changes to the procedures governing application and documentation of eligibility for free and reduced price DDFP benefits. These changes are designed to eliminate unnecessary procedural differences between the CCFP and the school programs.

The most important of these proposed changes will affect applicants for free or reduced price CCFP meal benefits by requiring that they provide more information concerning their household income. Because most households applying for these benefits participate in non-pricing programs (i.e., institutions in which there is no separate identifiable charge made for meals served to enrolled children), it was originally thought that obtaining more income information was unnecessary since households paying one overall child care fee would have no incentive to under-report their income. Thus, the final CCFP documentation and verification regulation published in 1985 required only that households list all members and their total current income.

In contrast, the regulations governing applications for free and reduced price benefits in the school programs (see § 245.6(a)) require applicants to provide "total household income and the income received by each household member identified by source of income." Thus, each household member receiving income must show specifically how that income is obtained (e.g., as wages, interest and dividends, cash welfare payments, pensions, etc.). This provides a more complete and accurate picture of household income than if only total income is requested.

Requiring CCFP applicants to report income by source will accomplish three purposes. First, the 39 States agencies currently administering both the CCFP and the school programs will not be able to use a single, standard application form for all of the child nutrition programs which they administer. Second, requesting income by source is helpful to both applicants and institutions as a reminder of the various types of income that must be counted in determining eligibility for free or reduced price meal benefits. Although

applicants in non-pricing situations may have little personal incentive to under-report income, requiring households to report income by source should produce more accurate income information, thus minimizing any inadvertent under-reporting which could lead to overpayment of meal benefits by the Department to institutions. Third, under current regulations, State agencies are permitted to verify income information on applications in non-pricing programs just as they are required to do in pricing situations (see § 226.23(h)(1)). However, without a listing of income by source for each household member, it is not likely that the State would be able to verify eligibility easily and accurately for free or reduced price benefits in non-pricing situations if they chose to do so. Accordingly, this rulemaking proposes to amend the definition of "Documentation" in § 226.2 and to amend § 226.23(e)(11)(D) to require that applicants provide income by source on their free and reduced price applications.

Along with this proposed change, it is also necessary to add to the regulations a requirement that the CCFP application include a certification that the information provided is true and correct and a statement that deliberate misrepresentation may subject the applicant to prosecution under applicable State or Federal laws. Since some applicants participate in pricing programs and are subject to the same type of verification procedures used in the school programs, the certification and statement are necessary to ensure the veracity of the eligibility information provided. In addition, the certification and statement will also help to underscore the importance of providing full and accurate information to those households participating in a non-pricing program and filling out the application for free and reduced price benefits. Finally, the addition of the certification and statement will make the CCFP and school programs applications fully compatible, thus allowing States to use a single application for all of the Child Nutrition Programs. Accordingly, this rulemaking proposes to amend § 226.23(e)(11)(G) by adding such a certification to the free and reduced price application.

Proposed Changes to Verification Requirements

In addition to mandating automatic free meal eligibility for children in food stamp households and AFDC assistance units, section 323 of Pub. L. 99–500 and Pub. L. 99–591 also mandated that proof of receipt of food stamp or AFDC benefits be accepted as adequate verification of eligibility to receive free meal benefits. Thus, regardless of whether a household applies for free meal benefits under the categorical eligibility procedures described in proposed § 226.23(e)(iii), it may verify its eligibility for free meals by documenting that the child is a member of a household or assistance unit that is currently authorized to participate in the Food Stamp or AFDC Program. Such documentation would generally consist of a Notice of Eligibility, issued by the appropriate agency, which would show that the child was a member of a household or assistance unit currently certified to participate in either the Food Stamp or AFDC Program. To emphasize the requirement that current certification to participate in these programs be properly verified, the regulatory language specifies that program identification cards are not acceptable sources for verification unless they contain an expiration date. This provision re-states current policy concerning this issue.

Accordingly, the Department proposes to amend § 226.23(h)(2) to incorporate the simplified verification methods mandated for Food Stamp and AFDC recipients by the School Lunch and Child Nutrition Act Amendments of 1986. In addition, the definition of "verification" in § 226.2 is slightly modified to incorporate specific procedures pertaining to categorically eligible participants and to include specific examples of the ways in which income eligibility may be verified for other pricing program participants.

The Department also proposes to make two discretionary changes to the regulations governing verification of eligibility for free or reduced price benefits in the CCFP. The first of these changes involves re-organizing the material presented in § 226.23(h)(2). This material has been divided into a number of topical paragraphs to facilitate reference to the specific aspects of verification in pricing programs being discussed in § 226.23(h)(2).

The second discretionary change involves the types of sources which States may use to verify eligibility for free or reduced price meal benefits. Currently, State agencies may conduct their required verification of applicants in pricing programs by using any combination of four verification sources: Writen evidence; collateral contacts; institution conferences; and systems of records. This rulemaking proposes to eliminate "institution conferences", which involve the State requesting the adult member(s) of a household to visit the institution in order to discuss the information contained on the application. The Department believes that, although informal discussions between parents and State reviewers may expedite the verification process, such "institution conferences" do not constitute a means of independently verifying the information provided on the application. A similar provision was removed from the school programs regulations when final verification rules were issued. Accordingly, the Department proposes to amend § 226.23(h)(2) to limit the sources of verification information to those utilized in the school programs: written evidence; collateral contacts; and systems of records.

List of Subjects in 7 CFR Part 226

Day care, Food assistance programs, Grant programs—Health, Infants and Children, Surplus agricultural commodities.

Accordingly, for the reasons set forth in the preamble, the Department is proposing to amend 7 CFR Part 226 as follows:

PART 226—CHILD CARE FOOD PROGRAM

1. The authority citation for Part 226 is revised to read as follows:

Authority: Secs. 323, 326, and 361, Pub. L. 99–500 (42 U.S.C. 1758, 1760, and 1766); secs. 323, 326, and 361 of Pub. L. 99–591 (42 U.S.C. 1758, 1760, and 1766); secs. 803, 810, and 820, Pub. L. 97–35, 95 Stat. 521–535 (42 U.S.C. 1758, 1766); sec. 2, Pub. L. 95–627, 92 Stat. 3603 (42 U.S.C. 1766); sec. 10, Pub. L. 89–642, 80 Stat. 889 (42 U.S.C. 171779), unless otherwise noted.

2. In § 226.2:

a. New definitions of "AFDC Assistance Unit" and "Food Stamp Household" are added in alphabetical order.

b. The definitions of "Documentation", "Free Meal", and "Verification" are revised.

The revisions and additions specified above read as follows:

§ 226.2 Definitions.

* * * * *

AFDC Assistance Unit means any individual or group of individuals which is currently certified to receive assistance under the Aid to Families with Dependent Children Program in a State where the standard of eligibility for AFDC benefits does not exceed the income standards for free meals under this part.

* * * * *

Documentation means the completion of the following information on a free

and reduced price application: (a) Names of all household members; (b) social security number of each adult household member or an indication that an adult household member does not possess one; (c) household income received by each household member, identified by source of income (such as earnings, wages, welfare, pensions, support payments, unemployment compensation, and social security) and total household income; and (d) the signature of an adult member of the household. Alternatively, "documentation" for a child who is a member of a food stamp household or an AFDC assistance unit means completion of only the following information on a free and reduced price application: the names and food stamp or AFDC case numbers for the child(ren); and the signature of an adult member of the household.

* * * * *

Food Stamp Household means any individual or group of individuals which is currently certified to receive assistance as a household under the Food Stamp Program.

Free meal means a meal served under the Program to (a) a child from a family which meets the income standard for free school meals, or to (b) a child who is automatically eligible for free meals by virtue of food stamp or AFDC recipiency. Regardless of whether the child qualifies for free meals by virtue of (a) or (b), neither the child nor any member of his family shall be required to pay or to work in the food service program in order to receive a free meal.

* * * * *

Verification means: (a) A review of the information reported by institutions to the State agency regarding the eligibility of enrolled children for free or reduced price meals; and (b) in addition, for a pricing program, confirmation of eligibility for free or reduced price benefits under the Program. Verification for a pricing program shall include confirmation of income eligibility or current certification to participate in the Food Stamp or AFDC Program. Such verification may be accomplished by examining information (e.g., wage stubs, etc.) provided by the household; other sources of income as specified in § 226.23(h)(2)(iv); and, at State discretion, any other information required on the application which is defined as documentation in § 226.2.

§ 226.4 [Amended]

3. In § 226.4, paragraphs (b)(1) through (b)(3) and (b)(5) through (b)(9) are amended by removing the word "income" and adding in its place the word "eligibility."

§ 226.6 [Amended]

4. In § 226.6:

a. Paragraph (b)(2) is amended by removing the words "family size and income" and adding in their place the word "eligibility."

b. Paragraph (e)(7) is amended by removing the words "Secretary's income."

§ 226.9 [Amended]

5. In § 226.9, paragraph (b)(1) is amended by removing the words "family-size and income" and adding in their place the word "eligibility".

§ 226.11 [Amended]

6. In § 226.11, paragraph (c)(1) is amended by removing the words "from families meeting the family-size and income standards for" and adding in their place the words "eligible to receive".

7. In § 226.15:

a. Paragraph (e)(2) is amended by adding a third sentence.

a. Paragraph (e)(3) is amended by adding a third sentence.

The additions specified above read as follows:

§ 266.15 Institution provisions.

* * * * *

(e) * * *

(2) * * * However, when a household applies for free meal eligibility on behalf of a child who is a member of a food stamp household or AFDC assistance unit in accordance with § 266.23(e)(1)(iii), such information shall consist of the food stamp or AFDC case number of the child(ren) for whom free meal benefits are being claimed.

(3) * * * However, when a provider's own child is a member of a food stamp household or an AFDC assistance unit and free meal benefits have been applied for in accordance with § 266.23(e)(1)(iii), such information shall consist of the child(ren)'s food stamp or AFDC case number.

* * * * *

7. In § 266.17, paragraph (b)(17) is amended by adding a second sentence to read as follows:

§ 226.17 Child care center provisions.

* * * * *

(b) * * *

(7) * * * However, for households applying for free meal eligibility on behalf of children from food stamp households or AFDC assistance units in accordance with § 266.23(e)(1)(iii), child care centers shall collect and maintain food stamp or AFDC case numbers in lieu of family-size and income information and social security numbers.

* * * * *

§ 266.18 [Amended]

8. In § 266.18, paragraph (e)(3) is amended by removing the words "meet the family-size income standards for" and adding in their place the words "are eligible to receive".

9. In § 266.19, paragraph (b)(9)(i) is revised to read as follows:

§ 266.19 Outside-school-hours care center provisions.

* * * * *

(b) * * *

(9) * * *

(i) Documentation of enrollment for all children, including information sufficient to establish the eligibility of children classified as free or reduced price meal receipients;

* * * * *

10. In § 266.23:

a. Paragraph (c)(2) is amended by changing the semi-colon to a period and adding a second sentence.

b. Paragraph (d) is amended by revising the fourth sentence.

c. Paragraph (e)(1)(i) is amended by adding a fifth sentence.

d. Paragraph (e)(1)(ii) is amended by adding the words, "Except as provided in paragraph (e)(1)(ii) of this section," at the beginning of the first sentence.

e. Paragraphs (e)(1)(ii)(D) and (e)(1)(ii)(G) are revised.

f. Paragraph (e)(1)(ii)(F) is amended by revising the first and fifth sentences.

g. Paragraph (e)(1)(iii) is revised.

h. Paragraphs (e)(2)(iii) and (e)(2)(vii) are revised.

i. Paragraph (h)(2) is revised.

j. Paragraph (h)(5) is amended by changing the words "paragraph (h)(2)(i)" to read "paragraph (h)(2)(vii)", and by changing the words "paragraph (h)(2)(ii)" to read "paragraph (h)(2)(viii)".

The revisions and additions specified above read as follows:

§ 226.23 Free and reduced price meals.

* * * * *

(c) * * *

(2) * * * Such methods will ensure that applications are accepted from households on behalf of children who are members of AFDC assistance units or food stamp households;

* * * * *

(d) * * * The release issued by institutions which charge separately for meals shall announce the availability of free and reduced price meals to children

meeting the approved eligibility criteria, and shall also announce that children who are members of AFDC assistance units or food stamp households are automatically eligible to receive free meal benefits. * * *

(e)(1) * * *

(i) * * * However, such forms and materials shall state that, if a child is a member of a food stamp household or an AFDC assistance unit, the child is automatically eligible to receive free CCFP meal benefits, subject to completion of the application as described in § 226.23(e)(1)(iii) of this part.

(ii) * * * (D) The total current household income and the income received by each household member identified by source of income (such as earnings, wages, welfare, pensions, support payments, unemployment compensation, social security, and other cash income received or withdrawn from any other source, including savings, investments, trust accounts, and other resources.) * * * (F) a statement which includes substantially the following information: "Section 9 of the National School Act requires that, unless you provide a food stamp or AFDC case number for your child, you must provide the social security numbers of all adult members of your household in order for your child to be eligible for free or reduced price meals. * * * These verification efforts may be carried out through program reviews, audits, and investigations and may include contacting employers to determine income, contacting a food stamp or welfare office to determine current certification for receipt of food stamps or AFDC benefits, contacting the State employment security office to determine the amount of benefits received, and checking the documentation produced by household members to prove the amount of income received. * * * (G) the signature of an adult member of the household immediately below a statement that the person signing the application certifies that all information furnished is true and correct; that the application is being made in connection with the receipt of Federal funds; that Program officials may verify the information on the application; and that the deliberate misrepresentation of any of the information on the application may subject the applicant to prosecution under applicable State and Federal criminal statutes.

(iii) If they so desire, households applying on behalf of children who are members of food stamp households and AFDC assistance units may apply for free meal benefits under this paragraph rather than under the procedures described in paragraph (e)(1)(ii) of this section. Households applying on behalf of children who are members of food stamp households or AFDC assistance units shall be required to provide:

(A) The names and food stamps or AFDC case numbers of the child(ren) for whom automatic free meal eligibility is claimed; and

(B) The signature of an adult member of the household below the certification provided in § 226.23(e)(ii)(G). In accordance with § 226.23(e)(ii)(F), if a food stamp or AFDC case number is provided, it may be used to verify the current food stamps or AFDC certification for the child(ren) for whom free meal benefits are being claimed. Whenever households apply for benefits for children not receiving food stamp or AFDC benefits, they must apply in accordance with the requirements set forth in § 226.23(e)(1)(ii).

(2) * * *

(iii) An explanation that an application for free or reduced price benefits cannot be approved unless it contains complete "documentation" as defined in § 226.2.

* * * * *

(vii) An explanation that households receiving free and reduced price meals must notify appropriate institution officials during the year of any decreases in household size or increases in income of over $50 per month or $600 per year or, in the case of households that provided a food stamp or AFDC case number to establish a child's eligibility for free meals, any termination in the child's certification to participate in the Food Stamp or AFDC Programs.

(h) * * *

(2) *Verification procedures for pricing programs.* (1) For pricing programs, in addition to the verification procedures described in paragraph (h)(1) of this section, State agencies shall also conduct verification of the income or food stamp/AFDC case number information provided on the approved application for free and reduced price meals. At State agency discretion, verification may also include confirmation of other information required on the application.

(ii) State agencies shall perform verification on a random sample of no less than 3 percent of the approved free and reduced price applications in an institution which is a pricing program.

(iii) Households shall be informed in writing that they have been selected for verification and that they are requird to submit the requested verification information to confirm their eligibility for free or reduced price benefits by such date as determined by the State agency. Those households shall be informed of the type or types of information and/or documents acceptable to the State agency and the name and phone number of an official who can answer questions and assist the household in the verification effort. Households selected for verification shall also be informed that if they are currently certified to participate in the Food Stamp or AFDC Program, they may submit proof of that certification in lieu of income information. In these cases, such proof shall consist of a current "Notice of Eligibility" for Food Stamp or AFDC Program benefits or equivalent official documentation issued by a food stamp or welfare office which shows that the children are members of households or assistance units currently certified to participate in the Food Stamp or AFDC Programs. An identification card for either program is not acceptable as verification unless it contains an expiration date. All households selected for verification shall be advised that failure to cooperate with verification efforts will result in a termination of benefits.

(iv) Sources of verification may include written evidence, collateral contacts, and systems of records.

(A) *Written evidence* shall be used as the primary source of verification. Written evidence includes written confirmation of a household's circumstances, such as wage stubs, award letters, letters from employers, and current certification to participate in the Food Stamp or AFDC Program. Whenever written evidence is insufficient to confirm eligibility, the State agency may use collateral contacts.

(B) *Collateral contact* is a verbal confirmation of a household's circumstances by a person outside of the household. The collateral contact may be made in person or by phone and shall be authorized by the household. The verifying official may select a collateral contact if the household fails to designate one or designates one which is unacceptable to the verifying official. If the verifying official designates a collateral contact, the contact shall not be made without providing written or oral notice to the household. At the time of this notice, the household shall be informed that it may consent to the contact or provide acceptable verification in another form. The household shall be informed that its eligibility for free or reduced price meals shall be terminated if it refuses to choose one of these options.

Termination shall be made in accordance with paragraph (h)(2)(vii) of this section. Collateral contacts could include employers, social service agencies, and migrant agencies.

(C) *Systems of records* to which the State agency may have routine access are not considered collateral contacts. Information concerning income, family size, or food stamp/AFDC certification which is maintained by other government agenices and to which the State agency can legally gain access, may be used to confirm a household's eligibility for CCFP meal benefits. One possible source could be wage and benefit information maintained by the State unemployment agency, if that information is available. The use of any information derived from other agencies must be used with applicable safeguards concerning disclosure.

(v) Verification by State agencies of receipt of food stamps or AFDC benefits shall be limited to a review to determine that the period of Food Stamp or AFDC Program eligibility is current. If the food stamp or AFDC certification period is found to have expired, or if the household's certification has been terminated, the household shall be required to document their income eligibility.

(vi) The State agency may work with the institution to verify the documentation submitted by the household on the application; however, the responsibility to complete the verification process may not be delegated to the institution.

(vii) If a household refuses to cooperate with efforts to verify, or the verification of income indicates that the household is ineligible to receive benefits or is eligible to receive reduced benefits, the State agency shall require the pricing program institution to terminate or adjust eligibility in accordance with the following procedures. Institution officials shall immediately notify families of the denial of benefits in accordance with paragraphs (e)(4) and (5) of this section. Advance notification shall be provided to families which receive a reduction of termination of benefits 10 calendar days prior to the actual reduction or termination. The 10-day period shall begin the day the notice is transmitted to the family. The notice shall advise the household of:

(A) The change; (B) the reasons for the change; (C) notification of the right to appeal the action and the date by which the appeal must be requested in order to avoid a reduction or termination of benefits; (D) instructions on how to appeal; and (E) the right to reapply at any time during the year. The reasons for ineligibility shall be properly documented and retained on file at the institution.

(viii) When a household disagrees with an adverse action which affects its benefits and requests a fair hearing, benefits shall be continued as follows while the household awaits the hearing:

(A) Households which have been approved for benefits and which are subject to a reduction or termination of benefits later in the same year shall receive continued benefits if they appeal the adverse action within the 10-day advance notice period; and

(B) Households which are denied benefits upon application shall not receive benefits.

* * * * *

Dated: May 18, 1987.

S. Anna Kondratas,

Acting Administrator.

[FR Doc. 87-11686 Filed 5-21-87; 8:45 am]

BILLING CODE 3410-30-M

Animal and Plant Health Inspection Service

9 CFR Parts 1 and 2

[Docket No. 87-068]

Animal Welfare; Definition of Terms and Regulations

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice of extension of comment period for proposed rule.

SUMMARY: This document extends the comment period by 30 days until July 1, 1987, for proposed rules entitled "Animal Welfare: Definition of Terms and Regulations." This action will provide interested persons with additional time to prepare comments on the proposed rule.

DATE: Comments must be postmarked on or before July 1, 1987.

ADDRESS: Send written comments to Dr. R.L. Crawford, Animal Care Staff, Veterinary Services, APHIS, USDA, Room 756, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Please state that your comments refer to Docket Number 84-010 and 84-027. Comments received may be inspected in Room 756 of the Federal Building between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Dr. R.L. Crawford, Senior Staff Veterinarian, Animal Care Staff, VS, APHIS, USDA, Room 756, Federal Building, Hyattsville, MD 20782, Area Code (301) 436-7833.

SUPPLEMENTARY INFORMATION: On March 31, 1987, the Animal and Plant Health Inspection Service published in the **Federal Register** (52 FR 10292-10322, Docket Number 84-010 and 84-027), a proposal which would amend Animal Welfare—Definition of Terms (9 CFR Part 1) and the Regulations (9 CFR Part 2) in order to comply with the amendment to the Animal Welfare Act contained in Pub. L. 99-198, "The Food Security Act of 1985" enacted December 23, 1985, and to expand the list of definitions and revise the current regulations in order to facilitate enforcement of the Act.

The proposed rule provided that written comments would be accepted for 60 days until June 1, 1987. We have received 13 requests that we extend the comment period for 60 days to provide interested persons with adequate time to prepare comments.

We believe it is in the public interest to extend the comment period; however, in order to proceed with the rulemaking process in a timely manner, we have determined that a 30-day extension is appropriate. Accordingly, we will extend this comment period for 30 days until July 1, 1987.

Done in Washington, DC, this 19th day of May, 1987.

William W. Buisch,

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

[FR Doc. 87-11726 Filed 5-21-87; 8:45 am]

BILLING CODE 3410-34-M

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9 CFR Parts 160 and 161

[Docket No. 87-054]

Standards for Accredited Veterinarians

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Withdrawal of a proposed rule.

SUMMARY: We are withdrawing a proposed rule that would have prohibited accredited veterinarians from performing official duties associated with livestock in which the accredited veterinarian or any member of the accredited veterinarian's immediate family has a financial interest. We received over 600 comments on this proposal, most in opposition. Based on our review of these comments, we have decided to withdraw the proposed rule. We are currently studying alternatives. If we determine at a later date that regulatory action is necessary, we will publish a new proposal.

FOR FURTHER INFORMATION CONTACT: Dr. W.E. Ketter, Chief Staff Veterinarian, Regulatory Communications and Compliance Staff, Veterinary Services, APHIS, USDA, Room 826, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782; 301–436–8565.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of December 24, 1986 [51 FR 46685–46687, Docket No. 86–048], we published a proposal to prohibit accredited veterinarians from performing official duties associated with livestock in which the accredited veterinarian or any member of the accredited veterinarian's immediate family has a financial interest. We received over 600 comments on the proposed rule, most in opposition.

Although it is impractical here to discuss all of the comments we received, following are some of the most frequently repeated assertions: (1) The proposed prohibition would create an economic hardship for accredited veterinarians and their clients who live in sparsely populated areas because, in these areas, only one accredited veterinarian is avalable for many miles and, in many cases, he or she is related to many of his or her clients; (2) family relationships are no more likely than business relationships to create conflicts of interest or the appearance of conflict of interest; (3) our proposal would not stop any dishonest accredited veterinarian from continuing to abuse his or her office, but would only hurt the majority of honest accredited veterinarians; (4) our proposed prohibition should be limited to accredited veterinarians performing official duties associated with cattle intended for export; (5) we should withdraw the proposal and, instead, strengthen our rules for identifying and penalizing those who engage in illegal activities; and (6) our proposal is unnecessary because our current regulations allow us to penalize those accredited veterinarians who commit illegal activities in performing their official duties.

Our options now are: (1) To adopt as a final rule the proposed rule as published; (2) to publish a final rule that would be a modification of the proposed rule based on the comments we received; (3) to withdraw the proposed rule and publish a new proposal; and (4) to withdraw the proposed rule and take no regulatory action.

Based on our review of all the comments, we have decided not to adopt the proposed rule as published. Furthermore, because of the strong interest shown in the proposed rule, we believe that accredited veterinarians and other interested parties should have an opportunity to comment on any changes we would make. We have therefore decided against option (2). That leaves options (3), and (4). Because of the number of comments we received, and because many of the comments require additional study, we have not yet decided on a specific course of action. Under most circumstances, we would wait until that decision was made before publishing it in the **Federal Register**. However, because of the interest in this proposal, and because either option (3) or (4) would involve a withdrawal, we are withdrawing the proposed rule now. If we determine at a later date that regulatory action is necessary, we will publish a new proposal. In the meantime, we welcome public comment on how to prevent conflict of interest or the appearance of conflict of interest.

Done at Washington, DC, this 19th day of May, 1987.

William W. Buisch,

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

[FR Doc. 87–11725 Filed 5–21–87; 8:45 am]

BILLING CODE 3401–34–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 86–ACE–04]

Proposed Alteration of Control Zone and Transition Area—Garden City, KS

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: This Notice proposes to alter the control zone and the 700-foot transition area at Garden City, Kansas. The Holcomb Non-Directional Beacon (NDB), located northwest of the Garden City Municipal Airport, has been decommissioned, and the instrument approach procedure has been canceled. As a result, this proposed action is necessary to redefine controlled airspace at Garden City, Kansas.

DATES: Comments must be received on or before June 29, 1987.

ADDRESSES: Send comments on the proposal to: Federal Aviation Administration, Manager, Traffic Management and Airspace Branch, Air Traffic Division, ACE-540, 601 East 12th Street, Kansas City, Missouri 64106, Telephone (816) 374–3408.

The official docket may be examined at the Office of the Regional Counsel, Central Region, Federal Aviation Administration, Room 1558, 601 East 12th Street, Kansas City, Missouri.

An informal docket may be examined at the Office of the Manager, Traffic Management and Airspace Branch, Air Traffic Division.

FOR FURTHER INFORMATION CONTACT: Dale Carnine, Airspace Specialist, Traffic Management and Airspace Branch, Air Traffic Division, ACE–540, FAA, Central Region, 601 East 12th Street, Kansas City, Missouri 64106, Telephone (816) 374–3408.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons may participate in the proposed rulemaking by submitting such written data, views or arguments as they may desire. Communications should identify the airspace docket number, and be submitted in duplicate to the Traffic Management and Airspace Branch, Air Traffic Division, Federal Aviation Administration, 601 East 12th Street, Kansas City, Missouri 64106. All communications received on or before the closing date for comments will be considered before action is taken on the proposed amendment. The proposal contained in this Notice may be changed in light of the comments received. All comments received will be available both before and after the closing date for comments in the Rules Docket for examination by interested persons.

Availability of NPRM

Any person may obtain a copy of this NPRM by submitting a request to the Federal Aviation Administration, Traffic Management and Airspace Branch, 601 East 12th Street, Kansas City, Missouri 64106, or by calling (816) 374–3408.

Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for further NPRMS should also request a copy of Advisory Circular No. 11–2A which describes the application procedure.

Discussion

The FAA is considering amendments to Subpart F, §71.171, of the Federal Aviation Regulations [14 CFR 71.171] and Subpart G, § 71.181 of the Federal Aviation Regulations [14 CFR 71.181], by altering the control zone and 700-foot transition area at Garden City, Kansas. The Holcomb Non-Directional Beacon (NDB), located northwest of the Garden

City Municipal Airport, has been decommissioned, and the instrument approach procedure canceled. Therefore, the control zone and transition area at this location are being redefined as set forth in this proposed airspace action. Sections 71.171 and 71.181 of Part 71 of the Federal Aviation Regulations were republished in Handbook 7400.6C, dated January 2, 1987.

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

List of Subjects in 14 CFR Part 71

Aviation safety, Control zones, Transition areas.

Adoption of the Amendment

PART 71—[AMENDED]

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration (FAA) proposes to amend Part 71 of the FAR (14 CFR Part 71) as follows:

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

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

2. By amending § 71.171 as follows:

Garden City, Kansas [Revised]

Within a 5-mile radius of the Garden City Municipal Airport (lat. 37°55'36"N, long. 100°43'29"W), and within 2-½ miles each side of the 004° radial of the Garden City VORTAC extending from the 5-mile radius zone to 8 miles north of the VORTAC; and within 2-½ miles each side of the 171° radial of the Garden City VORTAC extending from the 5-mile radius zone to 5 miles south of the VORTAC.

3. Additionally, by amending § 71.181 as follows:

Garden City, Kansas [Revised]

That airspace extending upward from 700 ft. above the surface within a 7-mile radius of the Garden City Municipal Airport (lat. 37°55'36"N, long. 100°43'29"W), and 4-½ miles east and 9-½ miles west of the 004° radial of the Garden City VORTAC extending from the 7-mile radius to 18-½ miles north of the VORTAC.

Issued in Kansas City, Missouri, on May 14, 1987.

T.R. Beckloff, Jr.,

Manager, Air Traffic Division.

[FR Doc. 87-11696 Filed 5-21-87; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 68

[DoD Directive 1342.xx]

Provision of Free Public Education for Eligible Dependent Children

AGENCY: Office of the Secretary, DoD.

ACTION: Proposed rule.

SUMMARY: The proposed rule would implement Pub. L. 81-874, as amended ("section 6"), and section 505(c) of Pub. L. 97-35. Section 6 authorizes the establishment of "arrangements" for the education of certain federally-connected children when prescribed conditions are met. These arrangements may include the establishment of schools within the United States and specified possessions. The proposed rule establishes Department of Defense policies and prescribed procedures for the Secretary of Defense to make arrangements for the provision of free public education for eligible dependent children of United States military personnel and federally employed civilian personnel.

DATE: Comments must be received by June 22, 1987.

ADDRESS: Dependents Support Policy Directorate, (FSE&S) (FM&P), Room 3C965, The Pentagon, Washington, DC 20301-4000.

FOR FURTHER INFORMATION CONTACT: Mr. Hector O. Nevarez, 202-697-0481.

SUPPLEMENTARY INFORMATION: Assistant Secretary of Defense (Force Management and Personnel) Memorandum, Education of Handicapped Students in Section 6 Schools Operated by the Department of Defense," December 10, 1986 is hereby cancelled.

List of Subjects in 32 CFR Part 68

Education, Dependents.

Accordingly, Title 32 is proposed to be amended by adding Part 68 as follows:

PART 68—PROVISIONS OF FREE PUBLIC EDUCATION FOR ELIGIBLE DEPENDENT CHILDREN PURSUANT TO SECTION 6, PUBLIC LAW 81-874, AS AMENDED

Sec.

68.1 References.
68.2 Purpose.
68.3 Applicability and scope.
68.4 Policy.
68.5 Definitions.
68.6 Responsibilities.
68.7 Section 6 school board elections.
68.8 Effective date and implementation.

Authority: 20 U.S.C. 241

§ 68.1 References.

(a) Section 505(c), Pub. L. 97-35, August 13, 1981 (20 U.S.C. 241 note).

(b) Public Law 874, 81st Congress, section 6, as amended (20 U.S.C. 241).

(c) Sections 1009, 1031(a), Pub. L. 95-561, (20 U.S.C. 241).

(d) Memorandum of Understanding Between The Department of Defense and The Department of Education, August 16, 1982.

(e) Notice entitled, "Process for Section 6 Schools Operated by the Department of Defense," **Federal Register**, Vol. 49, No. 82, page 18028, April 26, 1984.

(f) [Reserved]

(g) Public Law 94-142, as amended (20 U.S.C. 1401 *et seq.*).

(h) DoD Directive 1020.1, "Nondiscrimination on the Basis of Handicap in Programs and Activities Assisted or Conducted by the Department of Defense," March 31, 1982.

(i) DoD 7220.9-M, "DoD Accounting Manual," October 22, 1981.

(j) DoD Directive 7600.6, "Audit of Nonappropriated Funds and Related Activities," January 4, 1974.

(k) DoD Directive 5500.7, "Standard of Conduct," May 6, 1987.

§ 68.2 Purpose.

This part establishes policies and procedures for the Department of Defense to make arrangements (as defined in § 68.5) for the provision of free public education to eligible children as authorized by § 68.1 (a), (b), and (c). This part implements references (a), (b), (d), and (e).

§ 68.3 Applicability and scope.

(a) The provisions of this part apply to the Office of the Secretary of Defense (OSD), the Military Departments, and the Defense Agencies.

(b) The provisions apply to schools operated by the Department of Defense within the Continental United States, Alaska, Hawaii, Puerto Rico, Wake Island, Guam, American Samoa, the

Northern Mariana Islands, and the Virgin Islands.

§ 68.4 Policy.

(a) In conformity with the provisions of § 68.1 (a), (b), and (c), it is the policy of the Department of Defense that dependent children of United States military personnel and federally employed civilian personnel residing on federal property be educated, whenever suitable, in schools operated and controlled by local public school systems.

(b) When it is not suitable for the children of United States military personnel and federally employed civilian personnel to attend a locally operated public school, the Secretary of Defense, or his designee, shall make arrangements for the free public education of such children. These arrangements may include the establishment of schools within the United States and specified possessions.

(c) The arrangements for such free public education will be made by the Secretary of Defense, or designee, either with a local educational agency, or with the head of a Federal Department or Agency, whichever in the judgment of the Secretary, or designee, appears to be more appropriate. If such an arrangement is made with the head of a Federal Department or Agency, either it must administer the property on which the children to be educated reside or, if the local schools are unavailable to the children of members of the Armed Forces on active duty because of official State or local action and no suitable free public education can be provided by a local educational agency, the Department or Agency must have jurisdiction over some or all of such children.

(d) Section 6 School Arrangements, by law, are required, to the maximum extent practicable, to provide educational programs comparable to those being provided by local public educational agencies in comparable communities in the state where the Section 6 School Arrangement is located. If the Section 6 School Arrangement is outside the Continental United States, Alaska, or Hawaii, it shall, to the maximum extent practicable, provide educational programs that are comparable to the free public education provided by the District of Columbia.

(e) Section 6 School Arrangements operated by the Department of Defense under § 68.1(a), (b), and (d) will comply, except as provided below, with § 68.1(g). If the state or other jurisdiction upon which a Section 6 School Arrangement's educational comparability is based has adopted a "state plan" for the implementation of § 68.1(g), that Section 6 School Arrangement shall provide its handicapped students a free appropriate public education, as defined in § 68.1(g), that, except as follows, is consistent with such state plan. To satisfy this responsibility, Section 6 School Arrangements will conform to the substantive and procedural provisions of § 68.1(g), except for those relating to impartial due process hearings in section 1415 of § 68.1(g). The procedures of such Section 6 School Arrangements for the identificaton, assessment, and programming of handicapped students in special education and related services must conform to the comparable state's regulatory guidelines. Complaints with respect to the identification, evaluation or educational placement of, or the free appropriate public education provided to, students in such a Section 6 School Arrangement who are or may be handicapped shall be investigated under enclosure 5 of DoD Directive 1020.[1] (§ 68.1(h)). If the state upon which a Section 6 School Arrangement's comparability is based has not adopted a state plan, the state plan of an adjacent state must be followed. If no adjacent state has adopted a state plan, the state plan of another state that is similar to the state in which the Section 6 School Arrangement is located shall be selected.

(f) After consultation with the Military Departments, funds will be made available for the operation and maintenance of Section 6 School Arrangements, on either a direct or reimbursable basis, to the comptroller at the respective military installation. These funds will remain separate and distinct from the funds of the individual Military Services.

(g) Attendance in Section 6 School Arrangements within the Continental United States, Alaska, and Hawaii is limited to eligible dependent children under § 68.1(b). Guidance, consistent with § 68.1(b) and (c), for student eligibility for Section 6 School Arrangements located outside the continental United States, Alaska, and Hawaii shall be established by the Military Department concerned after coordination and approval by the General Counsel, DoD, or designee, and the ASD(FM&P), or designee.

(h) Where a member of the Armed Forces is transferred or retires and his/her family moves after the start of the school year from on-base (post) housing, his/her children shall be permitted to continue in attendance at the Section 6 School Arrangement for the remainder of the school year during which the transfer or retirement occurred, providing the child is residing with a parent or legal guardian or another person acting *in loco parentis*.

(i) Where a member of the Armed Forces is assigned to an installation on which there is a Section 6 School Arrangement and is assigned on-base (post) family housing which is expected to be available for occupancy and to be occupied within ninety (90) school days from the reporting date, his/her children may be permitted to attend the school while residing in an area adjacent to such federal property. Transportation for children attending a Section 6 School Arrangement under these conditions is the responsibility of the parent.

(j) Senior students in good standing, residing with a parent or legal guardian or another person acting *in loco parentis*, may complete the current school year regardless of residence. For the purposes of this paragraph, "senior students" means persons in a high school who ordinarily would be graduated during the current school year.

§ 68.5 Definitions.

Adjacent Area. A geographic location that is next to or near by federal property. This would normally include a student commuting area within 45 minutes of the federal property, unless another area identified as adjacent is specifically designated by an administrator of the federal property, i.e., the installation commander.

Arrangements. Actions taken by the Secretary of Defense to provide a free public education to dependent children pursuant to Pub. L. 874 through paragraph (a) Section 6 School Arrangements or paragraph (b) Section 6 Special School Arrangements of the following:

(a) Section 6 School Arrangement—A situation whereby a Department of Defense operated school is established on federal property to provide a free public education for eligible children or, if not established on such property, the eligible child resides on such property.

(b) Section 6 Special Arrangement—An agreement, pursuant to § 68.1(b), between the secretary of defense, or designee, the ASD(FM&P), or designee, or the Secretary of a Military Department, or designee, and a local public education agency whereby a school or a school system operated by the local public education agency provides educational services to eligible

[1] Copies may be obtained, if needed, from the U.S. Naval Publications and Forms Center, Attention: Code 301, 5801 Tabor Avenue, Philadelphia PA 19120.

dependent children of United States military personnel and federally employed civilian personnel. Arrangements result in partial or total federal funding to the local public education agency for the educational services provided.

Comparability. Comparability is the act of demonstrating that the educational services and programs, school plant and facilities, budget and per pupil expenditures, and all associated activities and services provided in Section 6 School Arrangements for the free public education of eligible dependent children are, to the maximum extent practicable, equivalent in quality and availability to those provided by school districts in the State in which the Section 6 School Arrangement is located or the district(s) to which it is compared. Each Section 6 School Arrangement, in coordination with the Military Department concerned, will provide an annual statement, with supporting documentation, which demonstrates its comparability.

Dependent Children. Children who reside on federal property, or are minor dependents who are the children, stepchildren, adopted children, or wards of United States military sponsors of federally employed sponsors, or who are residents in the households of bona-fide sponsors who stand *in loco parentis* to such individuals and who receive one-half or more of their support from such sponsors, and are within the age limits for which the applicable state provides free public education.

Federal Property. Real property which is owned or leased by the United States.

Free Public Education. Education which is provided at public expense, under public supervision and direction, and without charge to the sponsor of a child, and which is provided at the elementary or secondary school level of the applicable state. The term does not include any education provided beyond grade 12, except in the case of state policy regarding the education of handicapped students, nor does it preclude the collecting of tuition from an agency responsible for the assignment of a child's sponsor resulting in the attendance of the child of a Section 6 School Arrangement.

Local Educational Agency. A board of education or other legally constituted local school authority having administrative control and direction of free public education in a county, township, independent, or other school district located within a state. Such term includes any State Agency which directly operates and maintains facilities for providing free public education.

Parent. Includes a legal guardian or another person standing *in loco parentis.*

State. A state, Puerto Rico, Wake Island, Guam, the District of Columbia, American Samoa, the Northern Mariana Islands, or the Virgin Islands.

State Educational Agency. The officer or agency primarily responsible for the state supervision of public elementary and secondary schools.

§ 68.6 Responsibilities.

(a) The *Assistant Secretary of Defense (Force Management and Personnel (ASD FM&P))*, or designee, shall:

(1) Ensure the development of policies and procedures for the operation, management, budgeting (in accordance with guidance provided by the ASD (Comptroller)), construction and financing of Section 6 Schools and for Section 6 Special Arrangements.

(2) Ensure that arrangements are made for the free public education of eligible dependent children in the Continental United States, Alaska, Hawaii, Puerto Rico, Wake Island, Guam, American Samoa, the Northern Mariana Islands, and the Virgin Islands, under the provisions of § 68.1 (a), (b), and (c).

(3) Ensure the establishment of elected School Boards in Section 6 School Arrangements operating under the provisions of § 68.1 (a) and (b).

(4) Ensure that the free public education being provided is, to the maximum extent practicable, of the kind and quality as that being provided by comparable public school districts in the state in which the Section 6 School Arrangement or Section 6 Special Arrangement is located or, if outside the Continental United States, Alaska, and Hawaii, as that being provided by the District of Columbia Public Schools.

(5) Ensure the establishment of audit procedures for reviewing funding of Section 6 School Arrangements and Section 6 Special Arrangements pursuant to § 68.1 (a), (b), and (c).

(6) Ensure timely and accurate preparation of budget execution reports and full compliance with accounting requirements in accordance with DoD 7220.9-M [2] (§ 68.1(i)).

(7) Approve guidance for student eligibility established by a Military Department for Section 6 School Arrangements located outside the Continental United States, Alaska, and Hawaii.

(b) The *General Counsel of the Department of Defense, (GC, DOD)*, or designee, shall:

(1) Approve guidance established by a Military Department for student eligibility for Section 6 School Arrangements located outside the Continental United States, Alaska, and Hawaii.

(2) Provide legal advice for the implementation of this part.

(c) The *Secretaries of the Military Departments*, or designees, shall:

(1) Comply with this part, including policies and procedures promulgated under § 68.5(a)(1), and ensure that Section 6 School Arrangements on their respective installations or under their jurisdiction are maintained and operated in accordance with this part.

(2) Submit to the Assistant Secretary of Defense (FM&P) an operation and maintenance budget, a procurement budget, and a military construction budget for each Section 6 School Arrangement and each Section 6 Special Arrangement, in accordance with OSD guidelines, as required.

(3) Ensure that there is an elected School Board at each Section 6 School Arrangement.

(4) Ensure the establishment of a means for employing personnel and, as required, for programming manpower spaces for such employees, all subject to applicable laws and regulations.

(5) Ensure that each Section 6 School Arrangement has an up-to-date set of guidelines for operation.

(6) Ensure that nonappropriated funds and related activities of Section 6 School Arrangements are reviewed in accordance with DoD Directive 7600.6 [1] (§ 68.1(j)).

(7) Establish guidance, consistent with § 68.1 (b) and (c), for student eligibility to attend Section 6 School Arrangements located outside the Continental United States, Alaska, and Hawaii and operated by the Military Department concerned. Gain the approval of the ASD(FM&P), or designee, and the General Counsel, DoD, or designee, before implementation.

(c) The *Installation Commanders*, or in the case of Puerto Rico, the *Area Coordinator* shall:

(1) Provide resource and logistics support at each Section 6 School Arrangement located on the installation.

(2) Ensure the establishment and operation of an elected School Board at the Section 6 School Arrangement.

(3) Ensure the implementation of DoD Directive 5500.7 [1] § 68.1(k)) and that all Section 6 School Arrangement personnel

[2] Copies may be obtained, at cost from the U.S. Department of Commerce, National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161.

[1] See footnote 1 to § 68.3(e)

are counseled and familiarized with its contents.

(4) Provide installation staff personnel to advise the School Board in budget, civil engineering, law, personnel, procurement, and transportation matters, when appropriate.

(5) Disapprove actions of the School Board which conflict with applicable statutes or regulations. Disapprovals must be in writing to the School Board and shall note the specific reasons for the disapprovals. A copy of this action shall be forwarded through channels of the Military Department concerned to the ASD(FM&P), or designee.

(6) Ensure the safety of students traveling to-and-from the on-base (post) school(s).

(7) Ensure that comptrollers and other support elements comply with the authorized execution of funds for Section 6 School Arrangements in accordance with the budget approved by the ASD(FM&P), or designee.

(d) The *Section 6 Dependents School Board* shall:

(1) Review and monitor school expenditures and operations, subject to audit procedures established under this Part and consistent with § 68.1 (a) and (b).

(2) Conduct meetings, approve agendas, prepare minutes, and conduct other activities incident to and associated with the provisions of Section 6 School Arrangements.

(3) Recruit and select a Superintendent for the Section 6 School Arrangement under the Board's jurisdiction.

(4) Provide the Superintendent regular constructive written and oral evaluations of the Superintendent's performance in an ongoing effort which should be linked to goals established by the Board with the assistance of the Superintendent.

(5) Provide the Superintendent the benefit of the Board's counsel in matters related to individual Board members' expertise.

(6) Ensure the attendence of the Superintendent or his/her designee at all School Board meetings.

(7) Review and approve school budgets prior to submission to the ASD(FM&P), or designee, through channels of the Military Department concerned.

(8) Establish policies and procedures for the operation and administration of the Section 6 School Arrangement(s).

(9) Provide guidance and assistance to the Superintendent in the execution and implementation of School Board policies, rules and regulations.

(10) Consult with the Superintendent on pertinent school matters, as they arise, that concern the school and on which the School Board may take action.

(11) Channel communications with school employees that require action through the Superintendent, and refer all applications, complaints, and other communications, oral or written, to the Superintendent in order to assure the appropriate processing of such communications.

(12) Establish policies and procedures for the effective processing of, and response to, complaints.

(e) *The Section 6 School Arrangement Superintendent* shall:

(1) Serve as the Chief Executive Officer to the School Board to ensure the implementation of the Board's policies, rules, and regulations.

(2) Attend all School Board meetings, or send a designee when unable to attend, sitting with the Board as a non-voting member.

(3) Provide advice and recommendations to the School Board and the Installation Commander or Area Coordinator on all matters and policies concerning the operation and administration of the school system.

(4) Recruit, select, and assign all professional and support personnel required for the school system. Teachers and school administrators shall hold, at a minimum a current and appropriate teaching or supervisory certificate, respectively, from any of the 50 states, Puerto, Rico, the District of Columbia, or the Department of Defense Dependents Schools system. Additional certification may be necessary to comply with respective state or national accreditation association standards and requirements.

(5) Determine retention or termination of employment of all school personnel in accordance with applicable federal regulations.

(6) Organize, administer, and supervise all school personnel to ensure that the curriculum standards, specialized programs, and level of instruction are comparable to accepted educational practices of the state or the District of Columbia, as appropriate.

(7) Be responsible for the fiscal management and operation of the school system to include execution of the budget as approved by the ASD(FM&P), or designee, and in accordance with School Board guidance.

(8) Ensure the evaluation of all school employees on a regular basis.

(9) Ensure the maintenance of all school buildings, grounds, and property accounting records.

(10) Ensure the procurement of necessary school supplies, equipment, and services.

(11) Ensure the preparation of the annual Section 6 School Arrangement budget as approved by the School Board, and as required by the ASD(FM&P), or designee, and the Military Department concerned, in accordance with guidance provided by the ASD (Comptroller), or designee.

(12) Ensure the maintenance of a professional relationship with local and state school offiicials.

(13) Ensure, wherever, practicable, the maintenance of accreditation of the Section 6 School Arrangement by the state and/or appropriate regional accreditation agencies.

(14) Operate the school consistent with applicable federal statutes and regulations, and with state statues and regulations that are made applicable to the Section 6 School Arrangement by this part.

(15) Ensure the submission of an annual statement to the Military Department concerned demonstrating comparability of the free public education provided in the Section 6 School Arrangement(s).

(16) Ensure the implementation of the local state plan or regulatory guidelines for compliance with § 68.1(g). If the state upon which a Section 6 School Arrangement's comparability is based has not adopted a state plan, the responsible Section 6 School System Superintendent will choose the state plan of an adjacent state to follow: If no adjacent state has adopted a state plan, the Superintendent will select the state plan of another state that is similar to the state in which the Section 6 School Arrangement is located.

§ 68.7 Section 6 school board elections.

A School Board for a Section 6 School Arrangement, as authorized by section 1009(d) of § 68.1(c), shall be empowered to oversee school expenditures and operations, subject to audit procedures established by the Secretary of Defense and the other provisions of § 68.1(b). The Secretary of the Military Department concerned shall:

(a) Ensure that the School Board is composed of a minimum of three (3) members elected only by parents or legal guardians (military or civilian) of students who are attending the school at the time of the election. School Board members will serve on the School Board for a term covering one school year.

(b) Ensure the following procedures with respect to a School Board election are observed:

(1) The parents must have adequate notice of the time and place of the election.

(2) The election must be conducted by secret ballot. The candidate(s) receiving the greatest number of votes shall be elected as Board member(s).

(3) Personnel employed in the school system may not be Board members, except for the Superintendent, who serves as a non-voting member.

(4) Nominations must be by petition of parents of students who are attending the school at the time of the election.

(5) The election process shall provide for the continuity of School Board opertions.

(6) Vacancies that occur among members of the elected School Board shall be filled to complete the current term by a special election.

(7) The responsibility for developing the plans for and conducting the School Board election rests with the Superintendent and the School Board.

§ 68.8 Effective date and implementation.

This part is effective June 22, 1987. The Secretary of each Military Department will forward two copies of the Military Department's implementing documents to the Assistant Secretary of Defense (Force Management and Personnel) within 120 days.

Linda M. Lawson,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

May 19, 1987.

[FR Doc. 87-11727 Filed 5-20-87; 9:58 am]

BILLING CODE 3810-01-M

VETERANS ADMINISTRATION

38 CFR Part 4

Evaluation of Hearing Loss

AGENCY: Veterans Administration.

ACTION: Proposed rule; correction.

SUMMARY: On pages 17607 through 17611 of the **Federal Register** of May 11, 1987, the Veterans Administration (VA) published a notice of proposed rulemaking to amend the Schedule of Rating Disabilities (38 CFR Part 4) to implement a new method for evaluating the degree of disability attributable to hearing loss. This notice is to correct two typographical errors and to publish a conforming amendment to Appendix C which was inadvertently omitted from the proposed rule.

EFFECTIVE DATE: The correction is effective May 11, 1987.

FOR FURTHER INFORMATION CONTACT: Robert M. White, Chief, Regulations Staff, Compensation and Pension Service, Department of Veterans Benefits, (202) 233-3005.

List of Subjects in 38 CFR Part 4

Handicapped, Pensions, Veterans.

Dated: May 12, 1987.

Priscilla B. Carey,

Chief, Directives Management Division.

FR Document 87-10514, published in the **Federal Register**, of May 11, 1987 on pages 17607 through 17611 is corrected as follows:

1. On page 17607 under **SUPPLEMENTARY INFORMATION,** the citation in the first sentence which reads "39 CFR 4.85 through 4.87a" is corrected to read "38 CFR 4.85 through 4.87a".

§ 4.85 [Corrected]

2. On page 17608, in 38 CFR 4.85(c), in the third line remove the word "an" and add, in its place, the word "and".

Appendix—[Amended]

3. Appendix C—Alphabetical Index of Disabilities is revised by removing Deafness—Table II, diagnostic code numbers 6277 through 6297 and inserting new information to read as follows:

DEAFNESS

0%	Evaluation based on Table VII	6100
10%	Evaluation based on Table VII	6101
20%	Evaluation based on Table VII	6102
30%	Evaluation based on Table VII	6103
40%	Evaluation based on Table VII	6104
50%	Evaluation based on Table VII	6105
60%	Evaluation based on Table VII	6106
70%	Evaluation based on Table VII	6107
80%	Evaluation based on Table VII	6108
90%	Evaluation based on Table VII	6109
100%	Evaluation based on Table VII	6110

[FR Doc. 87-11378 Filed 5-21-87; 8:45 am]

BILLING CODE 8320-01-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Ch. II

[Docket No. 51079-7030]

United States Standards for Grades of Breaded Catfish Products and Surimi-based Products; Determination

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

ACTION: Notice of determination.

SUMMARY: On the basis of comments received, NOAA announces its decision that at this time there is insufficient interest to warrant the development of U.S. Standards for Grades of Breaded Catfish Products. NOAA has also decided, on the basis of comments received and other information, to table development of U.S. Standards for Grades of Surimi-based Products.

ADDRESS: Gail Blaufarb, National Fishery Products Program, Office of Utilization Research, National Marine Fisheries Service, Washington, DC 20235.

FOR FURTHER INFORMATION CONTACT: Gail Blaufarb, 202-673-5374.

SUPPLEMENTARY INFORMATION: In response to two petitions received from Singleton Seafood Company, Tampa, Florida, and International Multifoods, Motley, Minnesota, NMFS published a **Federal Register** notice on November 22, 1985, (50 FR 48236) inviting written comments on the desirability and scope for two new voluntary U.S. Standards for Grades: breaded catfish products and surimi-based products. To allow receipt of a broad base of comments, the notice was distributed to the major fish processing, trade and marketing associations, as well as current and potential users of the commodities.

Breaded Catfish Products: We received two comments on the proposal to develop a grade standard for breaded catfish products. One was from a USDC inspector saying there was no need for a specific standard for these products. The other was a letter from Singleton Seafood reiterating their original letter requesting the standard. We have decided that at this time there is not sufficient interest to warrant a U.S. Grade Standard for breaded catfish products.

Surimi-based Products: We received six comments on the proposal to develop U.S. Standards for Grades for Surimi-based products. These comments offered a range of perspectives on the proposal. Four commenters said we should establish U.S. Grade Standards for surimi-based products. One of these four specified imitation crab legs, chunk style crab meat and scallops as the products for which standards are needed.

One commenter recommended that the grade standard apply to the surimi base material rather than the finished analog products. The other commenter stated that although grade standards may eventually be needed for surimi-based products, their development at

this time would be premature. They felt that grade standards could limit future developments by U.S. food processors.

Two of the six commenters discussed the quality criteria which needed to be measured. Neither discussed how to measure these criteria.

Other events in the U.S. surimi industry have been considered by this agency in deciding on the desirability of U.S. Grade Standards for surimi analog products. One is the question of "nutritional equivalency."

The Food and Drug Administration has stated that surimi-based products must be labeled "imitation" when formulated to resemble a "natural" product (crab legs, scallops) and when they are not nutritionally equivalent in certain nutrients to the natural product. NMFS is now funding a Saltonstall-Kennedy research project which will determine the nutritional profiles of certain natural products which surimi-based products are formulated to resemble. This project is expected to be completed in late 1987. At the same time, U.S. surimi processors are exploring the feasibility of fortifying surimi-based products to achieve "nutritional equivalency."

The Alaska Fisheries Development Foundation is drafting a Standard of Identity for surimi. Another S–K project is exploring the feasibility of making surimi from menhaden. In short, the U.S. surimi industry is in a dynamic state at this time. There is no consensus on what the significant quality criteria are, or how to measure them.

For these reasons, NMFS has decided to table development of U.S. Grade Standards for surimi-based products at this time. We feel that once a number of these issue is resolved, the resulting information can be incorporated into a comprehensive U.S. Standard for Grades.

Date: May 14, 1987.

Joseph W. Angelovia,

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

[FR Doc. 87–11806 Filed 5–21–87; 8:45 am]

BILLING CODE 3510–22–M

Notices

Federal Register
Vol. 52, No. 99
Friday, May 22, 1987

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

National Commission on Dairy Policy; Advisory Committee Meeting

Pursuant to provisions of section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), a notice is hereby given of the following committee meeting.

Name: National Commission on Dairy Policy.

Time and Place: Americana Host Inn, 4751 Lindle Road, Harrisburg, PA 17171.

Status: Open.

Matters To Be Considered: On June 3, the Commission will hold a public hearing to receive testimony on the dairy price support program, new dairy technologies, and the influence of the program and technologies on the family farm.

Written Statements May Be Filed Before or After the Meeting With: Contact person named below.

Contact Person for More Information: Mr. Jeffrey Lyon, Assistant Director, National Commission on Dairy Policy, 1401 New York Ave., NW., Suite 1100, Washington, DC 20005, (202) 638–6222.

Signed at Washington, DC, this 15th day of May 1987.

David R. Dyer,

Executive Director, National Commission on Dairy Policy.

[FR Doc. 87–11735 Filed 5–21–87; 8:45 am]

BILLING CODE 3410–05–M

Agricultural Marketing Service

Flue-Cured Tobacco Advisory Committee; Meeting

In accordance with the Federal Advisory Committee Act (5 U.S.C. App. 1) announcement is made of the following committee meeting:

Name: Flue-Cured Tobacco Advisory Committee.

Date: June 4, 1987.

Time: 1 p.m.

Place: Tobacco Division, Agricultural Marketing Service, U.S. Department of Agriculture, Flue-Cured Tobacco Cooperative Stabilization Corporation Building, 1306 Annapolis Drive, Raleigh, North Carolina 27605.

Purpose: To discuss the establishment of marketing areas, submarketing areas, selling schedules, opening dates, and related matters for the 1987 flue-cured marketing season.

The meeting is open to the public. Persons, other than members, who wish to address the Committee at the meeting should contact the Director, Tobacco Division, Agricultural Marketing Service, U.S. Department of Agriculture, 300 12th Street, SW., Washington, DC 20250, (202) 447–2567, prior to the meeting. Written statements may be submitted to the Committee prior to or at the meeting.

Dated: May 19, 1987.

J. Patrick Boyle,

Administrator.

[FR Doc. 87–11864 Filed 5–21–87; 8:45 am]

BILLING CODE 3410–02–M

Forest Service

Transfer of Administrative Jurisdiction; Laurel River Lake, KY

AGENCY: Forest Service, USDA.

ACTION: Notice of joint interchange of lands.

SUMMARY: On February 13, 1987, and January 2, 1987, the Secretary of the Army and the Secretary of Agriculture respectively signed a joint interchange order agreeing to the transfer of administrative jurisdiction of 639.50 acres, more or less, from the Department of Agriculture to the Department of the Army and 2,195.45 acres of fee lands, more or less, and 1.65 acres, more or less, of perpetual road easements from the Department of the Army to the Department of Agriculture within and adjacent to the exterior boundaries of the Daniel Boone National Forest, Kentucky. The 45-day Congressional oversight requirement of the Act of July 26, 1956 (70 Stat. 656, 16 U.S.C. 505a, 505b) has been met. A copy of the Joint Order, as signed, appears at the end of this notice.

EFFECTIVE DATE: The order is effective upon publication in the **Federal Register.**

FOR FURTHER INFORMATION CONTACT: James M. Dear, Lands Staff, Room 1010–RP–E, Forest Service, USDA, P.O. Box 96090, Washington, DC 20090–6090, Telephone: (703) 235–2493.

George M. Leonard,

Associate Chief.

May 15, 1987.

Department of Defense

Department of the Army

Laurel River Lake, Kentucky, Joint Order Interchanging Administrative Jurisdiction of Department of the Army Lands and National Forest Lands

By virtue of the authority vested in the Secretary of the Army and in the Secretary of Agriculture by the Act of July 26, 1956 (70 Stat. 656; 16 U.S.C. 505a, 505b), it is ordered as follows:

(1) The lands under the jurisdiction of the Department of the Army described in Exhibit A attached hereto and made a part hereof, which lands are within and adjacent to the exterior boundaries of the Daniel Boone National Forest, Kentucky, are hereby transferred from the jurisdiction of the Secretary of the Army to the jurisdiction of the Secretary of Agriculture, subject to outstanding rights or interests of records and to such continued use by the Corps of Engineers of all of these lands which are necessary for the construction, operation, and maintenance of the Laurel River Lake Project for its intended purposes, other than for recreation and fish and wildlife, as presently authorized, or as may be authorized in the future, including but not limited to the right to perform timber clearing, flooding of the area, to construct and maintain transmission lines and utilities, access roads, and to make improvements in the aid of navigation, and to a reservation by the Corps of Engineers of the privilege of outgranting rights-of-way for power and telephone lines, for roads and pipelines, etc., as necessary to accommodate such facilities as are relocated and reconstructed under certain relocation contracts between the Corps of Engineers and owners thereof. Administration of licenses, permits, and easements for such outgrants of right-of-way will be transferred to the Secretary of Agriculture.

(2) The National Forest lands described in Exhibit B, attached hereto and made a part hereof, which are a part of the Daniel Boone National Forest, Kentucky, are hereby transferred from the jurisdiction of the Secretary of

Agriculture to the jurisdiction of the Secretary of the Army, subject to outstanding rights or interests of records, and to a reservation for and on behalf of the United Stated Forest Service of the right of access and use necessary to provide for required other uses of National Forest lands, including the sale of timber therefrom prior to clearing activities of the Corps of Engineers and access for National Forest purposes.

(3) Pursuant to Section 2 of the aforesaid Act of July 26, 1956, the National Forest lands transferred to the Secretary of the Army by this order are hereafter subject only to the laws applicable to the Department of the Army lands comprising the Laurel River Lake Project. The Department of the Army lands transferred to the Secretary of Agriculture by this order are hereby subject to the laws applicable to lands acquired under the Act of March 1, 1911 (36 Stat. 961), as amended.

This order will be effective as of date of publication in the **Federal Register.**

Dated: February 13, 1987.

John O. Marsh,

Secretary of the Army, Jr.,

Dated: January 2, 1987.

Richard E. Lyng,

Secretary of Agriculture.

EXHIBIT A

Lands transferred from the Secretary of the Army to the Secretary of Agricultural.

The following listed tracts acquired by the Department of the Army for or in connection with the Laurel River Lake project in Whitley and Laurel Counties, Kentucky:

Segment 1—Portion of Tract A, Tracts 114, 115, 116, 117, 118E, 119E, 121
Segment 2—Tracts 202C, 204, 205, 206
Segment 3—Tracts 300, 302C
Segment 4—Tracts 407, 409, 411
Segment 5—Tracts 502, 505, 507C, 509
Segment 6—Tracts 610, 606, 613C, 614C, 620
Segment 7—Tracts 700, 707, 707C, 711, 719–1, 719–2, 720, 722, 723, 724, 726, 727, 728, 731
Segment 8—Tracts 803, 804C, 806C, 808C
Segment 9—Tracts 904, 905, 907–1, 907–2, 911, 912–1, 912–2, 913, 916, 921, 927, 292
Segment 10—Tracts 1000, 1001, 1002, 1003, 1004, 1005, 1006, 1009, 1014–1, 1014–2, 1016, 1018, 1020, 1022, 1024, 1027, 1028, 1030, 1031, 1032, 1033 ,1034, 1035, 1039, 1040, 1041, 1042, 1044, 1045, 1046, 1047, 1048, 1049, 1050, 1051, 1052, 1053, 1056, 1062, 1063, Portion of Tract 1037
Mineral Interests—Tracts 130M–1, thru M–17, 131M, 132M, 250M–1 thru M–9, 251M, 252M, 351M, 352M, 650M, 651M, 750M, 750M–1, 750M–2 850M–1 thru M–8, 851M, 951M, 952M, 953M, 954M–1, 954M–2, 1080M, 1081M

The surface lands listed above consist of 2,195.45 acres, more or less, in fee and 1.65 acres, more or less, in perpetual road easements. Legal descriptions and acquisition documents of the transferred tracts and Real Estate Segment Maps depicting their location are on file in the office of the District Engineer, Nashville District, Corps of Engineers, Nashville, Tennessee, and the office of the Forest Supervisor, Daniel Boone National Forest, Winchester, Kentucky.

Not all mineral interests in lands of the Laurel River Lake project were owned by the Federal government at the time of their transfer to the Secretary of Agriculture in the previous partial interchange. Those interests have since been acquired by the Secretary of the Army. This final interchange of lands includes (a) all mineral interests acquired for the lands listed above and (b) all mineral interests acquired for project lands previously transferred from the Department of the Army to the Department of Agriculture.

Exhibit B

Lands transferred from the Secretary of Agriculture to the Secretary of the Army.

The following listed tracts acquired by the Department of Agriculture for or in connection with the Daniel Boone National Forest project in Whitley and Laurel Counties, Kentucky:

Portions of Tracts 1371 Ac, 1520i, and 1863 consisting of 639.50 acres, more or less.

Legal descriptions and acquisition documents of the transferred tracts and maps depicting their location are on file in the office of the District Engineer, Nashville District, Corps of Engineers, Nashville, Tennessee; and the Office of the Forest Supervisor, Daniel Boone National Forest, Winchester, Kentucky.

[FR Doc. 87–11802 Filed 5–21–87; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

Agency Form Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: Bureau of the Census.

Title: Quarterly Survey of Residential Alternations and Repairs.

Form Number: Agency—CE–701, CE–702; OMB—0607–0130.

Type of Request: Revision of a currently approved collection.

Burden: 2,700 respondents; 1,800 reporting hours.

Needs and Uses: This survey is needed to upkeep and improve data for a nationwide sample of rental and vacant residential housing units. These statistics are used extensively by the Federal Government in making policy decisions and they become a part of the gross national product. They are also used by the private sector for market analysis and other research.

Affected Public: Individuals or households, state or local governments, businesses or other for-profit institutions.

Frequency: Quarterly.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Don Arbuckle, 395–7340.

Copies of the above information collection proposal can be obtained by calling or writing DOC Clearance Officer, Edward Michals, (202) 377–3271, Department of Commerce, Room H6622, 14th and Constitution Avenue, NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Don Arbuckle, OMB Desk Officer, Room 3228 New Executive Office Building, Washington, DC 20503.

Dated: May 18, 1987.

Edward Michals,

Departmental Clearance Officer, Office of Management and Organization.

[FR Doc. 87–11788 Filed 5–21–87; 8:45 am]

BILLING CODE 3510–07–M

Bureau of the Census

Census Advisory Committees of the Black, Hispanic, Asian and Pacific Islander, and American Indian and Alaska Native Populations for the 1990 Census; Renewal

In accordance with the provisions of the Federal Advisory Committee Act, 5 U.S.C. App. (1982), and Office of Management and Budget Circular A–63 of March 1974, and after consultation with GSA, the Secretary of Commerce has determined that the renewal of the Census Advisory Committees of the Black, Hispanic, Asian and Pacific Islander, and American Indian and Alaska Native Populations for the 1990 Census is in the public interest in connection with the performance of duties imposed on the Department by law.

These committees were originally established in May 1985. The

Department of Commerce last renewed each committee on May 7, 1987.

The committees will continue to provide advice to the Director, Bureau of the Census, on such matters as improving the accuracy of the population count, recommending subject content and tabulations of particular use to all populations, expanding the dissemination of census results to all users of census data, suggesting areas of research, and generally improving the usefulness of the census product.

Each committee will have a balanced representation of 12 members. The committees will continue to report and be responsible to the Director, Bureau of the Census, and will function soley as an advisory body in compliance with the Federal Advisory Committee Act.

The Department of Commerce will file copies of the committees' revised charters with appropriate committees in Congress.

You may address inquiries or comments to Mr. Russell Valentine, Committee Coordinator, Bureau of the Census, Room 3779, FB 3, Washington, DC 20233; telephone (301) 763-5169, or Ms. Suzette Kern, Committee Management Analyst, U.S. Department of Commerce, Washington, DC 20230, telephone (202) 377-3743.

Dated: May 18, 1987.

John G. Keane,

Director, Bureau of the Census.

[FR Doc. 87-11807 Filed 5-21-87; 8:45 am]

BILLING CODE 3510-07-M

International Trade Administration

[A-401-603]

Certain Stainless Steel Hollow Products From Sweden; Preliminary Determination of Sales at Less Than Fair Value

AGENCY: International Trade Administration, Import Administration, Commerce.

ACTION: Notice.

SUMMARY: We have preliminarily determined that certain stainless steel hollow products (SSHP) from Sweden are being, or are likely to be, sold in the United States at less than fair value. We have notified the U.S. International Trade Commission (ITC) of our determination, and we have directed the U.S. Customs Service to suspend liquidation of all entries of the subject merchandise as described in the "Suspension of Liquidation" section of this notice. If this investigation proceeds normally, we will make a final determination by July 29, 1987.

EFFECTIVE DATE: May 22, 1987.

FOR FURTHER INFORMATION: Contact Mary S. Clapp (202) 377-1769 or Gregory G. Borden (202) 377-3003, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Preliminary Determination

We have preliminary determined that SSHP from Sweden are being, or are likely to be, sold in the United States at less than fair value as provided in section 733 of the Tariff Act of 1930, as amended (19 U.S.C. 167b) (the Act). The margins of sales at less than fair value are shown in the "Suspension of Liquidation" section of this notice.

Case History

On October 17, 1986, we received a petition in proper form filed by the Specialty Tubing Group (which was amended to include the United Steelworkers of America on February 6, 1987) on behalf of the U.S. industry producing SSHP. In compliance with the filing requirements of § 353.36 of the Commerce Regulations (19 CFR 353.36), the petition alleged that imports of the subject merchandise from Sweden are being, or likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Act, and that these imports are causing material injury, or threaten material injury, to a U.S. industry.

After reviewing the petition, we determined that it contained sufficient grounds upon which to initiate an antidumping investigation. We initiated the investigation on November 7, 1986 (51 FR 33286, November 19, 1986), and notified the ITC of our action.

On November 28, 1986, the ITC determined that there is a reasonable indication that imports of SSHP are materially injuring a U.S. industry (U.S. ITC Pub. No. 1919, December 1986).

On January 6, and January 7, 1987, questionnaires were presented to Sandvik AB (SAB) and Avesta Sandvik Tube AB (AST), respectively, which account for virtually all of the exports to the United States during the period of investigation.

On February 20, 1987, we received a questionnaire response from SAB. On February 23, 1987, we received a questionnaire response from AST. A supplementary response from AST was received on March 5, 1987. We sent deficiency letters to SAB on March 17, 1987, and to AST on March 18, 1987.

On March 5, 1987, petitioners requested a postponement of the preliminary determination. On March 10, 1987, in accordance with section 733(c)(1)(A) of the Act, we postponed the preliminary determination to May 15, 1987, (52 FR 8089, March 16, 1987).

On April 17, 1987, petitioners alleged that sales of seamless redraw hollows to the Federal Republic of Germany (FRG) were below the cost of production.

Scope of Investigation

The United States has developed a system of tariff classification based on the international harmonized system of Customs nomenclature. The U.S. Congress is considering legislation to convert the United States to this Harmonized System (HS) by January 1, 1988. In view of this, we will be providing both the appropriate *Tariff Schedules of the United States Annotated* (TSUSA) item numbers and the appropriate HS item numbers with our product descriptions on a test basis, pending Congressional approval. As with the TSUSA, the HS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

We are requesting petitioners to include the appropriate HS item number(s) as well as the TSUSA item number(s) in all new petitions filed with the Department. A reference copy of the proposed HS schedule is available for consultation at the Central Records Unit, Room B-099, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC, 20230. Additionally, all Customs office have reference copies and petitioners may contact the Import Specialist at their local Customs office to consult the schedule.

The products covered by this investigation are certain stainless steel hollow products including pipes, tubes, hollow bars and blanks therefor, of circular cross-section, containing over 11.5 percent chromium by weight, as provided for under TSUSA item numbers 610.3701, 610.3727, 610.3741, 610.3742, 610.5130, 610.5202, 610.5229, 610.5230, and 610.5231, and currently classifiable under HS item numbers 7304.41.00-0, 7304.49.00-0, 7306.40.10-0, and 7364.05.00-2.

Fair Value Comparisons

To determine whether sales of the SSHP in the United States were made at less than fair value, we compared the United States price to the foreign market value as specified below.

We made comparisons on over 60 percent of the sales of the products during the period of investigation, May 1, 1986 through October 31, 1986.

United States Price

For SAB and AST, we based United States price on exporter's sales price (ESP) when those sales were made after importation, in accordance with section 772(c) of the Act. For those sales by SAB and AST to the United States which were made prior to importation, we determined that the merchandise had been purchased from the manufacturer or producer and, therefore, based the United States price on purchase price in accordance with section 772(b) of the Act. A majority of these sales which we have treated as purchase price transactions involved a related U.S. sales agent. We used purchase price for those sales based on the following elements:

1. The merchandise in question was shipped directly from the manufacturer to the unrelated buyer, without being introduced into the inventory of the related selling agent;
2. This was the customary commercial channel for sales of this merchandise between the parties involved; and
3. The related selling agent located in the United States acted only as a processor of sales-related documentation and a communication link with the unrelated U.S. buyer.

Where all the above elements are met, we regard the routine selling functions of the exporter as having been merely relocated geographically from the country of exportation to the United States, where the sales agent performs them. Whether these functions are done in the United States or abroad does not change the substance of the transactions or the functions themselves.

In instances where merchandise is ordinarily diverted into the related U.S. selling agent's inventory, we regard this factor as an important distinction because it is associated with a materially different type of selling activity than the mere facilitation of a transaction such as occurs on a direct shipment to an unrelated U.S. purchaser. In situations where the related party places the merchandise into inventory, he commonly incurs substantial storage and financial carrying costs and has added flexibility in his marketing. We also use the inventory test because it can be readily understood and applied by respondents who must respond to Department questionnaires in a short period of time. It is objective in nature, as the final destination of the goods can be established from normal commercial documents associated with the sale and verified with certainty.

We calculated purchase price and ESP based on the packed, duty paid, f.o.b. or c.i.f., delivered prices to unrelated purchasers in the United States. We made deductions for foreign inland freight, ocean freight, marine insurance, U.S. duty, and U.S. inland freight, as appropriate. For ESP sales, we also deducted credit and other expenses normally incurred in selling the merchandise in the United States.

For SAB, the Department additionally deducted the costs presented in the responses which represented those incurred for additional processing to the product sold in the United States by Sandvik Steel Company, Inc. (a subsidiary of SAB).

Foreign Market Value

SAB

In accordance with section 773(a)(1)(B) of the Act, we determined that there were insufficient home market sales of seamless redraw hollows and finished pipes and tubes to be used as a basis for detetermining foreign market value. The third country market with the largest volume of sales of the most similar mechandise is the FRG. On April 17, 1987, petitioners alleged that third country prices of seamless redraw hollows were below the cost of production. We did not have sufficient time to develop data for purposes of the preliminary determination. The issue will be addressed in the final determination.

We made deductions from delivered prices for discounts and for foreign inland freight betwen Sweden and the FRG. We deducted third country packing costs and added U.S. packing costs. For comparisons to ESP, we made a circumstance of sale adjustment for difference in credit expenses and an offset to indirect selling expenses on the U.S. sales, in accordance with § 353.15(b) of Commerce's regulations.

We found sufficient sales of hollow bar in the home market to form the basis of comparison and used delivered home market prices. We made deductions for inland freight. We deducted home market packing costs and added U.S. packing costs. For comparison to ESP sales, we deducted selling expenses incurred on home market sales up to the amount of indirect selling expenses incurred for sales to the U.S. market, as an offset in accordance with § 353.15(c) of our regulations. We made an adjustment for differences in credit terms in accordance with § 353.15 of our regulations.

AST

We found sufficient sales in the home market to form the basis of comparison and used delivered home market prices. We made deductions for foreign inland freight and discounts. We deducted home market packing costs and added U.S. packing costs. For comparison to ESP sales, AST has claimed no offsets for the selling expenses incurred in the U.S., in accordance with § 353.15(c) of our regulations. We made an adjustment for difference in credit terms in accordance with § 353.15 of our regulations.

Respondents have made claims for differences in quantities, level of trade and physical characteristics. These claims have not been sufficiently quantified. We will seek further information and consider these claims for purposes of the final determination.

Currency Conversion

For ESP comparisons, we used the official exchange rate for the date of sales since the use of that exchange rate is consistent with section 615 of the Trade and Tariff Act of 1984 (1984 Act). We followed section 615 of the 1984 Act rather than § 353.56(a)(2) of our regulations because the later law supersedes that section of the regulations.

For purchase price comparisons, we used the exchange rate described in § 353.56(a)(1) of our regulations. All currency conversions were made at the rates certified by the Federal Reserve Bank.

Verification

As provided in section 776(a) of the Act, we will verify all information used in reaching the final determination in this investigation.

Suspension of Liquidation

In accordance with section 733(d) of the Act, we are directing the U.S. Customs Service to suspend liquidation of all entries of SSHP from Sweden that are entered, or withdrawn form warehouse, for consumption, on or after the date of publication of this notice in the **Federal Register.**

The Customs Service shall require a cash deposit or the posting of a bond equal to the estimated amounts by which the foreign market values of the merchandise subject to this investigation exceed the United States price as shown below. This suspension of liquidation will remain in effect until further notice.

Manufacturer/Producer/Exporter	Weighted-average margin percentage
Sandvik AB	31.46
Avesta Sandvik Tube AB	60.65
All Others	35.43

ITC Notification

In accordance with section 733(f) of the Act, we will notify the ITC of our determination. In addition, we are making available to the ITC all nonprivileged and nonproprietary information relating to this investigation. We will allow the ITC access to all privileged and business proprietary information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under administrative protective order, without the written consent of the Deputy Assistant Secretary for Import Administration.

If our final determination is affirmative, then the ITC will determine no later than 120 days after the date of this preliminary determination, or 45 days after our final determination, whether these imports are materially injuring, or threaten material injury to, a U.S. industry.

Public Comment

In accordance with § 353.47 of our regulations (19 CFR 353.47), if requested, we will hold a public hearing to afford interested parties an opportunity to comment on this preliminary determination at 1:00 p.m. on June 29, 1987, at the U.S. Department of Commerce, Room 3708, 14th Street and Constitution Avenue, NW. Washington, DC 20230. Individuals who wish to participate in the hearing must submit a request to the Deputy Assistant Secretary for Import Administration, Room B-099, at the above address within 10 days of the publication of this notice. Requests should contain: (1) The party's name, address and telephone number; (2) the number of participants; (3) the reason for attending; and (4) a list of the issues to be discussed.

In addition, prehearing briefs in at least 10 copies must be submitted to the Deputy Assistant Secretary by June 22, 1987. Oral presentations will be limited to isues raised in the briefs. All written views should be filed in accordance with 19 CFR 353.46, not less than 30 days before the final determination, or, if a hearing is held, within 7 days after the hearing transcript is available, at the above address in at least 10 copies.

This determination is published pursuant to section 733(f) of the Act (19 U.S.C. 1673b(f)).

Gilbert B. Kaplan,

Deputy Assistant Secretary for Import Administration.

May 15, 1987.

[FR Doc. 87-11789 Filed 5-21-87; 8:45 am]

BILLING CODE 3510-DS-M

[Application No. 87-00004]

Export Trade Certificate of Review

AGENCY: Department of Commerce, International Trade Administration.

ACTION: Notice of issuance of an Export Trade Certificate of Review.

SUMMARY: The Department of Commerce has issued an export trade certificate of review to the National Machine Tool Builders' Association ("NMTBA"). This notice summarizes the conduct for which certification has been granted.

FOR FURTHER INFORMATION CONTACT: George Muller, Acting Director, Office of Export Trading Company Affairs, International Trade Administration, 202-377-5131. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 ("the Act") (Pub. L. 97-290) authorizes the Secretary of Commerce to issue trade certificates of review. The regulations implementing Title III ("the Regulations") are found at 15 CFR Part 325 (50 FR 1804, January 11, 1985).

The Office of Export Trading Company Affairs is issuing this notice pursuant to 15 CFR 325.6(b), which requires the Department of Commerce to publish a summary of a certificate in the **Federal Register.** Under section 305(a) of the Act and 15 CFR 325.11(a), any person aggrieved by the Secretary's determination may, within 30 days of the date of this noticce, bring an action in any appropriate district court of the United States to set aside the determination on the ground that the determination is erroneous.

Description of Certified Conduct

Export Trade

1. Products

Machine tools, including metal cutting machine tools (SIC code 3541), metal forming machine tools (SIC code 3542), woodworking machinery (SIC code 3553), and special industry machinery (SIC code 3559); tooling, dies, jigs, and fixtures for machine tools (SIC code 3544); machine tool accessories (SIC code 3545); assembly, measuring, and inspection machines; computer controls for machine tools (including computer programs); robotics, industrial laser equipment; materials handling equipment; welding apparatus (SIC code 3623); wire-guided vehicles; and other machine tool related equipment.

2. Services

Engineering and architectural services related to Products and to turn-key contracts that substantially incorporate Products; servicing of Products; and training with respect to the use of Products.

3. Export Trade Facilitation Services (as they relate to the export of Products and Services).

Consulting; international market research; marketing and trade promotion; trade show participation; insurance; legal assistance; transportation; trade documentation and freight forwarding; communication and processing of export orders; warehousing; foreign exchange; financing; and taking title to goods.

4. Technology Rights

Patents, trademarks, service marks, copyrights, trade secrets, know-how, and semiconductor mask works.

Export Markets

The Export Markets include all parts of the world except (a) the United States (the fifty states of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands) and (b) Canada.

Export Trade Activities and Methods of Operation

1. NMTBA and/or one or more of its Members may:

a. Engage in joint bidding or other joint selling arrangements for Products and Services in Export Markets and allocate sales resulting from such arrangements;

b. Establish export prices for sales of Products and Services by the Members in Export Markets, with each Member being free to deviate from such prices by whatever amount it sees fit;

c. Discuss and reach agreements relating to the interface specifications and engineering requirements demanded by specific potential customers for Products for Export Markets;

d. With respect to Products and Services, refuse to quote prices for, or to market or sell in, Export Markets;

e. Solicit non-member Suppliers to sell their Products and/or Services or offer their Export Trade Facilitation Services through the certified activities of NMTBA and/or its Members;

f. Coordinate with respect to the installation and servicing of Products in Export Markets, including the establishment of joint warranty, service, and training centers in such markets;

g. License associated Technology Rights in conjunction with the sale of

Products, but in all instances the terms of such licenses shall be determined solely by negotiations between the licensor Member and the export customer without coordination with NMTBA or any other Member;

h. Engage in joint promotional activities, such as advertising and trade shows, aimed at developing existing or new Export Markets; and

i. Bring together from time to time groups of Members to plan and discuss how to fulfill the technical Product and Service requirements of specific export customers or particular Export Markets.

2. NMTBA and/or its Members may enter into agreements wherein NMTBA and/or one or more Members agree to act in certain countries or markets as the Members' exclusive or non-exclusive Export Intermediary for Products and/or Services in that country or market. In such agreements, (i) NMTBA or the Member(s) acting as an exclusive Export Intermediary may agree not to represent any other Supplier for sale in the relevant country or market, and (ii) Members may agree that they will export for sale in the relevant country or market only through NMTBA or the Member(s) acting as exclusive Export Intermediary, and that they will not export independently to the relevant country or market, either directly or through any other Export Intermediary. When acting as an Export Intermediary, NMTBA shall make its services available to any Member on non-discriminatory terms.

3. NMTBA and/or its Members may exchange and discuss the following types of information solely about Export Markets:

a. Information (other than information about the costs, output, capacity, inventories, domestic prices, domestic sales, domestic orders, terms of domestic marketing or sale, or United States business plans, strategies or methods) that is already generally available to the trade or public;

b. Information about sales and marketing efforts for Export Markets; activities and opportunities for sales of Products and Services in Export Markets; selling strategies for Export Markets; pricing in Export Markets; projected demands in Export Markets; customary terms of sale in Export Markets; the types of Products available from competitors for sale in particular Export Markets, and the prices for such Products; and customer specifications for Products in Export Markets;

c. Information about the export prices, quality, quantity, source, and delivery dates of Products available from Members for export, provided however that exchanges of information and discussions as to Product quantity, source, and delivery dates must be on a transaction-by-transaction basis only;

d. Information about terms and conditions of contracts for sales in Export Markets to be considered and/or bid on by NMTBA and its Members;

e. Information about joint bidding, selling, or servicing arrangements for Export Markets and allocation of sales resulting from such arrangements among the Members;

f. Information about expenses specific to exporting to and within Export Markets, including without limitation transportation, intermodal shipments, insurance, inland freight to port, port storage, commissions, export sales, documentation, financing, customs, duties, and taxes;

g. Information about U.S. and foreign legislation and regulation affecting sales in Export Markets; and

h. Information about NMTBA's or its Members' export operations, including without limitation sales and distribution networks established by NMTBA or its Members in Export Markets, and prior export sales by Members (including export price information).

4. NMTBA may provide its Members or other Suppliers the benefit of any Export Trade Facilitation Services to facilitate the export of Products to Export Markets. This may be accomplished by NMTBA itself, or by agreement with Members or other parties.

5. NMTBA and/or its Members may meet to engage in the activities described in paragraphs one through four above.

6. NMTBA and/or its Members may forward to the appropriate individual Member requests for information received from a foreign government or its agent (including private pre-shipment inspection firms) concerning that Member's domestic or export activities (including prices and/or costs), and if such individual Member elects to respond, it shall respond directly to the requesting foreign government or its agent with respect to such information.

Definitions

1. "Export Intermediary" means a person who acts as a distributor, sales representative, sale or marketing agent, or broker, or who performs similar functions, including providing or arranging for the provision of Export Trade Facilitation Services.

2. "Members" means the member companies of NMTBA, subject to the provisions of this paragraph. A list of current NMTBA members is attached hereto as Attachment A and is incorporated herein by reference. New NMTBA members may be incorporated in this certificate pursuant to the abbreviated amendment procedure described below. An abbreviated amendment shall consist of a written notification to the Department of Commerce and the Department of Justice stating changes in NMTBA membership, identifying all new NMTBA members that desire to become a Member under this certificate pursuant to the abbreviated amendment procedure, and certifying for each new NMTBA member so identified its sales of Products in its prior fiscal year. Notice of new members so identified shall be published in the **Federal Register**. However, NMTBA may withdraw one or more individual members from the application for the abbreviated amendment. If 30 days or more following publication in the **Federal Register**, the Secretary of Commerce, with the concurrence of the Attorney General, determines that the incorporation in the certificate of the new members through the abbreviated amendment procedure is onsistent with the standards of the Act, the Secretary of Commerce shall amend the certificate of review to incorporate such new members, effective as of the date on which the application for amendment is deemed submitted. If the Secretary of Commerce does not within 60 days of publication in the **Federal Register** so amend the certificate of review, such amendment must be sought through the nonabbreviated amendment procedure.

3. "Supplier" means a person who produces, provides, or sells a Product, Service, and/or Export Trade Facilitation Services, whether a Member or nonmember.

Terms and Conditions of Certificate

Any agreements, discussions, or exchanges of information under this certificate relating to quantities of Products available for Export Markets shall be in connection only with actual or potential bona fide export transactions and shall be on a transaction-by-transaction basis only.

Participation by a Member in any Export Trade Activity or Method of Operation under this certificate shall be entirely voluntary as to that Member, subject to the honoring of contractual commitments. A Member may withdraw from coverage under this certificate at any time by giving written notice to NMTBA, a copy of which NMTBA shall promptly transmit to the Departments of Commerce and Justice.

A copy of this certificate will be kept in the International Trade Administration's Freedom of

Information Records Inspection Facility, Room 4102, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

Dated: May 19, 1987.

George Muller,

Acting Director, Office of Export Trading Company Affairs.

Appendix

Members of Applicant

Abrasive Engineering & Manufacturing (Division of Acrometal Companies, Inc.); Acme Manufacturing Co.; Acme-Cleveland Corporation; Acro Automation Systems, Inc.; Advanced Assembly Automation, Inc.; Advanced Machine Design Company; The Ajax Manufacturing Company; Chas. G. Allen Co.; Almco Inc.; Alpha Machine, Inc.; AMAF Industries, Inc.; American Broach and Machine Company; American GFM Corporation; American Pfauter Limited; Anocut, Inc.; Anorad Corporation; APEC—Guill Technologies; Apex Corporation; Armstrong-Blum Mfg. Co.; Automated Machine Tool Technology, Inc.; Automated Process Inc.; Automatic Feed Co.; Automation Associates, Inc.; Autonumerics, Inc.; Autospin, Inc.; B & H Tool and Machine Corporation; Bardons & Oliver, Inc.; Barker Milling Machine Company; Barnes Drill Company; Bayer Industries, Inc.; Beatty Machine & Manufacturing Company; Belden Tools, Inc.; Benchmaster Products Inc.; E.W. Bliss Company; The Bodine Corporation; Bohle Machine Tools, Inc.; Boston Digital Corporation; Bracker Corporation; Bridgeport Machines, Inc.; Brown & Sharpe Manufacturing Co.; Buffalo Forge Company; Cam-Apt, Inc.; Cammann, Inc.; Cargill Detroit Corporation; Centro-Morgardshammar, Inc.; Chemtool Deburring Systems; The Cincinnati Gilbert Mach. Tool Co.; Cincinnati Milacron Inc.; Clausing Industrial, Inc.; Clearing; Cleveland Punch and Shear (Division of Bath Iron Works); The Cleveland Tapping Machine Company; CM Systems, Inc.; Colt Industries, Inc.; Continental MDM, Inc.; Cooper-Weymouth, Peterson (Division of Reed National Corp.); Crankshaft Machine Company; Dake; Danley Machine Division (Division of Avondale Industries, Inc.); Davenport Machine Tool Division (Division of Dover Corp.); DeHoff Incorporated; Demmer Corporation; DeVlieg Machine Company; DoALL Company; Drake Manufacturing Services, Inc.; Dreis & Krump Mfg. Co.; The Dunham Tool Company, Inc.; Dustvent, Inc.; Dyna Mechtronics Inc.; Dynamic Feeds, Inc.; Dynetics Corporation; Eaton Leonard Technologies, Inc.; Eitel Presses, Inc. (Division of Transmares Corporation); Ekstrom, Carlson & Company; Elb-Florida, Inc.; Electro Arc Manufacturing Co., Inc.; Eltee Pulsitron; Engis Corporation; Erie Press Systems; Es-Tech; Esterline Corporation; Ex-Cell-O Corporation; Extrude Hone Corporation; Fairfield Machine; Farrel Company; Federal Press Company; Fellows Corporation; Foster-Miller Inc.; Fusion Incorporated; G.T. Acoustical Technologies (Division of G.T. Safety Equipment Co.); Gallmeyer & Livingston Company; Gehring LP; Geometric Tool; Giddings & Lewis; Gleason Corporation; Glendo Corporation; GM Industries, Inc.; The Goss & De Leeuw Machine Company; Gould & Eberhardt Gear Machy. Corp.; Greenerd Press & Machine Company, Inc.; Grinders for Industry, Inc.; Grinding Technology Inc.; Grotnes Metalforming Systems, Inc.; Hammond Machinery, Inc.; Hansvedt EDM Division; Hardinge Brothers, Inc.; Harper Buffing Machine (Division of the Harper Company); Harvill Machine, Inc.; Hausermann Abrading Process Co.; HE&M Saw; Hegenscheidt Corporation; Heim Corporation; Hertlein Special Tool Co., Inc.; The Hill Acme Company; Hitachi Seiki USA, Inc.; C.O. Hoffacker Company (Division of the Hoff Corp.); P. R. Hoffman; Hoglund Tri-Ordinate Corporation; Houdaille Industries, Inc.; S.E. Huffman Corporation; Hybco Products, Inc.; Hydra-Tool Corp.; Hydromat Inc.; Imperial Stamp & Engraving Company; Industrial Development System; Intertech Automation Company; IRD Mechanalysis, Inc.; ITW Illitron; Jacobson Tool & Manufacturing Corp.; Jarvis Corporation; Kasper Machine Company; Katy Industries, Inc.; Kaufman Mfg. Co.; Kayex-Spitfire Tool & Machine Company (Division of Kayex Unit of General Signal); Kinefac Corporation; Kingsbury Machine Tool Corporation; H.R. Krueger Machine Tool, Inc.; L & F Industries; L & J Press Corporation; Lamb Technicon Corp.; Landis Tool Co.; Laser Industries, Inc.; Laser Systems Division (Division of Combustion Engineering); Laserdyne Division (Division of Data Card Corporation); LeBlond Makino Machine Tool Company; K. O. Lee Company; Lehmann (Division of Smith International, Inc.); Leland-Gifford, Inc.; Louis Levin & Son Inc.; Livernois Automation Company; The Lodge & Shipley Company; Lyon Machine Builders Div. (Division of Shawmith Corporation); Masco Machine, Inc.; Mattison Machine Works; Mazak Corporation; Met/Coil Systems Corporation; MG Cutting Systems (Division of MG Industries); MHP Machines, Inc.; Miller Fluid Power Corporation; The Minister Machine Company; George A. Mitchell Co.; Modern Machine Works, Inc.; Moline Tool Company, Inc.; The Monarch Machine Tool Company; Moore Special Tool Co., Inc.; Morey Machinery, Inc.; Morgan Industries, Inc.; Multipress Incorporated; National Automatic Tool Co., Inc.; National Broach & Machine (Division of Lear-Siegler, Inc.); National Machinery Co.; Newcor, Inc.; Niagara Machine & Tool Works; Normac Incorporated; The O. K. Tool Company, Inc.; Oak Products Incorporated; Oerlikon Motch Corporation; The Ohio Broach Machine Co.; Oliver Instrument Company; The Olofsson Corporation; Onsrud Machine Corporation; P/A Industries; Pacific Press & Shear Corp.; Parker Hannifin Corporation; Parket-Majestic Inc.; Peerless Saw Division (Division of Medalist Industries); Pefecto Industries, Inc.; Perfekt Precision Mfg. Co., Inc.; PMC Industries; Pneumo Precision, Inc.; Pope Machinery Inc.; Process Equipment Company; The Producto Machine Company; Quamco, Inc.; R D & D Corporation; Redin Corporation; Remmele Engineering, Inc.; Reno Machinery and Engineering Co.; Republic Lagun Machine Tool Company; Reynolds Machine & Tool Corp.; Roberts Machine Corp.; Roto Finish Company, Inc.; Royal Master Grinders, Inc.; S-P Manufacturing Corporation; Saginaw Machine Systems Inc.; Sandvik Coromant Company; W. J. Savage Company, Inc.; Geo T. Schmidt Division (Division of Product Identification Corp.); Schreiber Manufacturing Co., Inc.; Schuler Incorporated; Sciaky Bros., Inc.; Scotchman Industries, Inc.; Sheffield Machine Tool Company; Sierra Machinery, Inc.; Simmons Machine Tool Corporation; South Bend Lathe, Inc.; SpeedFam Corporation; Standard Tool & Manufacturing Co.; Star Cutter Company; Stoelting, Inc.; R. Howard Strasbaugh, Inc.; Sunnen Products Company; Superior Die Set Corporation; Surf/Tran (Division of Robert Bosch Corporation); Swanson-Erie Corporation; Sweco, Inc.; T-Drill; Tannewitz, Inc.; Teknics Industrial Systems, Inc.; Teledyne Landis Machine; Tenco Industries, Inc.; Themac Inc.; Thielenhaus Microfinish Corp.; Toyoda Machinery USA; Tree Machine Tool Co., Inc.; Trumpf Inc.; Turchan Enterprises, Inc.; Ty-Miles, Inc.; U.S. Amada, Ltd.; The U.S. Baird Corporation; Uni-Tek Manufacturing Company; Unipunch Products, Inc.; United States Drill Head Co.; Universal Automatic Corp.; Universal Engineering (Division of Stanwich Industries); The V & O Press Company Inc.; Valenite-Kamset

(Division of GTE Corp.); Vapor Blast Manufacturing Company; Versa-Mil, Inc.; Vulcan Tool Company; Wadell Equipment Company, Inc.; O. S. Walker Company Inc.; Wallace Coast Machinery Company; Walter Grinders, Inc.; Wardwell Mfg. Co. Inc.; Weldon Machine Tool, Inc.; Wesel Manufacturing Company; Western Machine Tool Works; The Wheelabrator Corporation; White Consolidated Industries; Whitnon Spindle Division (Division of Emhart Corp.); Williams, White & Co.; Wotan Machine Tools (Division of Hunter Douglas N.V.); Wysong & Miles Company; Zagar, Inc.; Zero Manufacturing Co.

[FR Doc. 87-11777 Filed 5-21-87; 8:45 am]

BILLING CODE 3510-DR-M

The MCTL Implementation Technical Advisory Committee; Partially Closed Meeting

A meeting of the MCTL Implementation Technical Advisory Committee will be held June 11, 1987, 9:30 a.m., Herbert C. Hoover Building, Room B-841, 14th Street and Constitution Avenue, NW., Washington, DC. The Committee advises and assists the Office of Technology and Policy Analysis in the implementation of the Militarily Critical Technologies List (MCTL) into the Export Administration Regulations and provide for continuing review to update the Regulations as needed.

Agenda

Open Session

1. Opening remarks by the Chairman
2. Introduction of Public Attendees
3. Introduction of Invited Guests
4. Presentation of Papers or Comments by the Public
5. Briefing by Defense on the National Security Decision Directive (NSDD) 145 and Related Controls on Technical Information
6. Presentation and Discussion of Policy Issues Regarding Controls on Networking
7. Approach for Determining Controls on Technical Data Under § 374.4(d)

Executive Session

8. Discussion of matters properly classified under Executive Order 12356, dealing with the U.S. and COCOM control program and strategic criteria related thereto.

The General Session of the meeting will be open to the public and a limited number of seats will be available. To the extent time permits, members of the public may present oral statements to the Committee. Written statements may be submitted at any time before or after the meeting.

The Assistant Secretary for Administration, with the concurrence of the delegate of the General Counsel, formally determined on December 30, 1986, pursuant to section 10(d) of the Federal Advisory Committee Act, as amended by section 5(c) of the Government In The Sunshine Act, Pub. L. 94-409, that the matters to be discussed in the Executive Session should be exempt from the provisons of the Federal Advisory Committee Act relating to open meetings and public participation therein, because the Executive Session will be concerned with matters listed in 5 U.S.C. 552(c)(1) and are properly classified under Executive Order 12356.

A copy of the Notice of Determination to close meetings or portions thereof is available for public inspection and copying in the Central Reference and Records Inspection Facility, Room 6628, U.S. Department of Commerce, Telephone: (202) 377-4217). For further information or copies of the minutes contact Margaret A. Cornejo 202-377-2583.

Dated: May 19, 1987.

Margaret A. Cornejo,

Director, Technical Support Staff, Office of Technology and Policy Analysis.

[FR Doc. 87-11790 Filed 5-21-87; 8:45 am]

BILLING CODE 3510-DT-M

Semiconductor Technical Advisory Committee; Closed Meeting

SUMMARY: The Semiconductor Technical Advisory Committee was initially established on January 3, 1973, and rechartered on January 10, 1986 in accordance with the Export Administration Act of 1979 and the Federal Advisory Committee Act.

Time and Place: June 17, 1987 at 9:30 a.m., Herbert C. Hoover Building, Room 6802, 14th Street and Constitution Ave., NW., Washington, DC.

Agenda: The Committee will meet only in Executive Session to discuss matters properly classified under Executive Order 12356, dealing with the U.S. and COCOM control program and strategic criteria related thereto.

SUPPLEMENTARY INFORMATION: A Notice of Determination to close meetings or portions of meetings of the Committee to the public on the basis of 5 U.S.C. 552b(c)(1) was approved on January 10, 1986, in accordance with the Federal Advisory Committee Act.

A copy of the Notice is available for public inspection and copying in the Central Reference and Records Inspection Facility, Room 6628, U.S. Department of Commerce, telephone: 202-377-4217.

For further information call Ruth D. Fitts at 202-377-2583.

Dated: May 19, 1987.

Margaret A. Cornejo,

Director, Technical Support Staff, Office of Technology and Policy Analysis.

[FR Doc. 87-11791 Filed 5-21-87; 8:45 am]

BILLING CODE 3510-DT-M

National Oceanic and Atmospheric Administration

[P135]

Marine Mammals, Issuance of Permit; Mystic Marinelife Aquarium

On June 23, 1986, notice was published in the **Federal Register** (51 FR 22846) that an application had been filed by Mystic Marinelife Aquarium, 55 Coogan Blvd., Mystic, Connecticut 06355 for a permit to permanently remove from the wild four (4) Atlantic bottlenose dolphins (*Tursiops truncatus*) for captive maintenance.

Notice is hereby given that on May 11, 1987, as authorized by the provisions of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361-1407), the National Marine Fisheries Service issued a Permit for the above taking subject to certain conditions set forth therein.

The Permit is available for review by interested persons in the following offices:

Office of Protected Resources and Habitat Programs, National Marine Fisheries Service, 1825 Connecticut Avenue, NW., Rm. 805, Washington, DC; Director, Southeast Region, National Marine Fisheries Service, 9450 Koger Boulevard, St. Petersburg, Florida 33702; and

Director, Northeast Region, National Marine Fisheries Service, 14 Elm Street, Federal Building, Gloucester, Massachusetts 01930.

Dated: May 11, 1987.

Dr. Nancy Foster,

Director, Office of Protected Resources and Habitat Programs, National Marine Fisheries Service.

[FR Doc. 87-11751 Filed 5-21-87; 8:45 am]

BILLING CODE 3510-22-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Establishment of Guaranteed Access Levels for Certain Cotton and Man-Made Fiber Textiles and Textile Products From the Dominican Republic

May 19, 1987.

The Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O 11651 of March 3, 1972, as amended, and the President's February 20, 1986 announcement of a Speical Access Program for textile products assembled in participating Caribbean Basin beneficiary countries from fabric formed and cut in the United States, and pursuant to the requirements set forth in 51 FR 21208 (June 11, 1986), has issued the directive published below to the Commissioner of Customs, effective June 1, 1987. For further information, contact Janet Heinzen, International Trade Specialist, Office of Textile and Apparel, U.S. Department of Commerce, (202) 377–4212.

Background

The Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of December 18, 1986 establishes, among other things, guaranteed access levels for cotton and man-made fiber textile products in Categories 340 (men's and boys' cotton shirts, not knit) and 644 (women's, girls' and infants' man-made fiber suits) assembled in the Dominican Republic from fabric formed and cut in the United States, which have been properly certified under the Special Access Program, and exported from the Dominican Republic during the twelve-month period beginning on June 1, 1987 and extending through May 31, 1988.

Textile products in Categories 340 and 644 exported from the Dominican Republic, qualifying for the Special Access Program for entry under TSUSA 807.0010, exported on or after June 1, 1987 must be accompanied by a properly completed CBI Export Declaration (Form ITA–370P).

In the letter published below, the Chairman of the Committee for the Implementation of Textile Agreements directs the Commissioner of Customs to establish guaranteed access levels for properly certified textile products assembled in the Dominican Republic from fabric formed and cut in the United States and exported from the Dominican Republic in Categories 340 and 644.

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 19, 1987

Commissioner of Customs,
Department of Treasury, Washington, DC 20229

Dear Mr. Commissioner: Under the terms of section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), and the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as further extended on July 31, 1986; pursuant to the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of December 18, 1986 between the Governments of the United States and the Dominican Republic; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, and the Special Access Program as set forth in 51 FR 21208 (June 11, 1986).

The following guaranteed access levels have been established for properly certified textile products assembled in the Dominican Republic from fabric formed and cut in the United States and exported from the Dominican Republic during the period June 1, 1987 through May 31, 1988.

Category	12-Mo.
340	645,000 dozen.
644	200,000 dozen.

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).

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreement 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 Agreements

[FR Doc. 87–11786 Filed 5–21–87; 8:45 am]

BILLING CODE 3510-DR-M

COMMITTEE FOR PURCHASE FROM THE BLIND AND OTHER SEVERELY HANDICAPPED

Procurement List 1987; Addition and Deletions

AGENCY: Committee for Purchase from the Blind and Other Severely Handicaped.

ACTION: Addition to and deletions from Procurement List.

SUMMARY: This action adds to and deletes from Procurement List 1987 a commodity and services to be provided by workshops for the blind and other severely handicapped.

EFFECTIVE DATE: June 22, 1987.

ADDRESS: Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square 5, Suite 1107, 1755 Jefferson Davis Highway, Arlington, Virginia 22202–3509.

FOR FURTHER INFORMATION CONTACT: C.W. Fletcher, (703) 557–1145.

SUPPLEMENTARY INFORMATION: On March 11, 1987 and March 31, 1987 the Committee for Purchase from the Blind and Other Severely Handicapped published notices (52 FR 7468 and 52 FR 10251) of addition to and deletions from Procurement List 1987, November 3, 1986 (51 FR 39945).

Additions

After consideration of the relevant matter presented, the Committee has determined that the service listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46–48c, 85 Stat. 77 and 41 CFR 51–2.6.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered were:

a. The action will not result in any additional reporting recordkeeping or other compliance requirements.

b. The action will not have a serious economic impact on any contractors for the service listed.

c. The action will result in authorizing small entities to provide the service procured by the Government.

Accordingly, the following service is hereby added to Procurement List 1987:

Service

Completion of Form DD 1574 and Form DD 1574–1.

(Requirements for Robins Air Force Base, Georgia only)

Deletions

After consideration of the relevant matter presented, the Committee has determined that the commodity and services listed below are no longer suitable for procurement by the Federal Government under 41 U.S.C. 46–48C, 85 Stat. 77 and 41 CFR 51–2.6.

Commodity

Cable Assembly, Power
6150–00–935–8799
6150–00–507–8852

Services

Repair of Rubberized Items:
Mattress Pneumatic
(Noninsulated 8465–00–254–8887)
(Insulated 8465–00–518–2781)
Ponchos (8405–00–935–3257)
Bag Clothing, Waterproof (8465–00–261–6909)
Fort Bliss, Texas

Repair Services of the following items at Fort Bliss, Texas only:
Bag, Sleeping
8465–00–242–7855
8465–01–049–0088
Case, Sleeping Bag
8465–00–237–8719
Liner, Field Jacket
8415–00–782–2888
Bag, Barracks
8465–00–530–3692
Bag, Duffel
8465–00–141–0932
Grounds Maintenance, Recreation Areas, Naval Air Station, Lemoore, California
Janitorial Service, USDA Forest Service Sequoia National Forest, Porterville, California at: Supervisor's Office, 900 W. Grand Avenue, Warehouse Complex, 480 N. Henrahan
Shrink Wrapping Gift Packages, U.S. Postal Service, Washington, DC

C.W. Fletcher,

Executive Director.

[FR Doc. 87–11754 Filed 5–21–87; 8:45 am]

BILLING CODE 6820–33–M

Procurement List 1987; Proposed Additions and Deletions

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Proposed additions to Procurement List.

SUMMARY: The Committee has received proposals to add to Procurement List 1987 commodities and services to be produced by workshops for the blind or other severely handicapped.

Comments Must be Received on or Before: June 22, 1987

ADDRESS: Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square 5, Suite 1107, 1755 Jefferson Davis Highway, Arlington, Virginia 22202–353509.

FOR FURTHER INFORMATOIN CONTACT: C.W. Fletcher, (703) 557–1145.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a)(2), 85 Stat. 77 and 41 CFR 51–2.6. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

Additions

If the Committee approves the proposed additions, all entities of the Federal Government will be required to procure the commodities and services listed below from workshops for the blind or other severely handicapped.

It is proposed to add the following commodities and services to Procurement List 1987, November 3, 1986 (51 FR 39945).

Commodities

Test Set, Lead
6625–01–121–0510
(50% of the Government's requirements)
Folder, File, Kraft
7530–00–985–7097
Shirt, Women's Utility
8410–01–058–9394
8410–01–058–9395
8410–01–058–9396
8410–01–058–9397
8410–01–058–9398
8410–01–058–9399
8410–01–058–9400
8410–01–058–9401
8410–01–058–9402
8410–01–058–9403
8410–01–058–9404
8410–01–058–9405
8410–01–058–9406
8410–01–058–9407
8410–01–058–9408
8410–01–058–9409
8410–01–058–9410
8410–01–058–9411
8410–01–058–9412
8410–01–058–9413
8410–01–058–9414
8410–01–058–9415
8410–01–058–9416
8410–01–058–9417
8410–01–058–9418
8410–01–058–9419
8410–01–058–9420
8410–01–132–7962
8410–01–132–7963
8410–01–132–7964
8410–01–132–7965
8410–01–132–7966
8410–01–132–8067
8410–01–132–7968

Services

Commissary Warehouse Service, Robins Air Force, Georgia
Commissary Shelf Stocking, Branch Commissary Store, Naval Support Activity, New Orleans, Louisiana
Food Service Attendant, Homestead Air Force Base, Florida
Janitorial Service, Brickell Federal Building, Miami, Florida
Janitorial/Custodial, Officer's Open Mess, Building 542; NCO Open Mess, Building 956, Robins AFB, Georgia
Janitorial Service, John F. Kennedy Federal Building, Low Rise, Boston, Massachusetts
Operatoin of the Postal Service Center, Maxwell AFB and Gunter Air Force Station, Alabama

C.W. Fletcher,

Executive Director.

[FR Doc. 87–11755 Filed 5–21–87; 8:45 am]

BILLING CODE 6820–33–M

DEPARTMENT OF DEFENSE

Department of the Air Force

Ground Wave Emergency Network (GWEN); Draft Environmental Impact Statement (DEIS)

To all interested government agencies, public groups and concerned citizens: The United States Air Force will hold an additional public hearing on June 8, 1987 to receive public and agency comments on the GWEN DEIS which addresses the proposed action of expanding the GWEN program to its final operational capability. The no action alternative was also considered.

The Environmental Protection Agency previously announced in the **Federal Register** on April 17, 1987 (52 FR 592) that the DEIS was filed. Subsequently public hearings were held in Atlanta, GA on May 4, 1987, in Dallas, TX on May 6, 1987, and in Sausalito, CA on May 8, 1987.

This public hearing will be held at the William Green Federal Building, Rm. 3306, 600 Arch St., Philadelphia, PA 19106. The meeting will start at 10:00 a.m. and continue until all comments are heard or until 2:00 p.m., whichever occurs first.

Both written and oral comments will be accepted, and transcripts of the

hearings will be made. Lengthy or technically complex statements should be summarized for oral presentation. Oral statements will be limited to five minutes.

Written comments will be accepted any time until June 23, 1987 which is the end of the public comment period for the DEIS (changed from the previously announced deadline of June 1, 1987).

Written comments should be forwarded to: Mr. Chris Perkins, ESD/DEP, Hanscom AFB, MA 01731-5000.

Copies of the DEIS will be available upon request from Mr. Perkins at the above address.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 87-11728 Filed 5-21-87; 8:45 am]

BILLING CODE 3910-01-M

USAF Scientific Advisory Board; Meeting

May 13, 1987.

The USAF Scientific Advisory Board's Ad Hoc Committee on Space-Based Radar will conduct a meeting at the ANSER facility, 1215 Jefferson Davis Hwy., Crystal Gateway 3, Arlington, VA, June 24-25, 1987, from 8:00 A.M. to 5:00 P.M.

The purpose of this meeting is to discuss technology issues relevant to Air Force requirements for a space-based radar system.

This meeting will involve discussions of classified defense matters listed in section 552b(c) of Title 5, United States Code, specifically subparagraph (1) thereof, and accordingly will be closed to the public.

For further information, contact the Scientific Advisory Board Secretariat at (202) 697-8404.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 87-11702 Filed 5-21-87; 8:45 am]

BILLING CODE 3910-01-M

USAF Scientific Advisory Board; Meeting

May 18, 1987.

The USAF Scientific Advisory Board Ad Hoc Committee on Airships will meet on June 9th and 10th, 1987, at the Pentagon, room 5D982, from 8:00am to 5:00pm each day. The purpose of the meeting is to review, discuss and evaluate the suitability of airships to perform certain Air Force roles and missions.

This meeting will involve discussions of classified defense matters listed in section 552b(c) of Title 5, United States Code, specifically subparagraph (1) thereof, and accordingly will be closed to the public.

For further information, contact the Scientific Advisory Board Secretariat at 202-697-4811.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 87-11833 Filed 5-21-87; 8:45 am]

BILLING CODE 3910-01-M

DEPARTMENT OF EDUCATION

Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice of proposed information collection requests.

SUMMARY: The Director, Information Technology Services, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1980.

DATE: Interested persons are invited to submit comments on or before June 22, 1987.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Desk Officer, Department of Education, Office of Management and Budget, 726 Jackson Place, NW., Room 3208, New Executive Office Building, Washington, DC 20503. Requests for copies of the proposed information collection requests should be addressed to Margaret B. Webster, Department of Education, 400 Maryland Avenue, SW., Room 5624, Regional Office Building 3, Washington, DC 20202.

FOR FURTHER INFORMATION CONTACT: Margaret B. Webster (202) 732-3915.

SUPPLEMENTARY INFORMATION: Section 3517 of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations.

The Director, Information Technology Services, publishes this notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following:

(1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Agency form number (if any); (4) Frequency of collection; (5) The affected public; (6) Reporting burden; and/or (7) Recordkeeping burden; and (8) Abstract. OMB invites public comment at the address specified above. Copies of the requests are available from Margaret Webster at the address specified above.

Dated: May 18, 1987.

Carlos U. Rice,

Director for Information Technology Services.

Office of Postsecondary Education

Type of Review: Revision
Title: Guarantee Agency Monthly Claims and Collections Report
Agency Form Number: ED 1189
Frequency: Monthly
Affected Public: State or local government; non-profit institutions
Reporting Burden: Burden Hours: 1,026, *Responses:* 708
Recordkeeping Burden: Burden Hours: 4.72, *Recordkeepers:* 59
Abstract: This form is used by a guarantee agency to request payments of reinsurance for default, bankruptcy, death and disability claims paid to lenders, and for costs incurred for supplemental preclaims assistance. In addition, an agency may use this form to make payments for amounts due the Department for collections on defaulted loans on which reinsurance has been paid, and for refuding amounts previously paid for reinsurance claims. The Department uses this information to administer the Department's loan guarantee program operated by guarantee agencies.

Type of Review: Revision
Title: Lender's Annual Call Report on Guaranteed Student Loans Outstanding
Agency Form Number: ED 799-1
Frequency: Annually
Affected Public: Businesses or other for profit
Reporting Burden: Burden Hours: 6,600, *Responses:* 12,000
Recordkeeping Burden: Burden Hours: 960, *Recordkeepers:* 12,000
Abstract: This report is used by all lenders participating in the Guaranteed Student Loan Program to provide the Department with information regarding the lender's loan portfolio. The Department uses this information for internal financial reporting and budgetary projects.

Type of Review: Revised

Title: Application for Grants and Contracts Under the Veterans Education Outreach Program
Agency Form Number: ED 269
Frequency: Annually
Affected Public: Non-profit institutions
Reporting Burden: Burden Hours: 800, Responses: 800
Recordkeeping Burden: Burden Hours: 0, Recordkeepers: 0

Abstract: This application will be used by institutions of higher education to apply for grants under the Veterans Education Outreach Program. The Department uses the data collected to award grants to all eligible institutions that provide special educational services to veterans.

Office of Special Education and Rehabilitative Services

Type of Review: Reinstatement
Title: Annual Client Assistance Program Report
Agency Form Number: ED 227
Frequency: Annually
Affected Public: State or local governments; non-profit institutions
Reporting Burden: Burden Hours: 171, Responses: 57
Recordkeeping Burden: Burden Hours: 0, Recordkeepers: 0

Abstract: Agencies designated to administer the Client Assistance Program (CAP), provide assistance in informing and advising all clients and client applicants of the available benefits under the Rehabilitation Act of 1973, as amended. These agencies use this form to report to the Department on their progress in administering the CAP. In turn, the Department uses the information to evaluate the program and make recommendations to the Congress.

Type of Review: New
Title: State Plan Supplement for Supported Employment Services under Title IV, Part C of the Rehabilitation Act, as amended
Agency Form Number: B20–27P
Frequency: Every three years
Affected Public: State or local governments
Reporting Burden: Burden Hours: 172, Responses: 86
Recordkeeping Burden: Burden Hours: 0, Recordkeepers: 0

Abstract: This State plan supplement is used by the States to report to the Department information about their goals and plans for supported employment services offered under Title IV, Part C of the Rehabilitation Act, as amended. The Department uses this information to monitor and evaluate the States' performance in providing the service.

Type of Review: New
Title: Report of the Estimated Total Number of Handicapped Children Ages 3–5 Expected to be Receiving Special Education and Related Services
Agency Form Number: E20–25P
Frequency: One time only
Affected Public: State or local governments
Reporting Burden: Burden Hours: 288, *Responses:* 57
Recordkeeping Burden: Burden Hours: 0, *Recordkeepers:* 0

Abstract: This form will be used by State educational agencies to report the estimated number of children ages 3–5 years old, who will be receiving special education and related services under the Education of the Handicapped Act in the 1987–88 school year. The Department will use the data collected to award preschool grants for the 1987–88 school year based on the number of eligible children reported.

Office of Educational Research and Improvement

Type of Review: Extension
Title: Application for Grants Under the Strengthening Research Library Resources Program
Agency Form Number: ED 592
Frequency: Annually
Affected Public: State or local governments; non-profit institutions
Reporting Burden: Burden Hours: 1,600, *Responses:* 100
Recordkeeping Burden: Burden Hours: 0, *Recordkeepers:* 0

Abstract: This application will be used by institutions and non-profit organizations to apply for funds under the Strengthening Research Library Resources Program. The Department evaluates the data submitted to determine the significance of the applicant's facility as a major research library and the quality of the proposed project. Grants are awarded on a competitive basis.

Type of Review: Revision
Title: Final Financial Status and Performance Report for Higher Education Act Programs—Titles II–B and II–C
Agency Form Number: ED 606
Frequency: Annually
Affected Public: Non-profit institutions
Reporting Burden: Burden Hours: 320, *Responses:* 80
Recordkeeping Burden: Burden Hours: 80,
Recordkeepers: 80

Abstract: This report form is used by institutions of higher education, library organizations and agencies to report to the Department on the use of grant funds awarded under the Library Programs Titles I–B and II–C. The Department uses the information collected to monitor project performance.

[FR Doc. 87–11779 Filed 5–21–87; 8:45 am]
BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Economic Regulatory Administration

[ERA Docket No. 87–23–NG]

Chervon Natural Gas Services, Inc.; Application To Import Natural Gas From Canada

AGENCY: Ecomonic Regulatory Administration, DOE.

ACTION: Notice of Application for Blanket Authorization to Import Natural Gas from Canada.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) gives notice of receipt on April 27, 1987, of an application filed by Chevron Natural Gas Services, Inc. (Chevron Gas), for blanket authorization to import Canadian natural gas for short-term and spot market sales in the United States. Authorization is requested to import up to 73 Bcf for a two-year term beginning on the date of the first delivery. The gas would be sold on a short-term of spot basis to U.S. purchasers including pipelines, local distribution companies, and commerical and industrial end-users. Chevron Gas would import gas for its own account or act as a broker for U.S. purchasers as well as Canadian suppliers. The specific terms of each import and sale would be negotiated on an individual basis, including price and volumes. Chevron Gas intends to utilize existing pipeline facilities for transportation of the volumes imported. The firm proposes to submit quarterly reports giving details of individual transactions within 30 days following each calendar quarter.

The application is filed with the ERA pursuant to Section 3 of the Natural Gas Act and DOE Delegation Order No. 0204–111. Protests, motions to intervene, notices of intervention and written comments are invited.

DATE: Protests, motions to intervene, or notices of intervention, as applicable, and written comments are to be filed no later than June 22, 1987.

FOR FURTHER INFORMATION CONTACT:

Tom Dukes, Natural Gas Division, Economic Regulatory Administration, Forrestal Building, Room GA–076, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–9590

Diane Stubbs, Natural Gas and Mineral Leasing, Office of General Counsel, U.S. Department of Energy, Forrestal Building, Room 6E–042, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–6667

SUPPLEMENTARY INFORMATION: The decision on this application will be made consistent with the DOE's gas import policy guidelines, under which the competitiveness of an import arrangement in the markets served is the primary consideration in determining whether it is in the public interest (49 FR 6684, February 22, 1984). Parties that may oppose this application should comment in their responses on the issue of competitiveness as set forth in the policy guidelines. The applicant asserts that this import arrangement is competitive. Parties opposing the arrangement bear the burden of overcoming this assertion.

Public Comment Procedures

In response to this notice, any person may file a protest, motion to intervene or notice of intervention, as applicable, and written comments. Any person wishing to become a party to the proceeding and to have the written comments considered as the basis for any decision on the application must, however, file a motion to intervene or notice of intervention, as applicable. The filing of a protest with respect to this application will not serve to make the protestant a party to the proceeding, although protests and comments received from persons who are not parties will be considered in determining the appropriate procedural action to be taken on the application. All protests, motions to intervene, notices of intervention, and written comments must meet the requirements that are specified by the regulations in 10 CFR Part 590. They should be filed with the Natural Gas Division, Office of Fules programs, Economic Regulatory Administration, Room GA–076, RG–23, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–9478. They must be filed no later than 4:30 p.m. e.d.t., June 22, 1987.

The Administrator intends to develop a decisional record on the application through responses to this notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. A party seeking intervention may request that additional procedures be provided, such as additional written comments, an oral presentation, a conference, or a trial-type hearing. A request to file additional written comments should explain why they are necessary. Any request for an oral presentation should identify the substantial question of fact, law, or policy at issue, show that it is material and relevant to a decision in the proceeding and demonstrate why an oral presentation is needed. Any request for a conference should demonstrate why the conference would materially advance the proceeding. Any request for a trial-type hearing must show that there are factual issues genuinely in dispute that are relevant and material to a decision and that a trial-type hearing is necessary for a full and true disclosure of the facts.

If an additional procedure is scheduled, the ERA will provide notice to all parties. If no party requests additional procedures, a final opinion and order may be issued based on the official record, including the application and responses filed by parties pursuant to this notice, in accordance with 10 CFR § 590.316.

A copy of Chevron Gas' application is available for inspection and coping in the Natural Gas Division Docket Room, GA–076–A at the above address. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, May 14, 1987.

Constance L. Buckley,

Director, Natural Gas Division, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 87–11712 Filed 5–21–87; 8:45 am]

BILLING CODE 6450–01–M

[ERA Docket No. 87–07–NG]

Methon Gas Marketing (U.S.) Inc.; Order Granting Blanket Authorization To Import Canadian Natural Gas

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Notice of Order Granting Blanket Authorization to Import Canadian Natural Gas.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy gives notice that it has issued an order granting blanket authorization to Methon Gas Marketing (U.S.) Inc. (Methon) to import natural gas from Canada. The order issued in ERA Docket No. 87–07–NG authorizes Methon to import up to 100 Bcf over a two-year period, beginning on the date of first delivery.

A copy of this order is available for inspection and copying in the Natural Gas Division Docket Room, GA–076, Forrestal Building, 1000 Independence Ave., SW., Washington, DC, 20585, (202) 586–9478. The docket room is open between the hours of 8:00 a.m., and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, May 15, 1987.

Constance L. Buckley,

Director, Natural Gas Division, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 87–11713 Filed 5–21–87; 8:45 am]

BILLING CODE 6450–01–M

Federal Energy Regulatory Commission

[Docket Nos. CP87–337–000 et al.]

Natural Gas Certificate Filings; Natural Gas Pipeline Company of America et al.

Take notice that the following filings have been made with the Commission:

1. Natural Gas Pipeline Company of America

[Docket No. CP87–337–000]

May 11, 1987.

Take notice that on May 4, 1987, Natural Gas Pipeline Company of America (Natural), 701 East 22nd Street, Lombard, Illinois 60148, filed in Docket No. CP87–337–000 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing Natural to transport natural gas on an interruptible basis under a gas transportation agreement with Transcontinental Gas Pipe Line Corporation (Transco), from an existing receipt point in Mills County, Iowa, to existing delivery points in Cameron and Vermillion Parishes, Louisiana, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Natural states that it has entered into a gas transportation agreement with Transco to provide on an interruptible basis transportation of up to a maximum of 34,375 MMBtu of natural gas per day for Transco for an additional term of one year, ending May 9, 1988. Natural would receive the gas at an existing receipt point in Mills County, Iowa, from Northern Natural Gas Company, a Division of Enron Corp. (Northern). The gas transported is synthetic natural gas produced at the Great Plains coal gasification plant located in Beulah, North Dakota. Northern Border Pipeline receives the gas at the plant and delivers it to Northern near Ventura, Hancock County, Iowa. Natural's

grandfathered transportation service for Transco expires May 9, 1987.

Natural proposes to extend the transportation service for Transco for one year expiring on May 9, 1988, pursuant to the same terms and conditions set forth in Docket No. ST85–1069. Natural proposes to charge Transco a transportation rate of 14.3 cents per MMBtu. Natural also proposes to reduce the volumes of gas redelivered for the account of Transco by five-tenths percent per MMBtu for gas lost and unaccounted for and gas used as fuel. It is stated that no additional facilities would be required to continue such service.

Comment date: May 26, 1987, in accordance with Standard Paragraph F at the end of this notice.

2. Florida Gas Transmission Company

[Docket No. CP87–316–000

May 13, 1987.

Take notice that on April 30, 1987, Florida Gas Transmission Company (FGT), P.O. Box 1188, Houston, Texas 77251–1188, filed in Docket No. CP87–316–000 an application pursuant to section 7(c) of the Natural Gas act for authorization to transport gas for American Distribution Company (American), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Specifically, FGT states that American and FGT have entered into an interruptible gas transportation agreement dated March 16, 1987, which provides for the receipt by FGT for the account of American up to five billion Btu of gas per day, and for the redelivery of equivalent volumes for American's account, less American's pro rata share of any gas vented or lost for any reason from that portion of FGT's facilities being utilized for American at the time of such loss. FGT states that the gas would be received at the existing point of interconnection between FGT and American in Mobile County, Alabama, and would be redelivered at existing points of interconnection between FGT and Texas Eastern Transmission Corporation, Sabine Pipe Line Company and Enron Industrial Natural Gas Company in Texas and Louisiana. FGT is not proposing herein to install any new facilities.

For this transportation service, FGT proposes to charge a facility charge of 7.5 cents per million Btu delivered and 1.48 cents per million Btu for the Gas Research Institute surcharge. FGT also requests permission to discount its facility charge but to a level not less than a minimum rate of 0.7 cent per million Btu, which FGT alleges is necessary to permit FGT to remain competitive with any alternative transportation available to American.

FGT states that the term of the transportation agreement is for a period of five years from tha date of initial deliveries under the contract, and from year-to-year thereafter.

Additionally, FGT states that downstream transportation services would be provided pursuant to section 311 of the Natural Gas Policy Act of 1978, or under section l(c) of the Natural Gas Act. It is indicated that upstream transportation services would be provided by American under a certificate issued in Docket No. CP84–474–000.

FGT states that since the transportation service would be fully interruptible and would be contingent upon the availability of capacity sufficient to provide the service without detriment or disadvantage to FGT's existing customers, the transportation service proposed herein would not have an adverse impact on FGT's existing customers.

Comment date: June 3, 1987, in accordance with Standard Paragraph F at the end of this notice.

3. Northern Natural Gas Company, Division of Enron Corporation

[Docket No. CP87–325–000

May 13, 1987.

Take notice that on April 30, 1987, Northern Natural Gas Company, Division of Enron Corporation (Northern), 2223 Dodge Street, Omaha, Nebraska 68102, filed in Docket No. CP87–325–000 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the transportation of natural gas by Northern for the account of Panhandle Eastern Pipe Line Company (Panhandle Eastern), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Northern proposes to transport on an interruptible basis for Panhandle Eastern's account up to 100,000 MMBtu per day of natural gas produced in Matagorda Island Area Blocks 622C, 623A, and 623B, (MAT 622C, MAT 623A, and MAT 623B) in offshore Texas. It is stated that Panhandle Eastern would cause the designated production to be delivered to Northern immediately upstream of the measurement facilities on the production platform in each of the above designated blocks. Northern explains that it would then transport and redeliver thermally equivalent volumes to: (1) The existing interconnection of Northern's and Seagull Shoreline System's (Seagull Shoreline) facilities in Texas state waters in Matagorda Island Block 624, or (2) at such other point(s) as Northern and Panhandle Eastern mutually may agree. It is further explained that additional downstream transportation for Panhandle Eastern's account would be provided by Seagull Shoreline, Houston Pipe Line Company, Texas Eastern Transmission Corporation, and Trunkline Gas Company.

For the proposed service, Northern proposes to charge Panhandle Eastern maximum rates of 7.02 cents, 2.01 cents, and 3.38 cents per MMBtu for MAT 623A gas, MAT 623–B gas, and MAT 622-C gas, respectively.

Comment date: June 3, 1987, in accordance with Standard Paragraph F at the end of this notice.

4. Northwest Pipeline Corporation

[Docket No. CP87–335–000]

May 13, 1987.

Take notice that on April 30, 1987, Northwest Pipeline Corporation (Northwest), 295 Chipeta Way, Salt Lake City, Utah 84108, filed in Docket No. CP87–335–000 an application pursuant to section 7(c) of the Natural Gas Act for authorization to construct and operate certain natural gas facilities and the transportation of natural gas for direct sale to Exxon Company U.S.A. (Exxon) for use during emergency shut-downs at Exxon's Dry Piney Dehydration Plant and during facility malfunction at Mountain Fuel Resources, Inc.'s (MFR) Dry Piney Gas Conditioning Plant, both in Sublette County, Wyoming, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

It is stated that the Dry Piney Dehydration Plant was constructed by Exxon to treat natural gas from the LaBarge Anticline located in southwestern Wyoming. It is then stated that the natural gas treated in the Dry Piney Dehydration facility is transported through Exxon's facilities to the inlet of Exxon's Shute Creek Processing Plant. Northwest states that ANR Pipeline Company (ANR) then purchases the processed gas for its general system supply requirements. It is indicated that by order dated January 24, 1985, in Docket No. CP84–756–000, MFR was granted authorization to deliver natural gas to its affiliated local distribution company for ultimate delivery to Exxon for base load requirements at Exxon's Dry Piney Dehydration Plant. Northwest states that the supply source from which MFR provides base load requirements to Exxon is MFR's Dry Piney Gas

Conditioning Plant. MFR has indicated to Northwest that the current production at the tailgate of its plant is approximately 8,500 MMBtu of natural gas per day (MMBtu/d).

Exxon has stated to Northwest that in the event of a plant upset at the Dry Piney Dehydration Plant, its needs for instantaneous emergency gas would be approximately 29,000 MMBtu/d, an amount that is in excess of the present capacity of MFR's plant. In the event that Exxon's Dry Piney facility experienced failure, it is stated, MFR would be unable to supply a sufficient source of pipeline quality gas to provide flare assistance volumes to Exxon, thus creating a potentially hazardous situation because Exxon would be unable to flare the unprocessed gas within the plant site because the raw gas contains lethal amounts of hydrogen sulphide, thus, the limited venting of this gas could create a safety hazard for field employees. It is further stated that in the event MFR's facility failed to operate at capacity or to otherwise function properly, MFR would be unable to supply Exxon's Dry Piney facility with its entire base load requirements.

It is stated that to insure an ample supply of emergency shut-down gas to Exxon for use in flare assistance procedures and to supply base load protection, Exxon and Northwest have entered into an emergency gas sales agreement (Agreement) dated July 28, 1986, under which Northwest would provide on a firm basis up to 29,000 MMBtu/d of pipeline quality gas for use as emergency fuel gas for emergency shut-down operations at Exxon's Dry Piney Dehydration Plant. It is maintained that in the event that MFR cannot provide adequate base load volumes due to a facility malfunction, Northwest would supply a portion of Exxon's base load requirements unitl MFR is able to correct the facility malfunction. It is maintained that such sales under the Agreement would be used only to backstop MFR's base load supplies to Exxon's plant whenever MFR may be unable to provide sufficient supplies, and, in the event of an Exxon plant failure, would be used as flare assistance gas and as purge and pack gas to restart the plant. It is stated that the Agreement is effective for a primary term of five years and from year-to-year thereafter until terminated upon six months written notice. It is stated that Exxon estimates that for each plant failure the emergency gas volumes would be requried for a period of 4–5 hours for flare assistance and for a period of 24 hours maximum to purge and repack the plant. Northwest states that Exxon indicates that plant upsets would probably occur no more than twice a year.

Northwest states that it is currently delivering for Exxon's account any requested emergency gas to MFR for subsequent redelivery by MFR's affiliated local distribution company to Exxon's Dry Piney plant by utilizing facilities initially installed pursuant to § 157.53 of the Commission's Regulations to deliver testing gas to Exxon. Northwest proposes in Docket No. CP87–335–000 to replace such temporary facilities with 4.53 miles of 6-inch pipeline, one meter station consisting of a 6-inch meter run, a 3-inch meter and a 2-inch meter, and miscellaneous facilities. It is explained that the proposed line would be constructed from the discharge side of Northwest's existing Big Piney compressor station located in Sublette County, Wyoming, extending in a southwesterly direction to a point of interconnection with the proposed meter station located adjacent to Exxon's Dry Piney Dehydration Plant.

It is stated that for all volumes of natural gas sold to Exxon under the terms of the Agreement, Northwest would charge a rate equal to its IOS–1 rate which currently is 23.577 cents per therm as set forth on Sheet 10 in Northwest's FERC First Revised Volume No. One Tariff. In accordance with the approved settlement of Northwest's rate proceeding in Docket No. RP85–13–000, Northwest states that it would retain all revenues received from Exxon.

Northwest states that the estimated cost of installing the 4.53 miles of 6-inch pipeline, the meter station and miscellaneous appurtenant facilities would be $741,000. Northwest further states that Exxon would reimburse Northwest for the total cost of installing such facilities. It is stated that Northwest would retain title and operational control of the facilities consistent with Northwest's policy on sales laterals.

Comment date: June 3, 1986, in accordance with Standard Paragraph F at the end of this notice.

5. Trunkline Gas Company

[Docket No. CP87–332–000]

May 13, 1987.

Take notice that on April 30, 1987, Trunkline Gas Company (Trunkline), P.O. Box 1642, Houston, Texas 77251, filed in Docket No. CP87–332–000 an application pursuant to section 7(c) of the Natural Gas Act and the regulations thereunder for a limited-term certificate of public convenience and necessity authorizing the receipt, transportation, and redelivery of natural gas on an interruptible basis on behalf of Northern Natural Gas Company (Northern) and pregranted abandonment, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Trunkline states that pursuant to a transportation agreement between Trunkline and Northern dated February 26, 1987, Turnkline has agreed to receive for transportation a volume of natural gas of up to 10,000 Mcf per day on an interruptible basis on behalf of Northern for Northern's system supply. Trunkline states that Trunkline would receive volumes for Northern's account from Northern in Grand Isle Block 82, Offshore Louisiana and redeliver to United Gas Pipe Line Company (United), on Northern's behalf, thermally equivalent volumes, less 1.0 percent and 1.5 percent for fuel at existing points of pipeline interconnection located in St. Mary and La Salle Parishes, Louisiana, respectively. It is indicated that Northern would pay Truckline 10.66 cents per Mcf of natural gas redelivered to St. Mary Parish and 43.22 cents per Mcf of natural gas redelivered to La Salle Parish and reimburse Trunkline for any filing fees incurred.

Trunkline states that it would perform the proposed service using existing facilities. Trunkline proposes to perform the service for a limited-term expiring on the earlier of February 25, 1989, or thirty days following the date Trunkline accepts an Order No. 436 blanket certificate.

Comment date: June 3, 1987, in accordance with Standard Paragraph F at the end of this notice.

6. Trunkline Gas Company

[Docket No. CP87–334–000]

May 13, 1987.

Take notice that on April 30, 1987, Trunkline Gas Company (Trunkline), P.O. Box 1642, Houston, Texas 77251, filed in Docket No. CP87–334–000 an application pursuant to section 7(c) of the Natural Gas Act for a limited-term certificate of public convenience and necessity authorizing the receipt, transportation and redelivery of natural gas on an interruptible basis on behalf of Panhandle Eastern Pipe Line Company (Panhandle) and pregranted abandonment, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Trunkline indicates that pursuant to a transportation agreement between Trunkline and Panhandle dated February 23, 1987, Trunkline has agreed to receive for transportation a volume of

natural gas of up to 2,500 Mcf per day on an interruptible basis on behalf of Panhandle. It is stated that Trunkline would receive volumes for Panhandle's account from High Island Block A–542 offshore Texas. It is stated that Trunkline would use its capacity in the systems of High Island Offshore System (HIOS), U–T Offshore System (U–T), and Natural Gas Pipeline Company of America (Natural) to transport the gas to its onshore facilities. Trunkline then states that it would redeliver to Panhandle thermally equivalent volumes, less 4 percent fuel and less any fuel and unaccounted-for losses on the systems of HIOS, U–T, Natural or any other system through which the volumes would be transported, at an existing point of pipeline interconnection located near Tuscola in Douglas County, Illinois. Trunkline states that for this transportation service, Panhandle would pay Trunkline 70.44 cents per Mcf of natural gas received and would reimburse Trunkline for any filing fees incurred.

Trunkline indicates that the proposed service may be performed through existing facilities. Trunkline proposes a limited-term certificate with pregranted abandonment authorization expiring on the earlier of February 22, 1989, or thirty days following the date Trunkline accepts an Order No. 436 blanket certificate.

Comment date: June 3, 1987, in accordance with Standard Paragraph F at the end of this notice.

7. Trunkline Gas Company

[Docket No. CP87–333–000]

May 13, 1987.

Take notice that on April 30, 1987, Trunkline Gas Company (Trunkline), P.O. Box 1642, Houston, Texas 77251, filed in Docket No. CP87–333–000 an application pursuant to section 7(c) of the Natural Gas Act and the regulations thereunder for a limited-term certificate of public convenience and necessity authorizing the receipt, transportation, and redelivery of natural gas on an interruptible basis on behalf of Southern Natural Gas Company (Southern) and pregranted abandonment, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Trunkline indicates that pursuant to a transportation agreement between Trunkline and Southern dated March 2, 1987, Trunkline has agreed to receive for transportation a volume of natural gas of up to 50,000 Mcf per day on an interruptible basis on behalf of Southern at existing points of receipt in Waller County, Texas and Allen and Beauregard Parishes, Louisiana. It is indicated that Trunkline would redeliver thermally equivalent volumes to Southern at an existing point of interconnection located in St. Mary Parish, Louisiana. For this transportation service, it is indicated that Southern would pay Trunkline 10.66 cents per Mcf of natural gas received, and would reimburse Trunkline for any filing fees incurred.

Trunkline states that no new facilities are required to implement the service. Trunkline proposes a term to expire on the earlier of March 1, 1989, or thirty days following the date Trunkline accepts an Order No. 436 blanket certificate.

Comment date: June 3, 1987, in accordance with Standard Paragraph F at the end of this notice.

8. Texas Eastern Transmission Corporation

[Docket No. CP87–311–000]

May 13, 1987.

Take notice that on April 29, 1987, Texas Eastern Transmission Corporation (Texas Eastern), P.O. Box 2521, Houston, Texas 77252–2521, filed in Docket No. CP87–311–000 an application pursuant to section 7(c) of the Natural Gas Act, for a certificate of public convenience and necessity authorizing the transportation of natural gas by Texas Eastern for the account of Panhandle Eastern Pipe Line Company (Panhandle Eastern), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Texas Eastern proposes to transport for Panhandle, on an interruptible basis, up to 100,000 Dekatherms (dth) of natural gas per day, the Maximum Daily Receipt Quantity (MDRQ), and such additional quantities in excess of the MDRQ as Texas Eastern in its sole judgment determines it is able to receive, transport and deliver, pursuant to a gas transportation agreement (Agreement) dated March 30, 1987. It is stated that the gas proposed to be transported by Texas Eastern for Panhandle would be from reserves dedicated to Panhandle in the matagorda Island area of offshore Texas and that such gas would be utilized by Panhandle as part of its long-term system supply.

Texas Eastern states that it would receive the stated quantities of natural gas, for Panhandle's account, from either Seaqull Shoreline System (Seaguall Shoreline) at a proposed point of receipt and/or from Houston Pipe Line Company (Houston Pipe Line) at an existing point of receipt, in Matagorda County, Texas. It is indicated that Texas Eastern would then transport and deliver equivalent quantities, less applicable shrinkage, to Trunkline Gas Company (Trunkline) for the account of Panhandle at existing interconnections between the pipeline facilities of Texas Eastern and Trunkline in Allen and Beauregard Parishes, Louisiana and at a proposed interconnection in Wharton County, Texas. It is further indicated that subsequent transportation of the gas from these delivery points to Panhandle's pipeline system would be provided by Trunkline.

It is explained that Seagull Shoreline would own the measurement facilities at the proposed point of receipt in Matagorda County, Texas. It is further explained that Panhandle would install and own the measurement facilities at the proposed point of delivery to Trunkline in Wharton County, Texas.

Texas Eastern proposes to provide such transportation service for a primary period of twelve years and from year-to-year thereafter subject to mutual agreement.

Texas Eastern states that it proposes to charge Panhandle each month a charge equal to the product of the posted TS–3 rate in effect during such month times the quantity of gas delivered by Texas Eastern during such month. Texas Eastern further proposes to retain .01 percent for shrinkage.

Comment date: June 3, 1986, in accordance with Standard Paragraph F at the end of this notice.

9. Williams Natural Gas Company

[Docket No. CP87–302–000]

May 13, 1987.

Take notice that on April 22, 1987, Williams Natural Gas Company (WNG), P.O. Box 3288, Tulsa, Oklahoma 74101, filed in Docket No. CP87–302–000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205), for authorization to abandon, in place, measuring, regulating and appurtenant facilities which previously served nine domestic customers in Jackson, Atchinson, and Brown Counties, Kansas, under the authorization issued in Docket No. CP82–479–000, pursuant to section 7 of the Natural Gas Act, as more fully set forth in the request which is on file with the Commission and open to public inspection.

WNG states that it previously sought authorization to abandon approximately 0.6 miles of 4-inch pipeline by reclaim and approximately 6.7 miles of 4-inch pipeline in place, and to relocate nine domestic customers to an existing 6-inch pipeline. WNG states that after the

domestic customers were relocated and it began to reclaim the pipeline, many of the landowners protested the pipeline removal. WNG avers by the time WNG had reached an agreement with the landowners, the completion date of the proposed abandonment had lapsed. WNG is therefore seeking permission and approval to abandon those facilities in this proceeding. WNG further states that the facilities were originally constructed in 1931, and certificated in Docket No. G–298 (4 FPC 471). WNG states that the cost to reclaim is approximately $10,380 with an estimated salvage value of $960.

Comment date: June 29, 1987, in accordance with Standard Paragraph G at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission 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.

G. Any person of the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's procedural rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87–11773 Filed 5–21–87; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CI87–480–000]

Big Run Production Co.; Application for Abandonment

May 19, 1987.

Take notice that on April 10, 1987, as amended May 1 and 8, 1987, Big Run Production Company (Big Run) filed an application pursuant to section 7(b) of the Natural Gas Act and § 2.77 of the Commission's rules for abandonment of its sale of gas to United Gas Pipe Line Company from the Greenwood-Waskom Field, Caddo Parish, Louisiana.

In support of its application Big Run states that it is subject to substantially reduced takes without payment. The contract will terminate effective with the date of a Commission abandonment order herein, pursuant to an agreement between the parties dated April 1, 1987. The gas is NGPA section 104 1973–74 biennium gas. Deliverability is estimated to be 150 Mcf/d. The gas will be sold in intrastate 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 Nos. 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 procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or to be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87–11774 Filed 5–21–87; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. SA87–44–000]

Florida Gas Transmission Co.; Petition for Adjustment

May 19, 1987.

Take notice that on April 28, 1987, Florida Gas Transmission Company (FGT), P.O. Box 1188, Houston, Texas 77001, filed in Docket No. SA87–44–000 for an adjustment under Section 502(c) of the Natural Gas Policy Act of 1978, wherein FGT seeks (1) an adjustment in the provision of § 281.204(b)(2) of the Commission's Regulations to permit FGT to file a triennial update of its Priority 2 entitlements in lieu of an annual update, and (2) permanent authorization to file its triennial update of its essential agricultural requirements on October 15 instead of September 15, with a designated effective date of November 15, all as more fully set forth in the petition which is on file with the Commission and open to public inspection.

The procedures applicable to the conduct of this adjustment are found in Subpart K of the Commission's rules of practice and procedure.

Any person desiring to participate in the adjustment proceeding shall file a motion to intervene in accordance with the provisions of Subpart K. All motions to intervene must be filed within 15 days after publication in the **Federal Register.**

Kenneth F. Plumb,

Secretary.

[FR Doc. 87–11775 Filed 5–21–87; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CI87-493-000]

Kaiser-Francis Oil Co., Application for Abandonment With Pregranted Limited-Term Abandonment for Sales Under Small Producer Certificate

May 19, 1987.

Take notice that on April 13, 1987, as supplemented on April 17, and May 4, 1987, Kaiser-Francis Oil Company (Kaiser-Francis) filed an application pursuant to section 7(b) of the Natural Gas Act and § 2.77 of the Commission's rules Kaiser-Francis requests abandonment of its sale of gas to Lone Star Gas Company, a Division of ENSERCH Corp. from the L. Akers A-3 well, Doyle Field, Stephens County, Oklahoma, and requests pregranted abandonment authorization for a limited term of three years for sales of such gas under its small producer certrificate in Docket No. CS73-605.

Kaiser-Francis states in support of its application that there has been a consistent reduction in the level of takes by Lone Star; the gas volumes taken by Lone Star have been substantially less than the deliverability of the wells. Lone Star has notified Kaiser-Francis by letter dated April 7, 1987, that the January 1, 1973, Gas Purchase Agreement is terminated effective February 1, 1987. The estimated deliverability of the L. Akers A-3 well is 180 Mcf/d and the well produces NGPA section 104 flowing gas. Kaiser-Francis anticipates selling the gas to a new purchaser.

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 Nos. 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 procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or to be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87-11776 Filed 5-21-87; 8:45 am]

BILLING CODE 6717-01-M

Office of Hearings and Appeals

Cases Filed Week of April 24 Through May 1, 1987

During the Week of April 24 through May 1, 1987, the applications for relief listed in the Appendix to this Notice were filed with the Office of Hearings and Appeals of the Department of Energy. Submissions inadvertently omitted from earlier lists have also been included.

Under DOE procedural regulations, 10 CFR Part 205, any person who will be aggrieved by the DOE action sought in these cases may file written comments on the application within ten days of service of notice, as prescribed in the procedural regulations. For purposes of the regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date of receipt by an aggrieved person of actual notice, whichever occurs first. All such comments shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, DC 20585.

George B. Breznay,

Director, Office of Hearings and Appeals.

May 14, 1987.

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS

[Week of April 25 through May 1, 1987]

Date	Name and location of applicant	Case No.	Type of submission
Apr. 27, 1987	South Dakota, SD Pierre	KEG-0008	Petition for special redress. If granted: The Office of Hearings and Appeals would review the proposed expenditures for Stripper-Well funds which were disapproved by the Assistant Secretary for Conservation and Renewable Energy.
Apr. 28, 1987	Bigheart Pipeline Corporation, Washington, DC	KEF-0092	Implementation of special refund procedures. If granted: The Office of Hearings and Appeals would implement Special Refund Procedures pursuant to 10 CFR Part 205, Subpart V, in connection with the November 9, 1983 Consent Order entered into with Bigheart Pipeline Corporation.
Apr. 29, 1987	Shell Oil Company, Washington, DC	KEF-0093	Petition for implementation of special refund procedures. If granted: The Office of Hearings and Appeals would implement Special Refund Procedures pursuant to 10 CFR Part 205, Subpart V, in connection with the March 26, 1987 Consent Order entered into with Shell Oil Company.
May 1, 1987	Economic Administration, Washington, DC	KRR-0024	Request for modification/rescission. If granted: The March 27, 1987, Remedial Order issued to Pel-Star Energy, Inc. would be modified regarding the joining of James C. Stevens and John H. Harvison as parties in the proceeding.

Date received	Name of refund proceeding/ name of refund applicant	Case No.
4/21/86	Farmer's Oil Company	RF225-10791.
4/21/86	Farmer's Oil Company	RF225-10792.
5/23/86	J-D Oil Company	RF225-10771.
7/29/86	Mauger Sons, Inc	RF225-10774.
7/29/86	Mauger Sons, Inc	RF225-10775.
7/29/86	Mauger Sons, Inc	RF225-10776.
7/29/86	Mauger Sons, Inc	RF225-10777.
7/29/86	Well Oil Company	RF225-10778.
7/29/86	Ravenna Oil Company	RF225-10779.
8/1/86	C.O. Glenn	RF225-10772.
8/1/86	C.O. Glenn	RF225-10773.
8/1/86	Slover Oil Company	RF225-10780.
8/4/86	Hill Park Mobil Service Station.	RF225-10770.
4/2/87	Henry's Texaco	RF272-445.
4/4/87	Southwest Airlines Company	RF272-444.
4/4/87	Hannah Marine Corporation	RF225-10793.
4/4/87	Key Energy Enterprises	RF250-2722.
4/17/87	Canton Regional Transit Authority.	RF272-442.
4/24/87 thru 5/1/87	Getty Refund Applications	RF265-1160 thru RF265-1215.
4/24/87	E.B.T., Inc	RF272-440.
4/24/87	Edward Ciardillo	RF276-174.
4/27/87	Cherokee Brick & Title Company.	RF277-1.
4/27/87	Lillian Longo	RF276-176.
4/27/87	F. Wilfrid Bernard	RF276-177.
4/27/87	Bethlehem Steel Corporation	RF272-436.
4/27/87	Foster Wheeler Energy Corp	RF272-437.

Date received	Name of refund proceeding/ name of refund applicant	Case No.
4/27/87	Tatum Bakers	RF272-438.
4/27/87	Bendix Transportation Corp	RF272-439.
4/29/87	Rocco Pezzullo	RF276-178.
4/29/87	Rocco Pezzullo	RF276-179.
4/29/87	Joseph DeSisto	RF276-180.
4/29/87	Anthony Cambio	RF276-181.
4/30/87	Brewer Titchener	RF272-441.
4/30/87	Jeane's Gulf Service	RF40-3689.
4/30/87	Bob Davis Gulf	RF40-3690.
4/30/87	Gulf Service Station	RF40-3691.
4/30/87	Arnold Barfield Dist. Co., Inc	RF40-3692.
4/30/87	Archer Bros. Garage	RF40-3693.
4/30/87	Bennett's Gulf	RF40-3694.
4/30/87	Cashion Gulf Service	RF40-3695.
4/30/87	Vallamont Gulf Service	RF40-3696.
4/30/87	Blue Flame Gas Co., Inc	RF40-3697.
4/30/87	Scott Fuel, Inc	RF40-3698.
4/30/87	Amoco/Indiana	RQ251-367.
5/1/87	C. Lester Moultrop	RF276-182.
5/1/87	Joseph Violo	RF276-183.
5/1/87	The Webster Press	RF276-184.
5/1/87	Mid-America Dairymen, Inc	RF272-443.
5/1/87	Otis Elevator Company	RF277-2.
5/1/87	Monticello Butane Gas and Equipment.	RF108-34.
5/1/87	White Brothers Gas Company.	RF139-167.
5/1/87	North Middletown Gulf	RF40-3687.
5/1/87	Duke's Gulf	RF40-3688.

[FR Doc. 87-11714 Filed 5-21-87; 8:45 am]
BILLING CODE 6450-01-M

Issuance of Decisions and Orders; Week of April 27, Through May 1, 1987

During the week of April 27 through May 1, 1987, the decisions and orders summarized below were issued with respect to applications for relief filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

Copies of the full text of these decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals, Room 1E-234, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., except federal holidays. They are also available in *Energy Management: Federal Energy Guidelines*, a commercially published loose leaf reporter system.

George B. Breznay,

Director, Office of Hearings and Appeals.

May 12, 1987.

Supplemental Order

South Central Terminal Co., Inc., 4/30/87: KCX-0014

The Federal Energy Regulatory Commission issued an order styled as a "Partial Affirmance and Remand" with respect to a Remedial Order issued in *South Central Terminal Co.*, 13 DOE ¶ 83,002 (1985). In that order, FERC affirmed the RO's findings that South Central had improperly increased the price of its gasoline, but asked that DOE reconsider the question of the exact amount of South Central's liability for those increases. During the course of this proceeding, South Central and the DOE's Economic Regulatory Administration agreed on an exact amount of the firm's liability, and DOE approved that agreement.

Refund Applications

Arkla Chemical Corp./Dan Glover Trucking Co., 4/30/87; RF153-28

The DOE issued a Decision and Order concerning an Application for Refund filed by Dan Glover Trucking Co., a purchaser of Arkla refined petroleum products. Dan Glover applied for a refund from the Arkla I escrow account for the amount listed in the audit file. *Arkla Chemical Corp.*, 13 DOE ¶ 85,043 (1985). Dan Glover was an end-user and therefore was presumed to have been injured by Arkla's pricing practices. After examining the application and supporting evidence, the DOE approved a refund of $2,127 ($1,147 in principal plus $980 in interest).

Beacon Oil Company/Doug's Beacon Service et al., 4/29/87; RF238-6 et al.

The DOE issued a Decision and Order concerning six Applications for Refund filed by purchasers of Beacon Oil Company petroleum products. Each firm applied for a refund based on the procedures outlined in *Beacon Oil Co.*, 14 DOE ¶ 85,011 (1986), as modified by *Beacon Oil Co.*, 14 DOE ¶ 85,509 (1986), governing the disbursement of settlement funds received from Beacon pursuant to a December 17, 1979 consent order. Since all of the applicants claimed refunds of $5,000 or less, they were presumed to have been injured by Beacon's alleged overcharges. After examining the applications and supporting documentation submitted by the claimants, the DOE concluded that they should receive refunds totaling $27,907, representing $14,474 in principal and $13,433 in accrued interest.

Eagle Petroleum Company/Warren Petroleum Company, 5/1/87; RF121-1

Warren Petroleum Company filed an Application for Refund, seeking a portion of the funds remitted by Eagle Petroleum Company, pursuant to a consent order that Eagle entered into with the DOE. Warren purchased 9,915,935 gallons of propane, butane and natural gasoline from Eagle during the consent order period. The DOE applied the competitive disadvantage test by comparing the prices that Eagle charged Warren with average market prices. Based on the price comparisons, the DOE granted Warren a refund of $16,566.89, which equals the number of gallons that Warren purchased at above market prices multiplied by the per gallon refund rate. Warren will also receive $9,539.00 in interest.

Eastern of New Jersey, Inc./Pharmachem Labs, Inc., et al., 5/1/87; RF232-206 et al.

The DOE issued a Decision and Order concerning three Applications for Refund filed in the Eastern of New Jersey, Inc. special refund proceeding. The applicants were end-users that purchased No. 4 residual fuel oil from Eastern. The DOE granted the three applications under the standards specified in *Eastern of New Jersey, Inc.*, 13 DOE ¶ 85,364 (1986). The refunds totaled $1,578, representing $961 is principal and $617 in interest.

Getty Oil Company/Edro Haulage, Inc., et al., 4/30/87; RF265-454 et al.

The DOE issued a Decision and Order concerning six Applications for Refund filed by end-users of products covered by a concent order that the agency entered into with Getty Oil Company. The Applications were evaluated in accordance with the procedures set forth in *Getty Oil Co.*, 15 DOE ¶ 85,064 (1986). The sum of the refunds approved in this Decision in $17,811, representing $9,108 in principal and $8,703 in interest.

Getty Oil Company/Missouri Pacific Railroad Company, Sebago Lake Garage, 4/29/87; RF265-941, RF265-942

The DOE issued a Decision and Order granting two Applications for Refund filed by end-users of product covered by a consent order that the agency entered into with Getty Oil Company. The Applications were evaluated in accordance with the procedures set forth in *Getty Oil Co.*, 15 DOE ¶ 85,064 (1986). The sum of the refunds approved in this Decision is $20,899, representing $10,684 in principal and $10,215 in interest.

Gulf Oil Corporation/Gaddis-Tate Oil Co., Inc., Pilato's Graymont Gulf Service Station, 4/28/87; RF40-3637, RF40-3642

The DOE issued a Decision and Order concerning two Applications for Refund filed by resellers and retailers of Gulf Oil Corporation petroleum products. Each firm applied for a refund based upon the procedures outlined in *Gulf Oil Corp.*, 12 DOE ¶ 85,048 (1984), governing the disbursement of settlement funds received from Gulf pursuant to a 1978 consent order. In accordance with those procedures, each applicant demonstrated that it would not have been required to pass through to customers a cost reduction equal to the amount of refund claimed. After examining the Applications and supporting documentation submitted by the applicants, the DOE concluded that each should receive a refund. The total amount of refunds approved in this Decision is $5,072, representing $4,098 in principal and $974 in interest.

Gull Industries, Inc./Maxwell Oil Co., Inc., 5/1/87; RF260-16, RF259-19

The DOE issued a Decision and Order granting two Applications for Refund from the Gull Industries, Inc. escrow account under the provisions outlined in *Gull Industries, Inc.*, 14 DOE ¶ 85,381 (1986). The applicant, Maxwell Oil Co., Inc., was a reseller of Gull petroleum products and was listed in the Appendix to the *Gull* decision as being eligible for refunds in two of the Gull consent order proceedings. In case No RF260-17, Maxwell was eligible for a refund of $1,387.70 in principal. Since this amount is less than the threshold amount, no further proof of injury was required. In Case No. RF259-19, the firm's level of purchases made it potentially eligible for a refund greater than $5,000. Since Maxwell failed to submit proof of injury, however, its refund was limited to the $5,000 threshold amount.

The DOE determined that it was inappropriate to disburse the refunds directly to Maxwell because the firm was in arrears for payments that it was obligated to make under a consent order that it had entered into with the DOE. The DOE determined that the refunds to which Maxwell would generally be entitled should more properly be used to fund the empty Maxwell escrow account. The DOE also ordered the Economic Regulatory Administration to file a Petition for the Implementation of Subpart V Procedures with regard to the newly-funded Maxwell escrow account. The refunds transferred to the Maxwell escrow account totaled $9,766.03, representing $6,387.70 in principal and $3,378.33 in interest.

Gull Industries, Inc. Steve Wescott, 5/1/87: RF260–12, RF259–14

The DOE issued a Decision and Order granting two Applications for Refund from the Gull Industries, Inc. escrow account under the provisions outlined in *Gull Industries, Inc.*, 14 DOE ¶ 85,381 (1986). The applicant, Steve Wescott, was a reseller of Gull petroleum products and was listed in the Appendix to the *Gull* decision as being eligible for refunds in two of the Gull consent order proceedings. In Case No. RF260–12, Wescott limited his claim to the $5,000 threshold amount rather than attempt to prove that he was eligible for the full potential refund amount stated in Appendix A to the *Gull* Decision. Similarly, in Case No. RF259.14, Wescott limited his claim to the threshold amount although his level of purchases made him potentially eligible for a greater refund. Since Wescott limited his claim to $5,000 in each of the proceedings, no further proof of injury was required. The refunds approved in the Decision totaled $15,287, representing $10,000 in principal and $5,287 in interest.

Husky Oil Company/Nevada Power Company, 4/27/87; Rf161–94

The DOE issued a Decision and Order concerning an Application for Refund filed by the Nevada Power Company in the Husky Oil Company special refund proceeding. The applicant is a public utility that had purchased refined petroleum products from Husky during the consent order period. As a public utility, the applicant applied for a refund based on the procedures and presumption for utilities outlined in *Husky Oil Co.*, 13 DOE ¶ 85,045 (1985); it adequately documented its purchases from Husky and certified that it would pass any refund received to its customers in the form of fuel costs adjustments. The applicant was granted a refund of $12,078 based on its volumetric per gallon refund amount, representing $8,396 in principal and $3,682 in interest.

Marathon Petroleum Company/Dan-D-Service, 4/29/87; RF250–2719

Dan-D-Service (Dan) filed an Application for Refund in which the firm sought a portion of the fund obtained by the DOE through a consent order entered into with Marathon Petroleum Company (Marathon). Dan demonstrated that it pruchased 704,778 gallons of refined petroleum covered products from Marathon during the consent order period. Using a volumetic methodology, the DOE determined that Dan's claim was below the presumption of injury threshold refund level of $5,000. The DOE therefore granted Dan a refund of $296.01 in principal and $21.18 in accrued interest for a total refund of $317.19.

Marathon Petroleum Company/Marclay Oil Company, 4/27/87; RF250–994

The DOE issued a Decision and Order granting a refund from the Marathon Petroleum Company desposit escrow account to Marclay Oil Company, a retailer of Marathon motor gasoline. The applicant submitted a claim for less than the $5,000 threshold, and was therfore not required to provide a detailed showing of injury. Marclay was granted a total refund of $706, representing $649 in principal and $57 in interest.

Marathon Petroleum Company/Merle E. Schoon & Son, 4/29/87: RF250–2698, RF250–2699

Merle E. Schoon & Son (Schoon) filed two Applications for Refund in which the firm sought a portion of the fund obtained by the DOE through a consent order entered into with Marathon Petroleum Company (Marathon). Schoon demonstrated that it purchased 196,540 gallons of refined pertroleum covered products from Marathon during the consent order period. Using a volumetric methodology, the DOE determined that Schoon's claim was below the presumption of injury threshold refund level of $5,000. The DOE therefore granted Schoon a refund of $82.55 in principal and $6.05 in accrued interest for a total refund of $88.60.

Marathon Petroleum Company/Rainwater Gas & Oil Company, Inc., 4/29/87; RF250–2668, RF250–2669

The DOE issued a Decision and Order concerning two Applications for Refund filed by Rainwater Gas & Oil Company, Inc. (Rainwater), a reseller of Marathon covered products. Although the firms's purchase of diesel and motor gasoline from Marathon during the consent order period exceeded the threshold refund level established in *Marathon Petroleum Co.*, 14 DOE ¶ 85,269 (1986), Rainwater elected to file its refund applications in accordance with procedures for filing claims based upon the 35 percent presumption of injury outlined in the *Marathon* decision. After examining the evidence and supporting data submitted by the firm, the DOE concluded that Rainwater should receive a refund of $16,727.40 in principal and $1,199.51 in accrued interest for a total refund of $17,926.91.

Marathon Petroleum Company/Sears, Roebuck and Co., 4/29/87; RF250–2298, RF250–2299

The DOE issued a Decision and Order concerning Applications for Refund filed by Sears, Roebuck and Co. (Sears), a retailer of Marathon covered products. Although the firm's purchase of diesel and motor gasoline from Marathon during the consent order period exceeded the threshold refund level established in *Marathon Petroleum Co.*, 14 DOE ¶ 85,269 (1986), Sears elected to file its refund applications in accordance with procedures for filing claims of less than $50,000 under the 35 percent presumption method outlined in the *Marathon* decision. After examining the evidence and supporting data submitted by the firm, the DOE concluded that Sears should receive a refund of $49,999.99 in principal and $3,587.93 in accrued interest for a total refund of $53,587.92.

Mobil Oil Corporation/Agway Petroleum Corporation, 4/27/87; RF225–5164, RF225–5167

The DOE issued a Decision granting in part an Application for Refund from the Mobil Oil Corporation escrow account filed by Agway Petroleum Corporation, an agricultural cooperative headquartered in Syracuse, New York. In reaching its determination, the DOE noted that Agway was ineligible to receive a refund based on its spot market purchases of 10,500,000 gallons of Mobil motor gasoline for resale to entities other than cooperative members because Agway had not attempted to rebut the presumption that, as a spot purchaser, it was not inured on those purchases. However, Agway was deemed eligible to receive a refund based on its other refined product purchases from Mobil, including contractual purchases of Mobil motor gasoline for resale to Agway members. The total refund granted in the Decision was $879 ($724 in principal plus $155 in interest).

Mobil Oil Corporation/Cochran Oil Company, 4/29/87; RF225–10752

The DOE issued a supplemental Decision and Order granting Cochran Oil Company an additional refund from the Mobil Oil Corporation deposit escrow account. Cochran received an additional amount of $243 in principal and $53 in interest after the DOE concluded that the firm had been underpaid in a Decision and Order issued by the DOE on March 31, 1987.

Mobil Oil Corporation/Hensley's Consumers Oil Co., 4/29/87; RF225–10751

The DOE issued a supplemental Decision and Order concerning an Application for Refund filed on behalf of Hensley's Consumers Oil Company by Bassman, Mitchell & Alfano in the Mobil special refund proceeding. The applicant received a refund in *Mobil Oil Corp./Buford M. Musser*, 15 DOE ¶ 85,416 (1987). However, the level-of-distribution percentage that was incorrectly listed in the Appendix to the Decision resulted in a $142 overpayment to Hensley's. Therefore, the DOE determined that Bassman, Mitchell & Alfano, representing Hensley's, should remit the overpayment to the DOE.

Pacific States Transport, Inc., 4/29/87; RF250–2381

The DOE issued a Decision and Order approving a trucking company for a refund from the Surface Transporters Escrow. Pacific States Transport, Inc. documented its purchases of diesel fuel between August 19, 1973 and January 27, 1981 for use in its fleet of trucks. The DOE found that the firm had mailed the application on the deadline date and therefore had made a good-faith effort to comply with that deadline. Accordingly, the DOE granted the application and approved the firm for a refund based on 3,189,600 gallons. The DOE stated that because the size

of a surface transporter applicant's refund will depend upon the total amount of gallons ultimately approved, the actual amount of the firm's refund will be determined at a later date.

Texas Gas Exploration/Chevron U.S.A. Inc., 4/27/87; RF44–4

Chevron U.S.A. Inc. filed an Application for Refund in the Texas Gas Exploration refund case. The DOE noted that Chevron's claim was based on spot purchases. The DOE stated that a spot purchaser is generally presumed not to have been injured, and is therefore ineligible for a refund. Chevron was given an opportunity to rebut the no-injury presumption. To rebut that presumption, an applicant must show that the purchases were made solely for maintaining the refund applicant's base period customers' ongoing needs, and that the applicant sustained a loss in those transactions. Chevron failed to make such a showing. The DOE therefore denied Chevron's refund request.

Trans County Van Lines Et Al., 4/27/87; RF270–782 Et Al.

The DOE issued a Decision and Order in connection with its administration of the $10.75 million escrow fund established for surface transporters pursuant to the settlement agreement in the DOE stripper well exemption litigation. The DOE approved the gallonages of refined petroleum products claimed by six trucking companies and will use those gallonages as a basis for the refund that will ultimately be issued to the six firms. The DOE stated that because the size of a surface transporter applicant's refund will depend upon the total number of gallons that are ultimately approved, the actual amounts of the six firms' refunds will be determined at a later date. The total number of gallons approved in this Decision is 4,304,867.

Western Iowa Pork Co. Et Al., 5/1/87; RF270–783 Et Al.

The DOE issued a Decision and Order in connection with its administration of the $10.75 million escrow fund established for surface transporters pursuant to the settlement agreement in the DOE stripper well exemption litigation. The DOE approved the gallonages of refined petroleum products claimed by four trucking companies and will use those gallonages as a basis for the refund that will ultimately be issued to the six firms. The DOE stated that because the size of a surface transporter applicant's refund will depend upon the total number of gallons that are ultimately approved, the actual amounts of the four firms' refunds will be determined at a later date. The total number of gallons approved in this Decision is 7,642,825.

Yellow Cab Company of Gaston, Inc., Et Al., 4/29/87; RF270–2289 Et Al.

The DOE issued a Decision and Order concerning six Applications for Refund from the Surface Transporters Escrow. Each applicant demonstrated that it operated motor vehicles during the Settlement Period and that it is a "for hire" carrier for the purposes of this proceeding. In addition, each applicant demonstrated that it purchased a certain volume above the 250,000 gallon minimum established in the *Order Establishing Surface Transporters Escrow and Prescribing Provision for Administration of the Fund*, ¶ 16. Accordingly, all six Applications were approved, and the respective volumes will be used to calculate each company's final refund. The DOE stated that because the size of a surface transporter applicant's refund will depend upon the total number of gallons that are ultimately approved, the actual amounts of the firms' refunds will be determined at a late date. The total number of gallons approved in this Decision is 3,636,024.

Dismissals

The following submissions were dismissed:

Name and Case No.

Enterprise Beacon Service; RF238–24
Nice Community School District; RF270–580
School District of Westfield—Charles Street; RF270–590
Shell Oil Company; HRO–0271; KRD–0002, KRD–0016

[FR Doc. 87–11715 Filed 5–21–87; 8:45 am]
BILLING CODE 6450–01–M

Issuance of Proposed Decisions and Orders; Week of April 27 Through May 1, 1987

During the week of April 27 through May 1, 1987, the proposed decision and order summarized below was issued by the Office of Hearing and Appeals of the Department of Energy with regard to an application for exception.

Under the procedural regulations that apply to exception proceedings (10 CFR Part 205, Subpart D), any person who will be aggrieved by the issuance of a proposed decision and order in final form may file a written notice of objection within ten days of service. For purposes of the procedural regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date an aggrieved person receives actual notice, whichever occurs first.

The procedural regulations provide that an aggrieved party who fails to file a Notice of Objection within the time period specified in the regulations will be deemed to consent to the issuance of the proposed decision and order in final form. An aggrieved party who wishes to contest a determination made in a proposed decision and order must also file a detailed statement of objections within 30 days of the date of service of the proposed decision and order. In the statement of objections, the aggrieved party must specify each issue of fact or law that it intends to contest in any further proceeding involving the exception matter.

Copies of the full text of this proposed decision and order are available in the Public Reference Room of the Office of Hearings and Appeals, Room 1E–234, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., except federal holidays.

George B. Breznay,

Director, Office of Hearings and Appeals.

May 12, 1987.

Ackerman Oil Company, Jasper, IN; KEE–0110, Reporting Requirements

Ackerman Oil Company filed an Application for Exception from the requirement to complete the file Form EIA–782B, entitled "Reseller/Retailers' Monthly Petroleum Products Sales Report". On April 27, 1987, the Department of Energy issued a Proposed Decision and Order which determined that the exception request be denied.

[FR Doc. 87–11716 Filed 5–21–87; 8:45 am]
BILLING CODE 6450–01–M

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–3205–5]

Environmental Impact Statements; Availability

Responsible Agency: Office of Federal Activities, General Information, (202) 382–5073 or (202) 382–5075. Availability of Environmental Impact Statements Filed May 11, 1987 through May 15, 1987 Pursuant to 40 CFR 1506.9.

EIS No. 870163, DSuppl, FHW, MN, MN–TH–33 Improvements, I–35 to US TH–53, Urban Section Alternatives, Carlton and St. Louis Counties, Due: July 6, 1987, Contact: Lawrence Brown, (612) 290–3239.

EIS No. 870166, Draft, FHW, WI, WI–TH–83 Improvement, I–94 to Cardinal Lane/WI–TH–16, Waukesha County, Due: July 6, 1987, Contact: Robert Cooper, (608) 264–5956.

EIS No. 870167, Revised DSuppl, COE, AL, GA, Alabama-Coosa Rivers Navigation Channel, Operation and Maintenance, Due: July 6, 1987, Contact: Michael Eubanks, (205) 694–3861.

EIS No. 870168, Final, AFS, MT, Gallatin National Forest, Noxious Weed Control Program, Due: June 22, Contact: Richard Inman, (406) 587–6705.

EIS No. 807169, FSuppl, CDB, CA, Santa Maria Town Center Expansion and Development, CDBG, Santa Barbara County, Due: June 22, 1987, Contact: William Orndorff, (805) 925–0951.

EIS No. 870170, FSuppl, FHW, CA, CA–15 Reconstruction, I–805 to I–8, New Preferred Alternative, San Diego

County, Due: June 22, 1987, Contact: Michael Cook, (916) 551–1307.

EIS No. 870171, Final, NRC, CA, Humboldt Bay Power Plant, Unit 3 Decommissioning, Approval, Humboldt County, Due: June 22, 1987, Contact: Peter Erickson, (301) 492–8194.

EIS No. 870172, FSuppl, CDB, AZ, Rio Nuevo-North Development, Land Use Changes and New Information, CDBG, Pima County, Due: June 22, 1987, Contact: William Mosher, (602) 623–5427.

EIS No. 870173, Final, SCS, MS, South Delta Watershed Protection and Flood Prevention, Humphreys, Sharkey and Yazoo Counties, Due: June 22, 1987, Contact: L. Pete Heard, (601) 965–5205.

EIS No. 870174, Draft, COE, IN, Fort Wayne and Vicinity Flood Control Plan, Allen County, Due: July 6, 1987, Contact: Florence Bissell, (313) 226–3510.

EIS No. 870175, Draft, FWS, Yukon Delta National Wildlife Refuge, Long-Term Management Plan and Wilderness Review, Due: July 6, 1987, Contact: William Knauer, (907) 786–3399.

EIS No. 870176, Final, FWS, NJ, Great Swamp National Wildlife Refuge, Master Plan, Morris County, Due: June 26, 1987, Contact: Curtis A. Laffin, (617) 965–5100 Ext. 222.

EIS No. 870177, Final, AFS, MT, 1987 Deerlodge National Forest, Noxious Weed Control Program, Due: June 22, 1987, Contact: Dave Ruppert, (406) 496–3368.

EIS No. 870178, Final, NOA, PAC, Japanese Salmon Fishery, 1987 Through 1991 Incidental Take of Dall's Porpoise, United States Exclusive Economic Zone, General Permit, Due: June 22, 1987, Contact: Nancy M. Foster, (202) 673–5351.

Amended Notice

EIS No. 870152, Draft, COE, CA, Coyote and Berryessa Creeks Flood Control Improvement, Santa Clara County, Due: July 6, 1987, Published in the **Federal Register** May 8, 1987—Review period extended.

Dated: May 19, 1987.

Barbara Bassuener,

Acting Deputy Director, Office of Federal Activities.

[FR Doc. 87–11853 Filed 5–21–87; 8:45 am]

BILLING CODE 6560–50–M

[ER–FRL–3205–6]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared May 4, 1987 through May 8, 1987 pursuant to the Environmental Review Process (ERP), under section 309 of the Clean Air Act (CAA) and section 102(2)(c) of the National Environmental Policy Act (NEPA) as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 382–5076/73. An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated April 24, 1987 (52 FR 13749).

Draft EISs

ERP No. D–DOE–H22000–MO, Rating 3, Weldon Spring Site, Remedial Action, Long-Term Mgmt. of Contaminated Materials, MO. Summary: EPA does not believe the draft EIS adequately identified or evaluated the impacts of the proposed action nor does it fulfill the conditions set forth in the DOE/EPA Federal Facilities Agreement. The Agreement called for the completion of all investigations and studies related to the Remedial Investigation/Feasibility Study process before issuance of the draft EIS. The information presented in the draft EIS does not provide a basis for either developing an appropriate remedial action plan or an adequate draft EIS. EPA has requested the draft EIS be supplemented or revised. Due to the significant potential issues remaining to be resolved, this proposal could be a candidate for referral to the Council on Environmental Quality.

ERP No. D–FHW–B40051–MA, Rating EC1, MA–2/Alewife Brook Parkway Improvement, MA–2/Pleasant Street to Alewife Brook Parkway/Fresh Pond Parkway, Sect. 404 and 10 Permits, MA. Summary: EPA has expressed concerns regarding the protection of special aquatic sites including wetlands, and non-degradation of water quality. EPA believes Alternative 3 to be the preferred build alternative with respect to EPA's Clean Water Act (CWA) section 404(b)(1) Guidelines. However, EPA will continue to evaluate project refinements that reduce wetland losses throughout the NEPA and section 404 processes. Finally, EAP requests that FHWA commit to implementing the mitigation measures identified in the EIS.

ERP No. D–FHW–D40225–VA, Rating EC2, VA–28/Sully Rd. Improvements, I–66 at Centreville in Fairfax County to VA–7 at Leesburg Pike in Loudon County, VA. Summary: EPA identified a number of conditions which would require further information. These are lack of discussion of alternatives, insufficient information regarding the wetlands, air, and noise impacts, and incomplete discussion of the impacts to parallel roads.

ERP No. D–FHW–E40705–KY, Rating EC2, US 127 Improvements, Anderson County Line to I–64, Construction, KY. Summary: EPA's concerns involved the alternative analysis, noise, karst geologic features, and the possible presence of wetland areas. Additional information and/or impact avoidance/mitigation were therefore requested.

ERP No. D–SCS–H36099–NB, Rating LO, Middle Big Nemaha Watershed Protection and Flood Prevention Plan, NB. Summary: EPA has no objections to the project as proposed.

ERP No. D–USA–K11031–CA, Rating LO, Presidio Army Barracks Number 098, 119, and 124, CA. Summary: EPA expressed a lack of objections to the proposed project, but requested additional information on whether construction activities could impact surface or ground water quality. EPA also commended the Army for locating residential barracks near duty stations, which would benefit air quality by eliminating the need for daily commutes.

ERP No. D–USN–K80015–AZ, Rating EC2, Joint Guayule Rubber Program, Processing Operations, Prototype Rubber Extraction Facility, Construction/Operations, Gila R. Indian Reservation, AZ. Summary: EPA expressed environmental concerns because the project may generate hazardous waste, an issue not discussed in the draft EIS. EPA requested that the final EIS provide more information on hazardous waste characterization, and whether a permit is needed under the US Resource Conservation and Recovery Act.

Final EISs

ERP No. F–APH–A82116–00, 1987 Rangeland Grasshopper Cooperative Mgmt. Program, CA, WA, UT, AZ, AR, CO, NM, WY, ID, TX, ND, SD, OR, MT, KS, NB, NV, and OK. Summary: Most of EPA's concerns with the draft EIS have been addressed. However, EPA still believes APHIS should design a procedure for evaluating current program objectives and achievements.

ERP No. F–BLM–K61073–00, Benton—Owens Valley and Bodie Coleville Study Areas, Wilderness Recommendations, Designation, Partial or Non-Designations, CA and NV. Summary: EPA noted that the final EIS did not discuss potential water quality impacts. EPA requested that the Record of Decision commit to monitoring to ensure that water quality, beneficial uses and riparian areas are fully protected.

ERP No. F–JUS–E81027–GA, Jesup Federal Correctional Institution Complex, Construction and Operation, GA. Summary: The final EIS adequately

addressed EPA's draft EIS comments regarding air, noise, and wetland mitigation. Copies of the site and mitigation plans and the Record of Decisions were requested.

Amended Notices

The following reviews should have appeared in the FR Notice published on May 15, 1987.

ERP No. D-COE-G28011-TX, Rating LO, Applewhite Dam/Reservoir and Leon Creek Diversion Dam/lake Water Supply Project, Permit Application, Sect. 404 and 10 Permits, TX. Summary: EPA expressed no objections to the proposed action as described.

ERP No. D-SFW-F64003-00, Rating LO, Upper Mississippi River Nat'l Wildlife and Fish Refuge, Master Plan, IA, MN, WI, and IL. Summary: EPA's review resulted in no objections to implementation of the preferred alternative. EPA noted that coordination must continue during planning of specific elements of the master plan.

Dated: May 19, 1987.

Barbara Bassuener,

Acting Deputy Director, Office of Federal Activities.

[FR Doc. 87-11810 Filed 5-21-87; 8:45 am]

BILLING CODE 6560-50-M

[FRL-3205-7]

Test Method Equivalency Petitions; Availability of Guidance Document

AGENCY: Environmental Protection Agency.

ACTION: Notice of Availability of Guidance Document.

SUMMARY: The Environmental Protection Agency (EPA) announces the availability of a guidance document entitled "Test Method Equivalency Petitions: A Guidance Manual" (EPA/530-SW-87-008). The purpose of this document is to provide guidance to parties who wish to prepare a petition for submission to EPA for an equivalent test method (40 CFR 260.21). The document explains, in detail, the information a test method equivalency petition must include. Topics covered include the following:

- An explanation of the RCRA regulations that require a test method equivalency petition.
- A discussion of the process and procedures by which a petition is submitted to, and reviewed by, EPA.
- A description of basic statistical procedures to be used for evaluating test method equivalency.
- A description of how to prepare a petition, with a suggested petition format.
- A checklist to help ensure the completeness of the petition.
- A discussion of proper experimental designs and statistical analyses for more complex petitions.
- An example of a test method equivalency petition.

The document is currently available for purchase from the National Technical Information Service (NTIS) either as a paper copy ($18.95) or as a microfiche ($6.50).

ADDRESS: National Technical Service, 5285 Port Royal Road, Springfield, Virginia 22161.

Telephone: (703) 487-4650. NTIS Order No. PB-87-17-8349.

Requestors should cite the title, NTIS order number, and the EPA document number.

FOR FURTHER INFORMATION: Contact RCRA Hotline at (800) 424-9346 (toll free), or (202) 382-3000. For technical information contact Florence M. Richardson at (202) 382-4761.

Dated: May 11, 1987.

J.W. McGraw,

Acting Assistant Administrator for Solid Waste and Emergency Response.

[FR Doc. 87-11737 Filed 5-21-87; 8:45 am]

BILLING CODE 6560-50-M

[FRL-3206-1]

Science Advisory Board; Radiation Advisory Committee; National Radon Survey Design Subcommittee; Two Open Meetings—June 10-11, 1987 and June 12, 1987

Under Pub. L. 92-463, notice is hereby given that a meeting of the National Radon Survey Design Subcommittee of the Science Advisory Board's Radiation Advisory Committee will be held at the U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC. On Wednesday, June 10th, the meeting will be held in the Administrator's Conference Room 1101 West Tower. On Thursday, June 11th, the meeting will be held in Room #2, South Conference Area, Washington Information Center, Waterside Mall, 401 M Street, SW., Washington, DC. The meeting will begin at 9:00 a.m. Wednesday and adjourn no later than 5:00 p.m. Thursday.

The Subcommittee will review the *Design of the National Survey of Radon Levels in Residential Structures* for the Office of Radiation Programs. Copies of the documents being reviewed may be obtained by calling or writing Mr. Barry Parks (202) 475-9605 at the Office of Radiation Programs, ANR-460, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

The Science Advisory Board's Radiation Advisory Committee will meet Friday, June 12, 1987, in the Administrator's Conference Room 1101 West Tower. The meeting will begin at 8:00 a.m. and adjourn no later than 5:00 p.m.

The Committee will hear the report of the National Radon Survey Design Subcommittee and will complete its review of the Office of Radiation Program's *EPA Idaho Radionuclide Exposure Study.* Copies of this document may be obtaned by calling or writing Wayne Bliss (702) 798-2476 at the Office of the Radiation Programs, Post Office Box 18416, Las Vegas, NV 89114. The Committee will be briefed on April 1987 *Report on Congress on Indoor Air Pollution and Radon* prepared under Title IV Superfund Amendments and Reauthorization Act of 1986. Copies of this document may be obtained by calling or writing Ms. Stephany DeScisciolo (202) 475-9605 at the Office of Radiation Programs, ANR-460, Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460. The Office of Environmental Engineering and Technology Demonstration has requested the Committee review *EPA's Engineering Research Program on Indoor Air Quality: Radon Reduction Research and Development, Program Description and Plans.* The Committee will consider this request and hear briefings on the document. Copies can be obtained from Mr. Paul Shapiro (202) 382-2583 at the Office of Environmental Engineering and Technology Demonstration (RD-681), Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

Both meetings are open to the public; however, seating is limited. Any member of the public wishing to attend, obtain further information, or submit written comments to the Subcommittee should notify Mrs. Kathleen Conway, Executive Secretary, or Mrs. Dorothy Clark, Staff Secretary, (A101-F) Radiation Advisory Committee, Science Advisory Board, by the close of business on Friday, June 5, 1987. The telephone number is (202) 382-2552.

Dated: May 18, 1987.

Terry F. Yosie,

Director, Science Advisory Board.

[FR Doc. 87-11738 Filed 5-21-87; 8:45 am]

BILLING CODE 6560-50-M

[OPTS-51675; FRL]

Certain Chemical Premanufacture Notices

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5(a)(1) of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture or import a new chemical substance to submit a premanufacture notice (PMN) to EPA at least 90 days before manufacture or import commences Statutory requirements for section 5(a)(1) permanufacture notices are discussed in the final rule published in the **Federal Register** of May 13, 1983 (48 FR 21722). This notice announces receipt of thirty-three such PMNs and provides a summary of each.

DATES: Close of Review Period:

P 87–1054, 87–1055, 87–1056, 87–1057, 87–1058, 87–1059, 87–1060 and 87–1061—August 1, 1987.

P 87–1062, 87–1063, 87–1064, 87–1065, 87–1066, 87–1067, 87–1068, 87–1069, 87–1070, 87–1071, 87–1072, 87–1073, 87–1074, 87–1075, 87–1076, 87–1077, 87–1078, 87–1079, 87–1080, 87–1081, 87–1082, and 87–1083—August 2, 1987.

P 87–1084, 87–1085 and 87–1086—August 3, 1987.

Written comments by:

P 87–1054, 87–1055, 87–1056, 87–1057, 87–1058, 87–1059, 87–1060 and 87–1061—July 2, 1987.

P 87–1062, 87–1063, 87–1064, 87–1065, 87–1066, 87–1067, 87–1068, 87–1069, 87–1070, 87–1071, 87–1072, 87–1073, 87–1074, 87–1075, 87–1076, 87–1077, 87–1078, 87–1079, 87–1080, 87–1081, 87–1082 and 87–1083—July 3, 1987.

P 87–1084, 87–1085 and 87–1086—July 4, 1987.

ADDRESS: Written comments, identified by the document control number "[OPTS–51675]" and the specific PMN number should be sent to: Document Processing Center (TS–790), Office of Toxic Substances, Environmental Protection Agency, Rm. L–100, 401 M Street, SW., Washington, DC 20460, (202) 554–1305.

FOR FURTHER INFORMATION CONTACT: Stephanie Roan, Premanufacture Notice Management Branch, Chemcial Control Division (TS–794), Office of Toxic Substances, Environmental Protection Agency, Rm. E–611, 401 M Street, SW., Washington, DC 20460, (202) 382–3725.

SUPPLEMENTARY INFORMATION: The following notice contains information extracted from the non-confidential version of the submission provided by the manufacturer on the PMNs received by EPA. The complete non-confidenital document is available in the Public Reading Room NE–G004 at the above address between 8:00 a.m. and 4:00 p.m, Monday through Friday, excluding legal holidays.

P 87–1054

Manufacturer. E.I. du Pont de Nemours and Company, Inc.

Chemical. (G) Catalyst.

Use/Production. (G) Catalyst. Prod. range: Confidential.

P 87–1055

Manufacturer. E.I. du Pont de Nemours and Company, Inc.

Chemical. (G) Catalyst.

Use/Production. (G) Catalyst. Prod. range: Confidential.

P 87–1056

Manufacturer. E.I. du Pont de Nemours and Company, Inc.

Chemical. (G) Catalyst.

Use/Production. (G) Catalyst. Prod. range: Confidential.

P 87–1057

Importer. Sherex Chemical Company, Incorporated.

Chemical. (G) Polyamide resin.

Use/Import. (S) Industrial hot melt adhesive. Import range: Confidential.

P 87–1058

Manufacturer. Confidential.

Chemical. (G) Urethane diol.

Use/Production. (S) Industrial, commercial and consumer intermediate for urethane polymers. Prod. range: Confidential.

P 87–1059

Importer. Sherex Chemical Company.

Chemical. (G) Alkylaluminum halide.

Use/Import. (G) Plating aid. Import. range: Confidential.

P 87–1060

Manufacturer. W.R. Grace and Company.

Chemical. (S) Vermiculite concentrate, containing ammonium.

Use/Production. (G) Raw material for use as an intumescent agent for various heat and fire protection systems. Prod. range: Confidential.

P 87–1061

Manufacturer. E.I. du Pont de Nemours and Company, Inc.

Chemical. (G) Zirconium (4+)alkanolamine polyol complex.

Use/Production. (G) Non-dispersive use. Prod. range: Confidential.

Toxicity Data. Acute oral: 5,000 mg/kg; Irritation: Skin—Slight, Eye—Slight: LC_{50} 96hr (Fathead Minnow): 10,000 mg/L.

P 87–1062

Manufacturer. The Dow Chemical Company.

Chemical. (G) Aromatic carboxylic acid.

Use/Production. (S) Site-limited chemical intermediate. Prod. range: Confidential.

P 87–1063

Manufacturer. The Dow Chemical Company.

Chemical. (G) Solid bisphenol A type epoxy resin.

Use/Production. (S) Industrial and commercial binding agent cured with epoxy cross-linking agents for pigmented epoxy powder coatings. Prod. range: Confidential.

P 87–1064

Manufacturer. Cavedon Chemical Company, Incorporated.

Chemical. (G) Amino functional zircoaluminate chloride hydroxide polymer.

Use/Production. (S) Industrial adhesion promoter. Prod. range: Confidential.

P 87–1065

Manufacturer. Wilmington Chemical Corporation.

Chemical. (G) Aqueous aliphatic polyurethane dispersion.

Use/Production. (S) Coating, open, non-dispersive use. Prod. range: Confidential.

P 87–1066

Importer. Confidential.

Chemical. (G) Alkanolamidethersulfate.

Use/Import. (S) Emulsifier for the leather and fur industry. Import range: Confidential.

P 87–1067

Manufacturer. Confidential.

Chemical. (G) Styrenated acrylate ester polymer.

Use/Production. (G) Paint non-volatile vehicle. Prod. range: 975,000 to 1,000,000 kg/yr.

P 87–1068

Manufacturer. Genesee Polymers Corporation.

Chemical. (S) 2-Propenoic acid, 2-methyl-3(methyl diethoxysilyl) propyl ester.

Use/Production. (G) Silane coupling agent. Prod. range: 5,454 to 20,000 kg/yr.

P 87–1069

Manufacturer. W.R. Grace & Company.

Chemical. (S) N-octylammonium phosphate.

Use/Production. (G) Foaming agent. Prod. range: 1,300 to 4,800 kg/yr.

P 87–1070

Manufacturer. W.R. Grace & Company

Chemical. (S) Aluminum silicate-clay prills.

Use/Production. (G) Aggregate in a spray-on fire proofing product for structural steel in high rise building construction. Prod. range: 106,000 to 398,000 kg/yr.

P 87–1071

Manufacturer. Confidential.

Chemical. (G) Modified maleated metal resinate.

Use/Production. (S) Industrial publication gravure printing inks. Prod. range: Confidential.

P 87–1072

Manufacturer. General Electric Company.

Chemical. (G) Aromatic sulfonate ester.

Use/Production. (S) Consumer UV-light screening agent additive for polycarbonate film and sheet protective coating. Prod. range: Confidential.

P 87–1073

Importer. EMS American Grilon, Inc.

Chemical. (G) Copolyester resin.

Use/Import. (S) Polymer as a component for producing fine powder with hardeners for metal coating by electrostatical.

P 87–1074

Importer. EMS American Grilon, Inc.

Chemical. (G) Copolyester resin.

Use/Import. (S) Polymer as a component for producing fine powder with hardeners for metal coating by electrostatical spraying and cross-linking by heat. Import range: Confidential.

P 87–1075

Importer. EMS American Grilon, Inc.

Chemical. (G) Copolyester resin.

Use/Import. (S) Polymer as a component for producing fine powder with hardeners for metal coating by electrostatical spraying and cross-linking by heat. Import range: Confidential.

P 87–1076

Importer. EMSER Industries.

Chemical. (G) Polyetheramide based on nylon 6-monomers.

Use/Import. (G) Technical plastic parts in different applications

P 87–1077

Importer. EMSER Industries.

Chemical. (G) Polyetheramide based on nylon 120–monomers.

Use/Import. (G) Technical plastic parts in different applications. Import range: Confidential.

P 87–1078

Importer. EMSER Industries.

Chemical. (G) Polyetheramide based on nylon 12–monomers.

Use/Import. (G) Technical plastic parts in different applications. Import range: Confidential.

P 87–1079

Importer. EMSER Industries.

Chemical. (S) Nylon 22 (poly condensate based on ethylene diamine and oxalic acid).

Use/Import. (G) Compounding additives for Nylon 6 and 12. Import range: Confidential

P 87–1080

Manufacturer. Reichhold Chemicals, Inc.

Chemical. (G) Terpene/vinyl aromatic resin.

Use/Production. (S) Industrial adhesive tackifiers. Prod. range: Confidential.

P 87–1081

Manufacturer. Confidential.

Chemical. (G) Vegetable oil soap.

Use/Production. (G) Ink coatings. Prod. range: Confidential.

P87–1082

Importer. CIBA-Geigy Corporation.

Chemical. (G) Substituted azo triazine naphthalenedisulfonic acid.

Use/Import. (G) Textile dye. Import range: Confidential.

Toxicity Data. Acute oral: 5,000 mg/kg; Acute dermal: >2,000 mg/kg; Irritation: Skin—Non-irritant, Eye—Non-irritant; Ames test: Negative, Skin Sensitization: Non-sensitizer, LC_{50} 96hr (Zebra fish): >1,000 mgl;. EC_{50} 24hr (Daphnia magna): >1,000 mg/L.

P87–1083

Manufacturer. Reichhold Chemicals, Inc.

Chemical. (G) Terpene-styrene resin.

Use/Production. (S) Industrial adhesive tackifiers. Prod. range: Confidential.

P87–1084

Importer. Tioxide America Inc.

Chemical. (S) 2-propanolato, 2-methyl-1-propanolato, bis (2,4-pentanedionato) titanium.

Use/Import. (S) Industrial cross-linking agent for water-based well fracturing fluids and adhesion promoter and heat stabilizer for printing inks. Import range: Confidential.

P87–1085

Manufacturer. Confidential.

Chemical. (G) Isocyanate terminated urethane prepolymer.

Use/Production. (S) Industrial, commercial and consumer hot melt (solvent-free) adhesive. Prod. range: Confidential.

P87–1086

Importer. TAKASAGO USA Inc.

Chemical. (S) Isopropoxyethyl salicylate.

Use/Import. (S) Site-limited perfume. Import range: 200 to 500 kg/yr.

Toxicity Data. Acute dermal: 0.02 ml; Irritation: Skin—Non-irritant; Ames test: Non-mutagenic.

Dated: May 11, 1987.

Denise Devoe,

Acting Division Director, Information Management Division.

[FR Doc. 87–11650 Filed 5–21–87; 8:45 am]

BILLING CODE 6560–50–M

[OPTS–59817; FRL 3204–9]

Short Oil Alkyd Resin; Premanufacture Notice

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5(a)(1) of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture or import a new chemical substance to submit a premanufacture notice (PMN) to EPA at least 90 days before manufacture or import commences. Statutory requirements for section 5(a)(1) premanufacture notices are discussed in EPA statements of the final rule published in the **Federal Register** of May 13, 1983 (48 FR 21722). In the **Federal Register** of November 11, 1984, (49 FR 46066) (40 CFR 723.250), EPA published a rule which granted a limited exemption from certain PMN requirements for certain types of polymers. Notices for such polymers are reviewed by EPA within 21 days of receipt. This notice announces receipt of one such PMN and provides the summary.

DATES: Close of Review Period:

Y 87–145—May 25, 1987

FOR FURTHER INFORMATION CONTACT: Stephanie Roan, Premanufacture Notice Management Branch, Chemical Control Division (TS–794), Office of Toxic Substances, Environmental Protection

Agency, Rm. E–611, 401 M Street, SW., Washington, DC 20460, (202) 382–3725.

SUPPLEMENTARY INFORMATION: The following notice contains information extracted from the non-confidential version of the submission by the manufacturer on the exemption received by EPA. The complete non-confidential document is available in the Public Reading Room NE–G004 at the above address between 8:00 a.m. and 4:00 p.m., Monday through Friday, excluding legal holidays.

Y 87–145

Manufacturer. Confidential.
Chemical. (G) Short oil alkyd resin.
Use/Production. (S) Industrial component of industrial paint binder. Prod. range: 4,500 to 7,300 kg/yr.

Dated: May 11, 1987.

Denise Devoe,

Acting Division Director, Information Management Division.

[FR Doc. 87–11649 Filed 5–21–87; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL COMMUNICATIONS COMMISSION

A Closed Circuit Test of the Emergency Broadcast System During the Week of June 8, 1987

May 15, 1987.

A test of the Emergency Broadcast System (EBS) has been scheduled during the week of June 8, 1987. Only ABC, AP Radio, CBS, MBS, NBC, NPR, United Stations and UPI Audio Radio Network affiliates will receive the Test Progrram for the Closed Circuit Test. The ABC, CBS, NBC, and PBS television networks and the national cable program supplier networks are not participating in the test.

Network and press wire service affiliates will be notified of the test procedures via their network approximately 25 minutes prior to the test.

Final evaluation of the test is scheduled to be made about one month after the Test.

THIS IS A CLOSED CIRCUIT TEST AND WILL NOT BE BROADCAST OVER THE AIR.

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc. 87–11743 Filed 5–21–87; 8:45 am]

BILLING CODE 6712–01–M

Technical Subgroup of Radio Advisory Committee To Hold Meeting Thursday, June 11, 1987

The technical Subgroup of the Advisory Committee on Radio Broadcasting will resume its continuing meeting on Thursday, June 11, 1987 at 10:00 a.m. in the Vincent Wasilewski Room of the National Association of Broadcasters, 1771 N Street, NW., Washington, DC.

The Subgroup will consider the following matters:

—Synchronous transmitters;

—Other technical issues identified by the Commission's review of the AM broadcast rules;

—Technical issues relating the preparations for the upcoming Second Session of the Region 2 Conference on the Planning of the Expansion of the AM band;

—Other business.

The Subgroup's meetings are continuing ones, and may be resumed after the June 11, 1987 session at such time and place as may be decided at that session.

All meetings of the Technical Subgroup are open to the public. All interested persons are invited to participate in these meetings.

For further information, please call the Subgroup Chairman, Wallace E. Johnson, at (703) 841–0050.

Federal Communications Commission.

William J. Tricarico.

Secretary.

[FR Doc. 87–11744 Filed 5–21–87; 8:45 am]

BILLING CODE 6712–01–M

Applications for Consolidated Hearing; Hawkeye Broadcasting Limited Partnership et al.

1. The Commission has before it the following mutually exclusive applications for a new TV station:

Applicant	City/State	File No.	MM Docket No.
A. Hawkeye Broadcasting Limited Partnership	Waterloo, Iowa	BPCT–861014KJ	87–143
B. William D. Silverman d/b/a Waterloo Television	Waterloo, Iowa	BPCT–8612165J	

2. Pursuant to section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon the issues whose headings are set forth below. The text of each of these issues has been standardized and is set forth in its entirety under the corresponding headings at 51 FR 19347, May 29, 1986. The letter shown before each applicant's name, above, is used below to signify whether the issue in question applies to the particular applicant.

Issue Heading	Applicant(s)
Satellite	A
Air Hazard	A, B
Comparative	A, B
Ultimate	A, B

3. If there is any non-standardized issue(s) in this proceeding, the full text of the issue and the applicant(s) to which it applies are set forth in an Appendix to this Notice. A copy of the complete HDO in this proceding is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 320), 1919 M Street, NW., Washington, DC. The complete text may also be purchased from the Commission's duplicating contractor, International Transcription Services, Inc., 2100 M Street, NW., Washington, DC 20037 (Telephone No. (202) 857–3800).

Roy J. Stewart,

Chief, Video Services Division, Mass Media Bureau.

[FR Doc. 87–11746 Filed 5–21–87; 8:45 am]

BILLING CODE 6712–01–M

Applications for Consolidated Hearing; Betty N Neisler et al.

1. The Commission has before it the following mutually exclusive applications for a new FM station:

Applicant	City/State	File No.	MM Docket No.
A. Betty N. Neisler	Mexico Beach, Florida	BPH–8501114MA	87–141 (Dismissed)
B. Mexico Beach FM Group Limited Partnership	Mexico Beach, Florida	BPH–850711NC	

Applicant	City/State	File No.	MM Docket No.
C. Robert G,. Kerringan	Mexico Beach, Florida	BHP-850711ND	
D. PN Radio Company	Mexico Beach, Florida	BPH-850711ON	(Dismissed)

2. Pursuant to section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon the issues whose headings are set forth below. The text of each of these issues has been standardized and is set forth in its entirety under the corresponding headings at 51 FR 19347, May 29, 1986. The letter shown before each applicant's name, above, is used below to signify whether the issue in question applies to the particular applicant.

Issue Heading	Applicant(s)
1. Main Studio	C
2. Comparative	B, C
3. Ultimate	B, C

3. If there is any non-standardized issue(s) in this proceeding, the full text of the issue and the applicant(s) to which it applies are set forth in an Appendix to this Notice. A copy of the complete HDO in this proceeding is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text may also be purchased from the Commission's duplicating contractor, International Transcription Services, Inc., 2100 M Street, NW., Washington, DC. 20037. (Telephone (202) 857–3800).

W. Jan Gay,

Assistant Chief, Audio Services Division, Mass Media Bureau.

[FR Doc. 87–11747 Filed 5–21–87; 8:45 am]

BILLING CODE 6712–01–M

Applications for Consolidated Hearing; Ocean Corp et al.

1. The Commission has before it the following mutually execlusive applications for a new TV station:

Applicant	City/State	File No.	MM Docket No.
A. Ocean Corporation	Brunswick, Georgia	BPCT-861020KI	87-144
B. DHA Broadcasting, Inc	Brunswick, Georgia	BPCT-8612169K	
C. Coastal Com, Inc	Brunswick, Georgia	BPCT-8612161L	
D. Sunbelt Broadcast Systems of Georgina, Inc	Brunswick, Georgia	BPCT-1612162L	

2. Pursuant to section 309(e) of the Communication Act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon the issues whose headings are set forth below. The text of each of these issues has been standarized and is set forth in its entirety under the corresponding headings at 51 FR 19347, May 29, 1986. The letter shown before each applicant's name, above, is used below to signify whether the issue in question applies to that particular applicant.

Issue Heading	Applicant(s)
Air Hazard	A, B, C, D
Comparative	A, B, C, D
Ultimate	A, B, C, D

3. If there is any non-standardized issue(s) in this proceeding, the full text of the issue and the applicant(s) to which it applies are set forth in an Appendix to this Notice. A copy of the complete HDO in this proceeding is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text may also be purchased from the Commission's duplicating contractor, International Transportation Services, Inc., 2100 M Street, NW., Washington, DC 20037 (Telephone No. (202) 857–3800).

Roy J. Stewart,

Chief, Video Services Division, Mass Media Bureau.

[FR Doc. 87–11748 Filed 5–21–87; 8:45 am]

BILLING CODE 6712–01–M

Appications for Consolidated Hearing; Sudduth Media, Inc. et al.

1. The Commission has before it the following mutually exclusive applications for a new FM station:

Applicant	City/State	File No.	MM Docket No.
A. Sudduth Media, Inc	Paris, Texas	BPH-860116MH	87-145
B. Douglas Reasno	Paris, Texas	BPH-860122MB	
C. Matthew Murillo, Jr. d/b/a Blacksmith Broadcasting	Paris, Texas	BPH-860122MC	
D. Dwight R. Magnuson	Paris, Texas	BPH-860122MG	

2. Pursuant to section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon the issues whose headings are set forth below. The text of each of these issues has been standardized and is set forth in its entirety under the corresponding headings at 51 FR 19347, May 29, 1986. The letter shown before each applicant's name, above, is used below to signify whether the issue in question applies to that particular applicant.

Issue Heading	Applicant(s)
1. Site Availability	C
2. Air Hazard	D
3. Comparative	A–D
4. Ultimate	A–D

3. If there is any non-standardized issue(s) in this proceeding, the full text of the issue and the applicant(s) to which it applies are set forth in an Appendix to this Notice. A copy of the complete HDO in this proceeding is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington DC. The

complete text may also be purchased from the Commission's duplicating contractor, International Transcription Services, Inc., 2100 M Street, NW., Washington, DC 20037. (Telephone (202) 857–3800).

W. Jan Gay,

Assistant Chief, Audio Services Division, Mass Media Bureau.

[FR Doc. 87–11749 Filed 5–21–87; 8:45 am]

BILLING CODE 6712-01-M

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Information Collection Activities Under OMB 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: Application Pursuant to section 19 of the Federal Deposit Insurance Act (OMB No. 3064–0018).

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, Federal Deposit Insurance Corporation, Washington, DC 20429.

COMMENTS: Comments on this collection of information should be submitted on or before June 2, 1987.

FOR FURTHER INFORMATION CONTACT: Requests for a copy of the submission should be sent to John Keiper, Assistant Executive Secretary, Federal Deposit Insurance Corporation , Washington, DC 20429, telephone (202) 898–3810.

SUMMARY: The FDIC is requesting OMB approval to extend for a three-year period, the expiration date of form FDIC 6710/07 used by FDIC-insured banks to obtain consent from the FDIC to employ persons who have been convicted of crimes involving dishonesty or breach of trust. Such consent is required under section 19 of the Federal Deposit Insurance Act (12 USC 1829). It is estimated that the annual burden on banks, collectively, to prepare the form is 1,056 hours.

Dated: May 18, 1987.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 87–11808 Filed 5–21–87; 8:45 am]

BILLING CODE 6714-01-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–792–DR]

Major Disaster and Related Determinations; New York

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of New York, (FEMA–792–DR), dated May 15, 1987, and related determinations.

DATED: May 15, 1987.

FOR FURTHER INFORMATION CONTACT: Sewall H. E. Johnson, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3616.

Notice: Notice is hereby given that, in a letter of May 15, 1987, the President declared a major disaster under the authority of the Disaster Relief Act of 1974, as amended (42 U.S.C. 5121 *et seq.* Pub. L. 93–288), as follows:

I have determined that the damage in certain areas of the State of New York resulting from severe flooding during the period April 3 to 7, 1987, is of sufficient severity and magnitude to warrant a major-disaster declaration under Pub. L. 93–288. I therefore declare that such a major disaster exists in the State of New York.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under Pub. L. 93–288 for Public Assistance will be limited to 75 percent of total eligible costs in the designated area.

Pursuant to section 480(b) of Pub. L. 93–288, you are authorized to advance to the State its 25 percent share of the Individual and Family Grant program, to be repaid to the United States by the State when it is able to do so.

The time period prescribed for the implementation of section 313(a), priority to certain applications for public facility and public housing assistance, shall be for a period not to exceed six months after the date of this declaration.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint Mr. Michael J. Chivinski of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of New York to have been affected adversely by this declared major disaster and are designated eligible as follows:

Delaware, Greene, Montgomery, Schoharie, and Ulster Counties for Individual Assistance and Public Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

Julius W. Becton, Jr.,

Director

[FR Doc. 87–11709 Filed 5–21–87; 8:45 am]

BILLING CODE 6718-02-M

FEDERAL MARITIME COMMISSION

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, 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 communciating with the Commission regarding a pending agreement.

Agreement No.: 217–010051–012.

Title: Mediterranean Force Majeure Agreement.

Parties:

Compania Transatlantica Espanola (Spanish Line)
Costa Container Line
Farrell Lines, Inc.
Italia Di Navigazione, S.P.A.
Jugolinija
Lykes Bros. Steamship Co., Inc.
Sea-Land Service, Inc.
Zim Isreal Navigation Co., Inc.

Synopsis: The proposed amendment would admit A.P. Moller-Maersk Line as a party to the agreement. The parties

have requested a shortened review period.

Agreement No.: 202–011102.

Title: U.S. Atlantic and Gulf/Western Mediterranean Rate Agreement.

Parties:

Costa Line
Farrell Lines, Inc.
Nedlloyd Lines
Sea-Land Service, Inc.
Trans Freight Lines

Synopsis: The proposed agreement would permit the parties to publish rates and agree upon other terms and conditions of service with regard to the movement of cargo from U.S. Atlantic and Gulf ports, and from U.S. coastal or interior points via such ports, to ports of Italy, Spain, Portugal and the Mediterranean coast of France, and to all points in Italy, Spain, Portugal, France, Switzerland, Austria, Czechoslovakia and Hungary via such ports.

Dated: May 19, 1987.

By Order of the Federal Maritime Commission.

Tony P. Kominoth,

Assistant Secretary.

[FR Doc. 87–11757 Filed 5–21–87; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 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 5, 1987.

A. **Federal Reserve Bank of Kansas City** (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *Donald L. Sturm,* Omaha, Nebraska; Robert B. Sturm Irrevocable Trust; and Melanie L. Sturm Irrevocable Trust; to acquire 61.1 percent of the voting shares of American Bank Corporation, Omaha, Nebraska, and thereby indirectly acquire American Bank of Afton, Afton, Wyoming; American Bank of Cheyenne, Cheyenne, Wyoming; and American Bank of Evanston, Evanston, Wyoming.

Board of Governors of the Federal Reserve System, May 18, 1987.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 87–11697 Filed 5–21–87; 8:45 am]

BILLING CODE 6210–01–M

Key Atlantic Bancorp; 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 asets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies, or to engage in such an activity. Unless otherwise noted, these activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than June 12, 1987.

A. **Federal Reserve Bank of New York** (William L. Rutledge, Vice President) 33 Liberty Street, New York, New York 10045:

1. *Key Atlantic Bancorp,* Albany, New York; to become a bank holding company by acquiring 100 percent of the voting shares of Key Bancshares of New York, Inc., Albany, New York, and thereby indirectly acquire Key Bank N.A., Albany, New York; Key Bank of Central New York, Syracuse, New York; Key Bank of Northern New York N.A., Watertown, New York; Key Bank of Southeastern New York N.A., Chester, New York; Key Bank of Western New York N.A., Jamestown, New York; Key Bank of Long Island, Sayville, New York; and Key Bank USA N.A., Albany, New York, a *de novo* bank; and Key Bancshares of Maine Inc., Augusta, Maine, and thereby indirectly acquire Key Bank of Central Maine, Augusta, Maine; Key Bank of Southern Maine, Portland, Maine; Key Bank of Eastern Maine, Bangor, Maine; and Key Bank of Northern Maine, Presque Isle, Maine.

In connection with this application, Applicant has also applied to acquire Key Trust Company, Key Trust Company of Florida N.A., and Key Trust Company of Maine, and thereby engage in fiduciary, agency and custodial activities pursuant to § 225.25(b)(3); Key Financial Services, Inc. and Key Commercial Corp., and thereby engage in leasing personal property pursuant to § 225.25(b)(5); Key Bank Life Insurance Ltd., and thereby engage in underwriting credit life, accident and health insurance pursuant to section 225.25(b)(8); Key Mortgage Funding, Inc., and thereby engage in making and servicing mortgage loans pursuant to section 225.25(b)(1); Key Services Corporation, and thereby engage in data processing activities pursuant to § 225.25(b)(7); Key Advisory Services, Inc. and Howe and Rusling, Inc., and thereby engage in investment and financial advisory services pursuant to § 225.25(b)(4); and Key Brokerage Company, Inc., and thereby engage in securities brokerage pursuant to § 225.25(b)(15) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, May 18, 1987.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 87–11698 Filed 5–21–87; 8:45am]

BILLING CODE 6210–01–M

O'Neill Properties, Inc.; Acquisition of Company Engaged in Permissible Nonbanking Activities

The organization listed in this notice has applied under § 225.23(a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23(a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than June 5, 1987.

A. Federal Reserve Bank of Kansas City (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *O'Neill Properties, Inc.*, Minneapolis, Minnesota; to acquire Meierhenry Agency, Inc., O'Neill, Nebraska, and thereby engage in the sale of general insurance in the town of O'Neill, Nebraska, pursuant to § 225.25(b)(8)(iii) of the Board's Regulation Y.

Board Governors of the Federal Reserve System, May 18, 1987.

James McAffee,

Associate Secretary of the Board.

[FR Doc. 87-11699 Filed 5-21-87; 8:45 am]

BILLING CODE 6210-01-M

[Docket No. R-0603]

Proposed Guidelines Regarding the Bank Bribery Act

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: 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 Enforcement Working Group. In accordance with a recommendation from the Federal Financial Institutions Examination Council, the guidelines proposed by the Board of Governors of the Federal reserve System (the "Board of Governors") encourage all state member banks and bank holding companies to adopt codes of conduct or written policies that describe the prohibitions of the bank bribery law. The guidelines also identify situations that, in the opinion of the Board of Governors, do not constitute violations of the Federal bank bribery law.

The proposed guidelines suggest, *inter alia*, that state member banks and bank holding companies themselves establish, in their own codes of conduct or written policies, a range of internally acceptable dollar amounts for the various benefits that their officials may receive from those doing or seeking to do business with them. In the proposed guidelines, the Board of Governor has not set any specific dollar amounts for entertainment, meal or gift expenses. With regard to this issue, the Board of Governors seeks comment from the public concerning whether the establishment by the Board of Governors of specific dollar limits or ranges will further assist compliance with the requirements of the Bank Bribery Act and, if so, what amounts should be set. The Board of Governors would also be interested in knowing whether the location, size and nature of a financial institution's business should be taken into consideration in the establishment of appropriate dollar limits or ranges.

DATE: Comments must be received on or before July 21, 1987.

ADDRESS: Interested parties are invited to submit written comments to William W. Wiles, Secretary of the Board, Board of Governors of the Federal Reserve System, 20th and Constitution Avenue, NW., Washington, DC 20551, or to deliver such comments to the guard station in the Eccles Building Courtyard on 20th Street, NW. (between Constitution Avenue and C Street, NW.). Written comments should refer to Docket No. R-0603. Comments received may be inspected in Room B-1122 between 8:45 a.m. and 5:15 p.m. weekdays, except as provided in section 261.6(a) of the Board's Rules Regarding Availability of Information (12 CFR 261.6(a)).

FOR FURTHER INFORMATION CONTACT: Herbert A. Biern, Assistant Director, Enforcement Section, Division of Banking Supervision and Regulation (202/452-2620); Mary P. Johannes, Attorney, Enforcement Section, Division of Banking Supervision and Regulation (202/452-3953); or for the hearing impaired *only*, Telecommunications Device for the Deaf ("TDD"), Earnestine Hill or Dorothea Thompson (202/452-3544), Board of Governors of the Federal Reserve System, Washington, DC 20551.

SUPPLEMENTARY INFORMATION:

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. 215, to prohibit employees, officers, directors, agents and attorneys of financial institutions from seeking or accepting anything of value in connection with any transaction or buslness of their financial institution. (The definition of a "financial institution" under the law includes a bank and a bank holding company.) 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 fiduciary 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 officer 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 a 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 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 to comply 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 prosecutive 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 standards 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 financial institution regulatory agency's expertise and judgment in defining those activities or practices that the agency believes 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 state member banks and bank holding companies to adopt internal codes of conduct or written policies or amend their present codes of conduct or policies 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 a state member bank or bank holding company would find advisable to cover in its code of conduct or written policy. The code or policy should prohibit, consistent with the statute, any employee, officer, director, agent or attorney of a state member bank or bank holding company (hereinafter "Bank or Bank Holding Company Official" or "Bank or Bank Holding Company Officials") from (1) soliciting for themselves or for a third party (other than the bank or bank holding company itself) anything of value from anyone in return for any business, service or confidential information of the bank or bank holding company and from (2) accepting anything of value (other than normal authorized compensation) from anyone in connection with the business of the bank or the bank holding company, either before or after a transaction is discussed or consummated.

The state member banks' and bank holding companies' codes or policies should be designed to alert Bank or Bank Holding Company Officials about the bank bribery statute, as well as to establish and enforce standards relating to acceptable business practices.

In its code of conduct or written policy, the state member bank or bank holding company may, however, specify appropriate exceptions to the general prohibition of accepting something of value in connection with bank or bank holding company business. There are a number of instances where a Bank or Bank Holding Company Official, without risk of corruption or breach of trust, may accept something of value from one doing or seeking to do business with the bank or bank holding company. The most common examples are the business luncheon or the holiday season 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 or Bank Holding Company Official; or if the benefit would be paid for by the bank or bank holding company as a reasonable business expense if not paid for by another party. Indeed, by adopting a code of conduct or written policy with appropriate allowances for such circumstances, a state member bank or bank holding company recognizes that acceptance of certain benefits by its Bank or Bank Holding Company Officials does not amount to a corrupting influence on the bank's or bank holding company's transactions.

In issuing guidance under the statute in the area of business propose entertainment or gifts, it is not advisable for the Board of Governors 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. A state member bank or bank holding company should seek to embody the highest ethical standards in its code of conduct or written policy. In doing this, a state member bank or bank holding company may establish in its own or policy a range of dollar values which cover the various benefits that its Bank or Bank Holding Company Officials may receive from those doing or seeking to do business with the bank or bank holding company.

The code of conduct or written policy should provide that, if a Bank or Bank Holding Company Official is offered, receives, or anticipates receiving something of value from a customer beyond what is expressly authorized in the bank's or bank holding company's code of conduct or written policy, the Bank or Bank Holding Company Official must disclose that fact to an appropriately designated official of the financial institution. The state member bank or bank holding company 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 bank or bank holding company to better protect itself from self-dealing. However, a Bank or Bank Holding Company 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 state member bank or bank holding company.

The Board of Governors recognizes that a serious threat to the integrity of a state member bank or bank holding company occurs when its Bank or Bank Holding Company 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, state member banks or bank holding companies are encouraged to prohibit, in their codes of conduct or policies, their Bank or Bank Holding Company Officials from self-dealing or otherwise trading on their positions with the bank or bank holding company or accepting from one doing or seeking to do business with the bank or bank holding company a business opportunity not generally available to the public. In this regard, a state member bank's or bank holding company's code of conduct or policy should require that its Bank or Bank Holding Company Officials disclose all potential conflicts of interest, including those in which they have been inadvertently placed due to either business or personal relationships with customers, suppliers, business associates, or competitors of the bank or bank holding company.

Exceptions

In its code of conduct or written policy, a state member bank or bank holding company may describe appropriate exceptions to the general prohibition regarding the acceptance of things of value in connection with bank or bank holding company 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 or Bank Holding Company Official) where the circumstances make it clear that it is those relationships rather than the business of the bank or bank holding company concerned which are the motivating factor;

(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 or bank holding company 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 or Bank Holding Company Officials, such as home mortgage 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, Christmas or bar or bat mitzvah (the bank or bank holding company may establish a specific dollar limit for such an occasion); or

(g) Permit the acceptance of civic, charitable, educational, or religious organizational awards for recognition of service and accomplishment (the bank or bank holding company may establish a specific dollar limit for such an occasion).

The policy or code may also provide that, on a case by case basis, a state member bank or bank holding company may approve of other circumstances, not identified above, in which a Bank or Bank Holding Company Official accepts something of value in connection with bank or bank holding company business, provided that such approval is made in writing on the basis 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 Board of Governors recommends the following additional procedures:

(a) The state member bank or bank holding company should maintain a copy of any code of conduct or written policy it establishes for its Bank or Bank Holding Company Officials, including any modification thereof.

(b) The state member bank or bank holding company should require periodic written acknowledgment from its Bank or Bank Holding Company Officials of its code or policy and the Bank or Bank Holding Company Officials' agreement to comply therewith.

(c) The state member bank or bank holding company should maintain contemporaneous written reports of any disclosures made by its Bank or Bank Holding Company Officials in connection with a code of conduct or written policy.

Board of Governors of the Fedreal Reserve System.

William W. Wiles,

Secretary of the Board.

May 18, 1987.

[FR Doc. 87-11694 Filed 5-21-87; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Social Services Policy; Applications for Grants on Long Term Care Research

Pursuant to section 1110A of the Social Security Act, the Assistant Secretary for Planning and Evaluation (hereafter the Assistant Secretary) is seeking applications for research in the area of long term care from States, public and other organizations.

A. Type of Application Requested

This announcement seeks applications for projects to develop and conduct a program of research and analysis pertaining to long term care.

The Department seeks to advance the state of knowledge principally in the following issue areas: (a) Characteristics of older persons with long term care needs (b) patterns of long term care (c) nursing home use (d) use of home and community-based services (e) informal caregiving (f) long term care costs and (g) catastrophic long term care expenditures.

These issue areas may be combined and other areas may be proposed if they are clearly demonstrated to be relevant to long term care. The following sections list the kinds of questions envisioned under each issue area.

1. Issue Areas

(a) Characteristics of Older Persons with Long Term Care Needs

What is the health and functional status of the elderly who require long-term care services? How does their status change over time? What are the rates of such change? How does the experience of the current cohort of the elderly compare with past cohorts and what implications does this have for future cohorts?

How are the impaired elderly distinguished by subgroups, based on such factors as age, sex, ethinicity, marital status and living arrangements? What are the incidence and prevalence of different kinds of disabilities and functional impairments for subgroups of the elderly?

What are the most appropriate ways of measuring functional capacity, whether physical or mental? For example, what is the most valid and reliable way to measure performance under the Activities of Daily Living (ADL) or Instrumental Activities of Daily Living (IADL)?

In what ways, if any, does greater longevity affect the onset and duration of health and functional limitations? What are the implications of this for planning long-term care services? In particular, how are the "oldest old", those age 85 and over, affected?

What types of living arrangements characterize people with long term care needs? What changes in living arrangements occur for the impaired elderly population over time and what characteristics are associated with these changes?

(b) Patterns of Long Term Care

Who uses long-term care services, both institutional and non-institutional? What factors are associated with different patterns of service use? What determines the decision to institutionalize an individual?

How does the supply of nursing home beds and community-based services affect the use of these types of care? How will the demand for long-term care services be affected by the growth of the elderly population?

To what extent are the elderly and their caregivers aware of long term care services and financing options? To what extent are long term care needs being met satisfactorily and what service gaps persist?

(c) Nursing Home Use

Who uses nursing home care? What characteristics distinguish short-stayers, long-stayers and the terminally ill?

What is the relative impact on nursing home use of such factors as (a) nursing home bed supply (b) availability of formal community-based services (c) patient characteristics (d) caregiver characteristics and (e) costs of services? In light of these (or other) factors, how can one identify target groups of persons at high risk of nursing home placement?

(d) Use of Home and Community-Based Services

Describe the types, patterns and costs of formal community service use. What are the characteristics of community service users? What are the characteristics of service provider organizations and their personnel?

Under what conditions can lower levels of service substitute for a higher level of care (e.g., homemaker for home health services or board and care settings for nursing home care)?

What variations in community service use exist by subgroups of the impaired elderly, geography or other factors?

Describe the role of case management in increasing access to formal community services. Which models of case management appear cost-effective in increasing access and assuring quality of service?

(e) Informal Caregiving

Under what conditions do caregivers decide to obtain increased formal services? How are service options identified and evaluated? What formal services do informal caregivers view as most important?

What is the full extent of informal caregiving? How does the availability of formal services affect the source, types and levels of informal care provided? To what extent does substitution of formal for informal care occur? Where it occurs, what are the characteristics of caregivers and clients associated with substitution?

What are the characteristics of informal caregivers? To what extent is informal caregiving a function of such factors as family size, geographic proximity, income and ethnicity?

How do the characteristics of informal caregivers and the caregiving process change over time? What can be projected about the size and characteristics of future cohorts of caregivers?

What are the effects of informal caregiving on caregivers themselves? For example, are there effects related to employment, income, social activity and stress? What patterns exist in the relationships between caregivers and care recipients?

(f) Long Term Care Costs

How are expenditures for long-term care distributed between public and private sources? How does the distribution vary by institutional and non-institutional services? What are past and projected trends for long term care expenditures?

What factors explain the variations in service use and expenditures for long-term care among States and across communities?

What are the likely effects of various public financing options on long-term care expenditures? For example, how might expenditures be affected by (a) changes in current Medicaid eligibility rules, covered services and vendor payment levels (b) cap on Medicaid expenditures (c) long-term care block grant to States (d) tax subsidies, like Individual Medical Accounts (IMA) and (e) expanded Medicare coverage of nursing home and home health care? What are the interaction effects of public and private financing options?

(g) Catastrophic Long Term Care Expenditures

What groups of impaired elderly persons are at high risk of catastrophic out-of-pocket long-term care expenditures? Describe their characteristics. Under what conditions are their expenditures likely to become catastrophically high? In particular, what is the cumulative effect of acute, post-acute and long term care costs?

Describe and analyze the Medicaid spend-down process. What impact does Medicaid spend-down have on public and private expenditures for nursing home care? What are the characteristics of those who spend down? How does the spend-down process affect spouses and other non-institutionalized family members?

To what extent can high out-of-pocket expenditures be reduced by private long-term care insurance? What is the effect on out-of-pocket expenditures of other private financing options such as continuing care retirement communities, home equity conversions, employee benefit options for retirees, and social health maintenance organizations? What are the characteristics of those likely to participate in these various options? What are the probable effects of such participation on public programs?

2. Critical Elements

Several elements are critical to the program of research solicited.

a. Knowledge of Prior Research

Grantee must demonstrate knowledge of past and current research relating to long term care. This includes empirical studies, surveys, evaluations of demonstration projects and long-term care modeling.

b. Policy-relevance

The applicant should indicate how the questions to be investigated will yield results relevant to long term care policy and program development in the near term.

For example, there is concern with alleviating catastrophic expenses among the elderly for long term care.

particularly through private financing options. A research project that addressed the extent and distribution of out-of-pocket costs for long term care would consequently be policy-relevant.

c. Familiarity With Departmental and Other Data Bases

The applicant should demonstrate familiarity with the data base(s) available for analysis and their applicability to the applicant's proposed research.

The principal public use data sets available for analysis at present are the 1977 Nursing Home Survey, the 1982 Long-Term Care Survey and data from the National Long-Term Care Channeling Demonstration. However, applicants are not limited to these data sources.

In addition to the Channeling and NLTCS data sets, there are a number of other data sources that can be considered. These include, but are not limited to: (a) Census data (b) Current Population Surveys (c) Survey of Income and Program Participation (SIPP) (d) National Medical Care Expenditure Survey (e) National Medical Care Utilization and Expenditure Survey and (f) National Health Interview Survey/ Supplement on Aging.

Data sets from States and from demonstration projects may also be used.

The applicant should also be familiar with data bases that will become available in the future insofar as they may permit further development of the applicant's project. Examples include the combined file of the 1982 and 1984 National Long Term Care Surveys with Medicare Part A and Part B bill data appended, which will become available in the near future and, over the longer term, the National Medical Expenditure Survey.

3. Potential Users

Potential users of the research include Federal and State officials involved in long term care policy, program development, program administration and financing. Additionally, research findings may be used by hospital and nursing home administrators, social service providers, home health agencies, and the insurance industry.

4. Type of Projects Excluded

Applications that are limited to theoretical development or include new data collection efforts will not be considered.

5. Content and Organization of the Application

The application must begin with a cover sheet followed by the required application forms and an abstract of the application that does not exceed two pages. Each application should include the background and significant of the issue, the specific questions to be investigated, the data sources to be used, the methodologies proposed for conducting the investigation and the policy issues which the research will help illuminate.

B. Applicable Regulations

1. "Grant Programs Administered by the Office of the Assistant Secretary for Planning and Evaluation" (45 CFR Part 63), which was published in the Code of Federal Regulations, October 1, 1980.

2. "Administration of Grants" (45 CFR Part 74).

C. Effective Date and Duration

1. The initial grant awards pursuant to this announcement are expected to be made by September 30, 1987. It is expected that six to eight grants will be made by that date. An additional two to four grants may be made in Fiscal Year 1988 as funds become available.

2. In order to avoid unnecessary delays in the preparation and receipt of applications, this notice is effective immediately.

3. Applicants may present a work plan and budget covering a one to two year period. After the initial time period, grants may be refunded.

D. Statement of Funds Available

1. A total of $310,000 in FY 87 funds has been set aside for grants to be awarded as a result of this announcement. Organizations submitting applications may propose a project at the dollar level they consider appropriate.

2. Nothing in this application should be construed as committing the Assistant Secretary to dividing available funds among all qualified applicants or to make any award.

E. Application Processing

1. Applications will be screened initially for relevance to the needs identified in Section A. If judged relevant the application will then undergo review by a government review panel, possibly augmented by outside experts.

2. Applications will be judged as to eligibility, quality and relevance, according to the criteria set forth in item 5.

3. A rating of "unacceptable" on any individual criterion may render the entire application unacceptable. Applicants should therefore make sure that all criteria are fully addressed.

4. Applications should be as concise as possible, consistent with the information requirements of reviewers.

Applications should be limited to 25 double-spaced typed pages, exclusive of forms, resumes, and budget. They should avoid being unduly elaborate or containing voluminous supporting documentation.

5. The evaluation of applications will be carried out in terms of the following criteria. The weights for the criteria are shown in parentheses.

a. The potential usefulness of the objectives and anticipated results of the proposed project for providing individuals and organizations and individuals concerned with the issues discussed in Section A with improved bases for making decisions about these issues. (20 POINTS)

b. The potential usefulness of the proposed project for the advancement of scientific knowledge. (15 POINTS)

c. The clarity of the statement of objectives, methods and anticipated results. (15 POINTS)

d. The appropriateness and soundness of the methodology, including research design, statistical techniques, modeling strategies, selection of data and other procedures. (30 POINTS)

e. The qualifications and experience of the project personnel. (20 POINTS)

F. Deadline for Applications

The deadline for applications is COB, Friday, July 31, 1987.

Mailed applications may be sent by U.S. Postal Service or a commercial carrier. Applications sent by U.S. Postal Service will be considered to be received on time by the Grants Officer if the application is sent by first class, registered or certified mail not later than July 27, 1987 as evidenced by the U.S. Postal Service postmark on the wrapper or envelope or on the original receipt from the Post Office.

Applications sent by commercial carrier will be considered received on time by the Grants Officer if sent not later than July 27, 1987 as evidenced by a receipt from the commercial carrier.

An application to be hand-delivered must be taken to the Grants Officer at the address listed below. Hand-delivered applications will be accepted daily between 9:00 am and 4:30 pm, Washington, DC time, except Saturdays, Sundays and Federal holidays. Applications will not be accepted after close-of-business on July 31, 1987.

G. Disposition of Applications

1. On the basis of the review of the application, the Assistant Secretary will either (a) approve the application whole or in part; (b) disapprove the application; or (c) defer action on the application for such reasons as lack of funds or need for further review.

2. The Assistant Secretary will notify applicants of the disposition of their application. A signed notification of the grant award will be issued to the person listed in Block 4 of the application to notify the applicant of the approved award.

H. Application Instructions and Forms

Copies of the application should be requested from the Grants Officer at the address given below. Questions concerning the preceding information should be submitted to the Grants Officer at the same address. Neither questions nor requests for applications should be submitted after July 6, 1987.

Three (3) copies of each application are required. Applicants are encouraged to send in up to four additional copies to facilitate processing. However, applicants will not be penalized if these extra copies are not sent. Send applications by the deadline to:

Mr. Albert A. Cutino, Grants Officer, Office of the Assistant Secretary for Planning and Evaluation, U.S. Department of Health and Human Services, Room 426–F, 200 Independence Avenue SW., Washington, DC 20201, Phone: (202) 245–1794

I. Federal Domestic Assistance Catalog

This announcement is not listed in the Federal Domestic Assistance Catalog.

J. Intergovernmental Review of Federal Programs

This announcement is not subject to Executive Order 12372, "Intergovernmental Review of Federal Programs", nor its implementing regulations at 45 CFR Part 100.

Dated: May 18, 1987.

Robert B. Helms,

Assistant Secretary for Planning and Evaluation.

[FR Doc. 87–11783 Filed 5–21–87; 8:45 am]

BILLING CODE 4150–01–M

Health Policy; Applications for Grants on Hospital Performance

Pursuant to section 1110A of the Social Security Act, the Assistant Secretary for Planning and Evaluation (hereafter the Assistant Secretary) is seeking applications for research in the area of health policy from States, public and other organizations.

A. Type of Application Requested

This announcement seeks applications for projects to develop and conduct a program of research and analysis pertaining to the effect of competition on hospital performance. The research should advance knowledge of the response of hospitals to reimbursement systems introduced or expanded during the 1980s. These systems include the Medicare Prospective Payment System (PPS); innovations introduced by States to reimburse hospitals for Medicaid and other welfare recipients; and contract negotiations, utilization review or financial incentives introduced by HMOs, PPOs and other third-party private payers. In particular, the research should address whether and how the degree of competition for patients in hospital's market area influences the hospital's behavior.

The research should determine whether the degree of competition in hospital markets influences:

- The level or the rate of growth of hospital utilization, costs and revenues;
- The substitution of outpatient for inpatient services;
- Specialization in delivery of services or type of patient served as distinguished by source of reimbursement (Federal, State or Private) or by diagnostic group;
- The quality of care or outcomes.

The research should attempt to disentangle the independent effects of competition for different types of patients as defined by type of payer (federal, state and local government, or private) or by type of service offered. As an example, two hospitals in relatively close proximity to each other may not be competing if they specialize in different services, predominantly serve different types of patients (Medicare, other public, private pay) or are jointly owned or closely affiliated.

The conventional structural measures of competition, such as concentration ratios or the Herfandahl Index, provide unidimensional summaries of competiton. Yet two hospitals with the same market competition index may be quite different in terms of their market share, size, services offered and revenue shares by type of payer. The research should investigate whether such hospital characteristics indepently influence hospital's response to market competition.

1. Background

The effects of market competition on costs in the health care system have frequently been regarded as negligible or even perverse. In fact, studies using pre-1980 data have found higher utilization and higher cost per stay or per day in areas with higher bed-to-population ratios.[1] The findings are usually attributed to third party insurance payments which reduce the marginal out-of-pocket cost to patients and to cost reimbursement of hospitals, both of which encourage non-price competition. Rather than cut costs to compete, hospitals were perceived to invest in cost-increasing, specialized facilities and equipment in order to attract physicians and patients.

In response to the continual rise in medical costs at rates exceeding general price inflation, governments, employers and other third-party payers took steps to control the rising health care costs. Changes in reimbursement methods and development of alternative delivery systems radically altered the financial incentives for hospitals to control costs.

The Medicare Prospective Payment System replaced cost reimbursement with essentially fixed payments per case to reimburse hospitals for operating costs (capital reimbursement remains on a cost basis). States are experimenting with a number of reforms including introduction of all-payer hospital rate systems and with negotiation and competition among hospitals for contracts to serve welfare recipients. Recent changes in laws and regulations of some States enhance the formation of HMOs, and Preferred Provider Organizations and the ability of third-party payers to contract for hospital services. Other private payers are reputed to engage in more effective utilization control than was their previous practice.[2] As a result of these

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[1] Farley, Dean E. "Competition Among Hospitals: Market Structure and Its Relation to Utilization, Costs and Financial Position," Research Note 7, Hospital Studies Program, National Center for Health Services Research and Health Care Technology Assessment, 1985.

Joskow, Paul L., "The Effects of Competition and Regulation on Hospital Bed Supply and the Reservation Quality of the Hospital," *The Bell Journal of Economics*, Vol. 11, Autumn 1980.

Robinson, James C. and Harold S. Luft, "The Impact of Market Structure on Patient Volume, Average Length of Stay, and the Cost of Care," *Journal of Health Economics*, Vol. 4 1985.

[2] Aquilina, David, and James B. Stowe, "Increasingly Sophisticated Customers Forcing PPOs To Address Market Needs," *Modern Healthcare*, 15(25) (1985), pp. 105–106.

Drury, Sallie J., "PPO's Efficiency, Not Their Discounts, Is Prime Drawing Care for Stouffer," *Modern Healthcare*, 14(8) (1984), pp. 74–75.

"Physicians Cost Cuts Spur PPO's Success," *Hospitals*, 59(6) (1985), p. 65.

Wallace, Cynthia, "Agreement Cuts Costs, Draws Business," *Modern Healthcare*, 15(18) (1985), pp. 42–43.

changes, the response of hospitals to competition may have changed in recent years.

As an example, Medicare statistics suggest that introduction of PPS may have influenced the rate of growth and the distribution of Medicare expenditures. Since 1980, the real rate of growth (actual rate adjusted for inflation) of total Medicare expenditures per enrollee and of reimbursement for inpatient hospital care per enrollee have both declined. The decline in the real rates of growth accelerated after the introduction of PPS in 1983. From 1984 to 1985 the real rate for inpatient hospital expenditures declined slightly from 1.5 percent to 1.3 percent. In contrast, the growth rate in total medical expenditures increased from under 2 percent in 1984 to 6.5 percent in 1985.[3] The aggregate data do not distinguish the behavior by hospital market.

2. Critical Elements

Several critical elements, most relevant to the program of research solicited, are briefly discussed below. Research applications should address but not be limited to the critical elements identified here.

a. Knowledge of Research

Applicants must demonstrate knowledge of past and current research relating to the effect of competition in health care markets generally and hospital markets particularly. They should demonstrate knowledge of the potential of and the limitations of structural measures of market competition traditionally used in industrial organization studies such as market concentration ratios and the Herfindahl index. They should demonstrate knowledge of methods used to evaluate quality of care and outcomes in hospitals, particularly as they may relate to the present study.

b. Determination of Market Areas and Empirical Measures of Competition

Catchment regions of hospital markets are irregular in shape and undoubtedly overlap. Some community hospitals may serve a relatively compact, well-defined market area. Some larger tertiary hospitals draw patients from all parts of a State, a census region or even the nation. The grantee must develop an appropriate method for defining and measuring the extent of each hospital's market and, simultaneously, a measure to characterize the extent of competition faced by each hospital.

The effort is expected to require experimentation to derive appropriate empirical measures for theoretical concepts such as market boundaries and measures of market concentration. Location of residence of hospital patients should be sufficiently precise (e.g., 5-digit zip-code area) to develop a basic geographic unit for market analysis. The basic units can then be aggregated up to appropriate market areas for each hospital.

The empirical market area of a hospital should reflect the actual geographic area from which the hospital attracts patients. The empirically defined market for each hospital should include primarily areas relevant for evaluating the effect of competition on the hospital; the defined market may exclude areas from which the hospital draws an insignificant share of its patients.

The market and competition measures should distinguish proximity from effective competition. The measures should be disaggregate enough to identify whether hospitals are actually competing for the same patients as distinguished by source of reimbursement (Federal, State or Private) and by diagnostic group or service provided. It would also be useful to identify hospitals which are jointly owned or affiliated in ways which reduce effective competition.

Convenient measures frequently used to characterize hospital markets in previous studies, such as counties, MSAs or all of the hospitals within a specified distance or travel time will not be acceptable for this study.

c. Measures of Performance

The grantee should estimate the effect of competition on such aggregate measures of hospital performance as the level and trends in the rate of change of:

- Inpatient admissions and days;
- Out-patient visits;
- Reimbursement and cost per case and per visit.

The analysis should be sufficiently detailed to identify the intensity of competition for types of patients as distinguished by source of payment, service required or diagnostic group. The analysis should also investigate possible differential response to competitive pressure of hospitals in the same or similar markets but which are distinguished by their initial market position, relative size, ownership or specialty. A partial list of more disaggregate analyses include:

- Are reductions in admissions concentrated in specific DRGs, types of service, or types of hospitals?
- Are there identifiable trends in specialization of services offered or case mix treated by: market competition, type of payor, hospital characteristics, ownership and profitability?
- Do trends in specilization reflect comparative advantage or relative profitability of treating certain diagnostic groups?
- Can we estimate the effect of Preferred Provider Organization and Health Maintenance Organization contracts on hospital behavior (status and volume) and identify the more effective contract structures?

The grantee should also explore the effect of competitive pressure on the quality of care and patient outcomes. Given the constraints on funding this analysis will probably be limited to use of administrative data or, perhaps, information on quality of care collected for other purposes. Such measures may include mortality rates within a fixed period after admission and readmission rates within a fixed period after discharge. Data collected by Peer Review Organizations on Generic Quality Screens may be available for hospitals in some States during the period of the study.[4] Ideally, outcome measures should be adjusted for differences in severity of illness and diagnostic mix of cases treated. In contrast to the other performance measures, the analysis of quality of care may be limited to the Medicare population because of insufficient data for the non-aged population.

Analysis of the effect of hospital competition on these various measures of hospital performance and outcomes should also consider the independent effect of other market characteristics such as the availability of physicians, availability of alternative sources of care, and socio-economic characteristics of the population.

d. Private Contracts

Characteristics of the Medicare Prospective Payment System and State reimbursement policies are matters of public record. Provisions of

[3] Prospective Payment Assessment Commission, *Medicare Prospective Payment and the American Health Care System: Report to the Congress*, February 1987. pp. 12–13.

[4] Generic Quality Screens include: adequacy of discharge planning; medical stability of the patient at discharge; deaths; nosocomial infections; unscheduled return to surgery; and trauma suffered in the hospital. A summary of the criteria for the screens can be obtained from the Grants Officer (address in Section I). Applicants should contact the appropriate Peer Review Organization to determine the availability of hospital-specific information on Generic Quality Screens for their proposed sample of hospitals. The HCFA will not collect hospital-specific information on the quality screens.

reimbursement contracts between hospitals and private-payers are less well known. Where possible, the grantee should obtain information on contract provisions and attempt to determine the impact of those provisions on hospital behavior and performance.

e. Data

The grantee must demonstrate access to data adequate to conduct this study. Medicare discharge data can be obtained from the annual MEDPAR file maintained by the Health Care Financing Administration (the 100 percent file might be required). Information on deaths during a specified period after initial admission can be obtained from the HCFA Health Insurance Eligibility Master file. It is expected that data on non-Medicare discharges, and on hospital utilization, revenue, and cost will be obtained, e.g., from a State Hospital Association, State Rate-Setting commission or similar organization. Information on the geographic distribution of physicians should also be available from State medical associations or State government agencies. Applicants should contact the appropriate Peer Review Organization to determine the availability of hospital-specific information on Generic Quality Screens for their proposed sample of hospitals.

The grant will not cover costs of primary data collection for information on utilization, costs and revenues of hospitals. Information on private hospital reimbursement contracts might not be routinely collected and generally available. The proposal should provide a plan for acquisition of such data.

Conduct of the study will require aggregate data on hospital utilization, costs and revenues. Data on each discharge are required including, but not limited to, indicators of patients' residence, type of payer, length of stay and diagnoses and procedure codes. The Medicare files, MEDPAR and HIE Master, provide sufficient information to construct mortality rates and readmission rates for each hospital. Similar data are not routinely available for non-Medicare patients and will not be required for this study.

The sample of hospitals may consist of the population of hospitals from one or more States. The applicant should provide a statistical power analysis to demonstrate that the relevant statistics will be estimated with sufficient precision.

f. Products

The applicant should present a schedule for delivery of interim progress reports and a final report. A well documented public use file should also be prepared. The file should include, but not be limited to, such derived variables as market area, market share, and the measures of market competition for each sample hospital.

3. Potential Users

Potential users of the research include Federal and State health policy makers involved in the evaluation and development of health care reimbursement systems. Managers of HMOs, PPOs and insurance companies would find the information on private contracts and the efficacy of particular provisions helpful. Hospital administrators could compare their performance with that of sample hospitals, in similar circumstances.

4. Types of Projects Excluded

In consideration of the intent of this announcement, applications concentrating primarily on case studies focused on a few hospitals or hospital markets, or applications which use countries, MSAs or States as the basic unit of analysis for the statistical analysis of average hospital performance will not be considered for funding.

In addition, this announcement seeks empirical analysis of geographic variation of health care expenditure using existing data. Applications that are limited to theoretical development or include new data collection efforts, expect for information on hospital reimbursement contracts, will not be considered.

5. Content and Organization of the Applications

The application must begin with a cover sheet followed by the required application forms and an abstract (of not more than two pages) of the application. Failure to include the abstract may result in delays in processing the application. Each application should include a description of the models to be analyzed, the data sources to be used, and the methodologies proposed to test the models. The methodologies should include approaches to empirically defining market areas and measuring the degree of competition in each market. Resumes of staff should be included, as should a full budget and a schedule of tasks for the proposed projects.

B. Applicable Regulations

1. "Grants Programs Administered by the Office of the Assistant Secretary for Planning and Evaulation" (45 CFR Part 63), Code of Federal Regulations, October 1, 1980.

2. "Administration of Grants" (45 CFR Part 74), Code of Federal Regulations on June 9, 1981.

C. Effective Data and Duration

1. The grant awarded pursuant to this announcement is expeced to be made on or about September 30, 1987.

2. In order to avoid unnecessary delays in the preparation and receipt of applications, this notice is effective immediately. The closing dates for applications are specified in Section F and G below.

3. Applicants may present a work plan and budget covering an eighteen month to two year period.

D. Statement of Funds Available

1. Approximately $750,000 has been estimated for this research grant.

2. Funds may be obligated fully at the time of award of this grant or incrementally over the following 18 to 24 months.

3. No more than one award will be made. However, nothing in this application should be construed as committing the Assistant Secretary to make any award.

E. Application Processing

1. Applications will be initially screened for relevance to the need defined in section A (as well as additional areas of interest persuasively shown to be relevant by the grantee). If judged relevant, the application will then be reviewed by a government review panel, possibly augmented by outside experts. *Three (3) copies* of each application are required. Applicants are encouraged to send an additional *seven (7) copies* of their application to ease processing, but applicants will not be penalized if these extra copies are not included.

2. Applications will be judged as to eligibility, quality, and relevance, according to the criteria set forth in item 5.

3. An unacceptable rating on an individual criterion may render the application unacceptable. Consequently, applicants should take care to ensure that all criteria are fully addressed in the application.

4. Applications should be as brief and concise as is consistent with the imformation requirements of the reviewers. Applications should be limited to 50 doubled-spaced typed pages, exclusive of forms, abstract, resumes, and proposed budget; they should neither be unduly elaborate nor contain voluminous supporting documentation.

5. *Criteria for Evaluation.* Evaluation of applications will employ the following criteria. The relative weights are shown in parentheses.

a. *Knowledge.* The applicant should provide evidence of understanding and knowledge of prior work in the area and how their proposals would contribute to the advancement of knowledge. Pertinent subjects include, but are not limited to, hospital markets, hospital behavior and performance, effects of public policy on hospital behavior, theoretical and empirical approaches to characterizing markets and measuring competition. (15 points)

b. *Experience and Qualifications of Personnel.* Principal Investigator's and other key staff's experience in this or related areas and indications of innovative approaches and creative potential. Is evidence presented in the application which indicates the ability of key staff to produce publishable quality reports or articles? (20 points)

c. *Research Design.* The clarity of statement of objectives, methods, and anticipated results. The adequacy and creativity of the research design and hypotheses and appropriateness of the methods. Is the proposed project's methodology precise and consistent with what is generally agreed to be the state-of-the-art in project design and analytical methods. (25 points)

d. *Adequacy of Data.* Validity and appropriateness of the data to support the proposed research. Reasonableness of the proposed approach to acquiring and proceesing the data. Necessary letters of agreement concerning data acquisition. (20 points)

e. *Production Capability.* Reasonableness of the proposal. Can it be done? Are the person-hour effort and types of personnel reasonable? Are professional, support staff and subcontractor arrangements sufficient or planned for? Is assurance given for timely and acceptable performance via Gantt chart(s) or work plan schedule(s)? Are there provisions for providing interim findings at appropriate intervals? Is there documentation of a commitment of the parties other than the applicants staff that is necessary to carry out the project? Availability of necessary facilities and equipment. (15 points)

F. Applications Sent by Mail

Applications may be sent by either the U.S. Postal Service or a commercial carrier. Applications sent by U.S. Postal Service will be considered to be received on time by the Grants Officer if the application was sent by first class, registered or certified mail not later than July 31, 1987, as evidenced by the U.S. Postal Service postmark on the wrapper or envelope, or on the original receipt from the U.S. Postal Service. Applications sent by a commercial carrier will be considered to be received on time by the Grants Officer if sent not later than July 31, 1987 as evidenced by a receipt from the commercial carrier.

G. Hand-Delivered Applications

An application to be hand-delivered must be taken to the Grants Officer at the address listed at the end of this announcement. Hand-delivered applications will be accepted daily between 9:00 am and 4:30 pm, Washington, D.C., time, except Saturdays, Sundays, or Federal holidays. Applications will not be accepted after close-of-business on August 4, 1987.

H. Disposition of Applications

1. *Approval, disapproval, or deferral.* On the basis of the review of the application, the Assistant Secretary will either (a) approve the application as a whole or in part; (b) disapprove the application; or (c) defer action on the application for such reasons as lack of funds or a need for further review.

2. *Notification of disposition.* The Assistant Secretary will notify the applicants of the disposition of their application. A signed notification of grant award will be issued to the contact person listed in block 4 of the application to notify the applicant of the approval application.

I. Application Instructions and Forms

Copies of applications should be requested from and submitted to: Grants Officer, Office of the Assistant Secretary for Planning and Evaluation, Department of Health and Human Services, 200 Independence Avenue, SW., Room 426F, Hubert H. Humphrey Building, Washington, DC 20201, Phone (202) 245–1794. Questions concerning the preceding information should be submitted to the Grants Officer at the same address. Neither questions nor requests for applications should be submitted after July 7, 1987. A description of the generic quality screens, *Quality of Care Review; Use of Generic Quality Screens*, is available on request from the Grants Officer.

J. Federal Domestic Assistance Catalog

This announcement is not listed in the Federal Domestic Assistance Catalog.

K. Intergovernmental Review of Federal Programs

This program is not subject to Executive Order 12372, "Intergovernmental Review of Federal Programs" or its implementing regulations 45 CFR Part 100.

Dated: May 18, 1987.

Robert B. Helms,

Assistant Secretary for Planning and Evaluation.

[FR Doc. 87–11784 Filed 5–21–87; 8:45 am]

BILLING CODE 4150–04–M

Centers for Disease Control

Availability of Funds for Fiscal Year 1987; Cooperative Agreements To Support Demonstration Projects for the Surveillance of Severe Pediatric Undernutrition

Introduction

The Centers for Disease Control (CDC) announces the availability of funds for Fiscal Year 1987 for Cooperative Agreements with State health departments to support demonstration projects for the surveillance of seven pediatric undernutrition.

Authority

This program is authorized under section 301(a) of the Public Health Service Act [42 U.S.C. 241 (a)], as amended. The catalog of Federal Domestic Assistance Number is 13.283.

Program Background and Objectives

The occurrence of severe pediatric undernutrition and its effect on morbidity, growth, and development is an important public health issue. Moreover, severe pediatric undernutrition has long been recognized as an indicator of inadequacy in the social environment or of deficits in essential nutrition and health care services. In recent years, concern has been expressed throughout this country about undernutrition among children and underprivileged segments of the U.S. population and about the adequacy of nutrition and health services for the poor.

This concern for undernourished children has made evident the need for data to characterize more clearly the prevalence, risk factors, and etiologies of severe pediatric undernutrition as well as the need for a consensus definition of this condition. It has also demonstrated the critical need to carry out surveillance for children with severe pediatric undernutrition using not only the traditional public facility reporting systems but also information on children treated in hospitals, other acute care facilities, or by private practitioners.

The long term goal of this initiative is to build State capacity to establish

ongoing surveillance of severe undernutrition among low income, high-risk children using State and local resources.

The short term objectives of this program are to assist 2–3 States to:

1. Demonstrate the use of a population-based surveillance system (including hospital sources of cases) for identifying preschool children with severe undernutrition, including the collection and analysis of information on prevalences, etiologies, and associated risk factors; and

2. Facilitate the referral of children confirmed with severe pediatric undernutrition to appropriate intervention sources. The practical usefulness of various surveillance models will be evaluated for implementation in additional States and localities.

Three practical planning activities have also been identified which bear on ability to successfully carry out this program. One is the development of an objective, scientifically credible, and specific case definition for severe pediatric undernutrition that is measurable in the typical hospital emergency room, public health clinic or primary medical care facility. The second is the clear identification of a population base which will become the prevalence rate denominator for severe pediatric undernutrition. The third activity is the inclusion of multiple reporting sources within the surveillance population in order to estimate the true prevalence of severe pediatric undernutrition.

Eligible Applicants

Because the purpose of this program is to build state capacity to monitor the prevalence and determine the etiologies and risk factors for severe pediatric undernutrition, competition will be limited to the official health departments of any State, 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.

Availability of Funds

It is expected that approximately $600,000 will be available in Fiscal Year 1987 to fund two or three awards ranging from $200,000 to $250,000. The award will be funded with 12-month annual budget periods with a 3-year project period. Continuation awards within the project period will be made on the basis of satisfactory progress in meeting project objectives and the availability of funds. The funding estimate outlined above may vary and is subject to change.

Application Submission and Deadline

1. Copies—Place of Submission

The original and two copies of the application should be submitted on Form PHS 5161–1 (revised 3–86) on or before July 15, 1987 to: Grants Management Branch, Procurement and Grants Office, Centers for Disease Control, Room 321, 255 East Paces Ferry Road, NE., Atlanta, Georgia 30305.

2. Deadline

Applications shall be considered as meeting the deadline if they are either:

a. Received at the above address on or before the deadline date, or

b. Sent on or before the deadline date and received in time for submission to the independent review group. (Applicants must request a legibly-dated U.S. Postal Service postmark or obtain a legibly-dated receipt from a commercial carrier or U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing.)

3. Late Application

Applications which do not meet the criteria in either paragraph 2.a. or b. immediately above are considered later and will not be included in the currrent competition but returned to the applicant.

Other Submission and Review Requirements

Applicants are not subject to review as governed by Executive Order 12372, Intergovernmental Review of Federal Programs.

Where to Obtain Additional Information

Copies of application forms, this program announcement, and other material may be obtained from Nealean Austin, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control, 255 East Paces Ferry Road, NE., Room 321, Atlanta, Georgia 30305, or by calling (404) 262–6575 or FTS 236–6575.

Technical assistance may be obtained from Faye L. Wong, Field Services Branch, Division of Nutrition, Center for Health Promotion and Education, Centers for Disease Control, 1600 Clifton Rd., NE., Atlanta, Georgia 30333, or by calling (404) 329–3075 or FTS 236–3075.

Dated: May 18, 1987.

Robert L. Foster,

Acting Director, Office of Program Support, Centers for Disease Control.

[FR Doc. 87–11693 Filed 5–21–87; 8:45 am]

BILLING CODE 4160–18–M

Food and Drug Administration

[Docket No. 87N–0180]

Drug Export Application; Bevantolol Hydrochloride (Bulk)

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Warner-Lambert Company has filed an application requesting approval for the export of the human drug Bevantolol Hydrochloride (Bulk) to Denmark.

ADDRESS: Relevant information on this application may be directed to the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, and to the contact person identified below. Any future inquiries concerning the export of human drugs under the Drug Export Amendments Act of 1986 should also be directed to the contact person.

FOR FURTHER INFORMATION CONTACT: Rudolf Apodaca, Center for Drugs and Biologics (HFN–310), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–295–8063.

SUPPLEMENTARY INFORMATION: The Drug Export Amendments Act of 1986 (Pub. L. 99–660) (section 802 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 382)) provides that FDA may approve applications for the export of drugs that are not currently approved in the United States. The approval process is governed by section 802(b) of the act. Section 802(b)(3)(B) of the act sets forth the requirements that must be met in an application for approval. Section 802(b)(3)(C) of the act requires that the agency review the application within 30 days of its filing to determine whether the requirements of section 802(b)(3)(B) have been satisfied. Section 802(b)(3)(A) of the act requires that the agency publish a notice in the **Federal Register** within 10 days of the filing of an application for export to facilitate public participation in its review of the application. To meet this requirement, the agency is providing notice that Warner-Lambert Company, 2800 Plymouth Road, Ann Arbor, Michigan 48105, has filed an application requesting approval for the export of the drug Bevantolol Hydrochloride (Bulk) to Denmark. The drug is indicated for use in arteriel hypertension and angina pectoris. The application was received and filed in the Center for Drugs and Biologics on May 11, 1987, which shall be considered the filing date for purposes of the act.

Interested persons may submit relevant information on the application to the Dockets Management Branch (address above) in two copies (except that individuals may submit single copies) and identified with the docket number found in brackets in the heading of this document. These submissions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

The agency encourages any person who submits relevant information on the application to do so by June 1, 1987, and to provide an additional copy of the submission directly to the contact person identified above, to facilitate consideration of the information during the 30-day review period.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (sec. 802, Pub. L. 99–660 (21 U.S.C. 382)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Center for Drugs and Biologics (21 CFR 5.44).

Dated: May 14, 1987.

Sammie R. Young,

Acting Director, Office of Compliance, Center for Drug and Biologics.

[FR Doc. 87–11753 Filed 5–21–87; 8:45 am]

BILLING CODE 4160–01–M

Health Resources and Services Administration

"Low Income Levels" for Health Careers Opportunity Program, Financial Assistance for Disadvantaged Health Professions Students, Nursing Special Project Grants, and Area Health Education Centers

This Notice updates the income levels that are used of define a "low income family" for the support of training for individuals from disadvantaged backgrounds as provided for under section 787, Health Careers Opportunity Program, and the program of Financial Assistance for Disadvantaged Health Professions Students, section 820, Nursing Special Project Grants and section 781, Area Health Education Centers of the Public Health Service Act as amended.

Sections 57.18004(b)(2) and 57.1905(b)(2) of the program regulations (42 CFR Part 57, Subparts S and T) require that the Secretary publish periodically in the **Federal Register** the low income levels which will be used for Public Health Service grants to institutions which provide training for individuals from disadvantaged backgrounds.

The Health Professions Training Assistance Act of 1985, enacted on October 22, 1985, amended section 787 to include stipends under subsections (a)(2)(F) and (b) to individuals from disadvantaged backgrounds and of exceptional financial need (as defined by regulations issued by the Secretary under section 758), who are students at schoods of medicine, osteopathy or dentistry.

The income figures below were taken from low income levels, published by the U.S. Bureau of the Census, using an index adopted by a Federal Interagency Committee for use in a variety of Federal Programs, then multiplied by a factor of 1.3 for adaptation to health professions grant programs for which traning for individuals from disadvantaged backgrounds is supported. The income figures have been updated to reflect increases in the Consumer Price Index through December 31, 1986.

	Income level [2]
Size of parents family: [1]	
1	$7,400
2	9,500
3	11,400
4	14,500
5	17,200
6 or more	19,300

[1] Includes only dependents listed on Federal income tax forms.

[2] Rounded to $100. Adjusted gross income for calendar year 1986.

Dated: May 18, 1987.

David N. Sundwall,

Administrator, Assistant Surgeon General.

[FR Doc. 87–11752 Filed 5–21–87; 8:45 am]

BILLING CODE 4160–15–M

National Organ Transplant Act; Grants for Organ Procurement Organizations

AGENCY: Health Resources and Services Administration, PHS, DHHS.

ACTION: Notice of availability of grant funds.

SUMMARY: The Bureau of Resources Development (BRD), Health Resources and Services Administration (HRSA), announces that Fiscal Year (FY) 1987 funds are available for grants for assistance for Organ Procurement Organizations (OPOs). The grants are authorized by sections 371 and 374 of the Public Health Service (PHS) Act, as amended by section 201 of the National Organ Transplant Act, Pub. L. 98–507.

DATE: To receive consideration, grant applications (PHS Form 5161–1, Standard Form 424) must be received by the close of business July 21, 1987. Applications shall be considered as meeting the deadline if they are either (1) received on or before the deadline date; or (2) postmarked on or before the deadline date and received in time for submission to the review committee. A legibly dated receipt from a commercial carrier or U.S. Postal Service will be accepted in lieu of a postmark. Private metered postmarks shall not be acceptable as proof of timely mailing.

FOR FURTHER INFORMATION CONTACT: Requests for technical or programmatic information should be directed to Ms. Linda D. Sheaffer, Acting Director, Office of Organ Transplantation, Parklawn Building, Room 9–31, 5600 Fishers Lane, Rockville, Maryland 20857 (301/443–7577). Grant application kits and additional information regarding business, administrative or fiscal issues related to the awarding of grants under this notice may be requested from Mr. Donald C. Parks, Grants Management Officer, Bureau of Resources Development, Parklawn Building, Room 9–03, 5600 Fishers Lane, Rockville, Maryland 20857 (301/443/2630).

SUPPLEMENTARY INFORMATION:

Background

The National Organ Transplant Act, Pub. L. 98–507, amended the PHS Act to authorize the establishment of a program of grants for the planning, establishment, initial operation and expansion of Organ Procurement Organizations (OPOs).

Sections 371 and 374 of the PHS Act state that in awarding OPO grants the Secretary shall:

1. Take into consideration any recommendations made by the Task Force on Organ Transplantation established under section 101 of the National Organ Transplant Act.

2. Given special consideration to applications which cover geographical areas which are not adequately served by existing OPOs.

3. Give priority to any applicant which has a formal agreement of cooperation with all the transplant centers in its proposed service area.

4. Given special consideration to organizations which met the requirements of a qualified OPO as defined in section 371(b) before the enactment of Pub. L. 98–507.

5. Not discriminate against an applicant solely because it provides health care services other than those related to organ procurement.

Section 374 of the Act also states that the Secretary may not make a grant to more than one OPO which serves the

same service area. Section 9318 of the Omnibus Budget Reconciliation Act of 1986 (Pub. L. 99–509) requires that the Secretary certify OPOs every 2 years in order for the OPOs to be eligible for payments under Medicare and Medicaid. Section 9318 also states that only one OPO may be certified within the same service area. An OPO does not have to be certified to participate in the grants program of this Notice. Furthermore, applicants should be aware that as a qualified grant recipient under section 371(b), they are eligible to participate in Medicare and Medicaid. However, once they are no longer a grantee, they will be subject to the certification requirement in order to receive Medicare or Medicaid payments.

Program Objectives

The principal purpose of the grant program is to increase the availability of donor organs in this country by improving the overall organ procurement system. The Task Force on Organ Transplantation recommended that the program emphasize the need to increase substantially the number of organ donors an to encourage innovations which could be readily duplicated for national application. The Task Force recommended the following three priorities for the program:

1. Proposals to consolidate and coordinate organ procurement efforts where multiple programs currently exist.
2. Proposals to develop new approaches (for the applicant) to improve the efficiency and effectiveness of an existing program so as to increase the number of organ donors within a service area, e.g., professional education.
3. Proposals to expand present efforts to increase the number of organ donors within a service area, e.g., satellite programs, computerization of data, expanding services to serve dispersed rural areas.

Types of Grants

To accomplish the above objectives, the Secretary will award planning, initial operation and expansion grants consistent with the statutory guidelines and Task Force Recommendations as spelled out in this Notice.

Planning grants will be available to organizations capable of conducting a feasibility study and preparing a detailed plan of how they will carry out the functions of a qualified OPO as described in section 371(b).

Initial operation grants will be available for organizations capable of operating as a qualified OPO and in need of financial assistance for the establishment and/or the initial operation of a qualified OPO as defined in section 371(b) of the PHS Act.

Expansion grants will be available for organizations that meet the statutory requirements of a qualified OPO as defined in section 371(b).

Availability of Funds

Public Law 99–591 appropriated $7.4 million for the Organ Transplant Program in FY 1987. Of this amount, $2,940,000 has been allocated to OPOs. Because of the limited funds available in FY 1987 and the priorities determined by the Secretary, grant awards will be less than the maximum amount permitted in section 374 of the Act. This will permit the Department to provide assistance to a large number of organizations.

Planning grants will be for a period of one year and will not exceed $50,000.

Initial operation grants will be for a project period of up to two years and will not exceed $350,000 for the period of performance.

Expansion grants will be for a project period of up to two years and will not exceed $250,000 for the period of performance.

Eligibility for Grants

As noted above, grants will be available to organizations that have the capability to be a qualified OPO as defined in section 371(b) or that meet the statutory requirements of a qualified OPO as defined in that section. Section 371(b)(1) and (2) of the Act specifies the requirements of a qualified OPO as follows:

(b)(1) A qualified organ procurement organization for which grants may be made under subsection (a) is an organization which, as determined by the Secretary, will carry out the functions described in paragraph (2) and—

(A) is a nonprofit entity,

(B) has accounting and other fiscal procedures (as specified by the Secretary) necessary to assure the fiscal stability of the organization,

(C) has an agreement with the Secretary to be reimbursed under Title XVIII of the Social Security Act for the procurement of kidneys,

(D) has procedures to obtain payment for non-renal organs provided to transplant centers,

(E) has a defined service area which is a geographical area of sufficient size which (unless the service area comprises an entire State) will include at least 50 potential organ donors each year and which either includes an entire standard metropolitan statistical area (as specified by the Office of Management and Budget) or does not include any part of such an area,

(F) has a director and such other staff, including the organ donation coordinators and organ procurement specialists necessary to effectively obtain organs from donors in its service area, and

(G) has a board of directors or an advisory board which—

(i) is composed of—

(I) members who represent hospital administrators, intensive care or emergency room personnel, tissue banks, and voluntary health associations in its service area,

(II) members who represent the public residing in such area,

(III) a physician with knowledge, experience, or skill in the field of histocompatability,

(IV) a physician with knowledge, or skill in the field of neurology, and

(V) from each transplant center in its service area which has arrangements described in paragraph (2)(G) with the organization, a member who is a surgeon who has practicing privileges in such centers and who performs organ transplant surgery,

(ii) has the authority to recommend policies for the procurement of organs and the other functions described in paragraph (2) and

(iii) has no authority over any other activity of the organization.

(2) An organ procurement organization shall—

(A) have effective agreements, to identify potential organ donors, with a substantial majority of the hospitals and other health care entities in its service area which have facilities for organ donations,

(B) conduct and participate in systematic efforts, including professional education, to acquire all usable organs from potential donors,

(C) arrange for the acquisition and preservation of donated organs and provide quality standards for the acquisition of organs which are consistent with the standards adopted by the Organ Procurement and Transplantation Network under section 372(b)(2)(D),

(D) arrange for the appropriate tissue typing of donated organs,

(E) have a system to allocate donated organs among transplant centers and patients according to established medical criteria,

(F) provide or arrange for the transportation of donated organs to transplant centers,

(G) have arrangements to coordinate its activities with transplant centers in its service area,

(H) participate in the Organ Procurement and Transplantation Network established under section 372,

(I) have arrangements to cooperate with tissue banks for the retrieval, processing, preservation, storage, and distribution of tissues as may be appropriate to assure that all usable tissues are obtained from potential donors, and

(J) evaluate annually the effectiveness of the organization in acquiring available organs.

Since the grants will be awarded to non-profit organizations, the administrative requirements specified in OMB Circular A–110 will apply.

Review and Evaluation Criteria

In selecting recipients for grant awards, the Secretary intends to follow

the statutory guidelines as discussed in the Background section of this Notice and the recommendations of the Task Force or Organ Transplantation as described in the Program Objective section of this Notice. The Secretary will give first priority for funding to planning grants followed by initial operation grants and then followed by expansion grants.

In the awarding of expansion grants, priority will be given to (1) organizations that propose new approaches (for the applicant) to improve the efficiency and effectiveness of an existing program so as to increase the number of organ donors in a service area; and (2) organizations that propose to expand present efforts to increase the number of organ donors within a service area, e.g., satellite programs, computerization of data, and expanding services to serve dispersed rural populations.

Grant applications will be reviewed according to the established Bureau objective review procedures. The following criteria will be considered:

—The consistency with the program objectives and priorities;
—The adequacy of the method proposed to carry out the project;
—The appropriateness of the work plan and schedule for organizing and completing the project;
—The capability of the organization to complete the project as proposed;
—The adequacy of supporting documentation justifying the proposal;
—The reasonableness of the budget;
—The qualifications of the project director and staff; and
—The plan to continue beyond the grant period the activity or activities initiated under this grant including plans to secure other funding sources.

Allowable Costs

A successful applicant under this notice must spend the funds it receives according to the approved application and budget, the authorizing legislation, terms and conditions of the grant award and the cost principles specified in 45 CFR Part 74, Subpart Q.

Executive Order 12372

Grant awarded under this notice are subject to the provisions of Executive Order 12372, as implemented by 45 CFR Part 100, which allows States the option of setting up a system for reviewing applications within their States for assistance under certain Federal programs. The application packages to be made available by HRSA will contain a listing of States which have chosen to set up such a review system and will provide a point of contact in the States for the review. Applicants should promptly contact their State Single Point of Contact (SPOC) and follow its instructions prior to the submission of an application. The SPOC has 60 days after the application deadline date to submit its review comments.

The OMB Catalogue of Federal Domestic Assistance Number for this program is 13.134.

Dated: March 31, 1987.

David N. Sundwall,

Administrator, HRSA.

[FR Doc. 87-11701 Filed 5-21-87; 8:45 am]

BILLING CODE 4160-15-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Administration

[Docket No. N-87-1700]

Submission of Proposed Information Collections to OMB

AGENCY: Office of Administration, HUD.

ACTION: Notices.

SUMMARY: The proposed information collection requirements described below have been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposals.

ACTION: Interested persons are invited to submit comments regarding these proposals. Comments should refer to the proposal by name and should be sent to: John Allison, OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: David S. Cristy, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, SW., Washington, DC 20410, telephone (202) 755-6050. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal described below for the collection of information to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the description of the need for the information and its proposed use; (4) the agency form number, if applicable; (5) what members of the public will be affected by the proposal; (6) how frequently information submissions will be required; (7) an estimate of the total number of hours needed to prepare the information submission; (8) whether the proposal is new, an extension, reinstatement, or revision of an information collection requirement; and (9) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Copies of the proposed forms and other available documents submitted to OMB may be obtained from David S. Cristy, Reports Management Officer for the Department. His address and telephone number are listed above. Comments regarding the proposal should be sent to the OMB Desk Officer at the address listed above.

The proposed information collection requirement is described as follows:

Notice of Submission of Proposed Information Collection to OMB

Proposal: Advances for Public Works Planning (PWP) Programs.

Office: Community Planning and Development.

Description of the Need for the Information and its Proposed Use: HUD makes planning advances to public agencies to finance the cost of plan preparation for public works. The agency repays HUD when construction of the project begins. To determine if construction has begun, HUD annually sends Form HUD-4435, Report of Construction Status of Advance Planning Project, to the public agency.

Form Number: HUD-4435.

Respondents: State or Local Governments.

Frequency of Response: Annually.

Estimated Burden Hours: 240.

Status: Reinstatement.

Contact: Stanley F. Victor, HUD, (202) 755-6182; John Alison, OMB, (202) 395-6880.

Authority: Sec. 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; Sec. 7(d) of the Department of Housing and Urban Development Act 42 U.S.C. 3535(d).

Notice of Submission of Proposed Information collection to OMB

Proposal: 1. Statement of Facts. 2. Supplements to Statement of Facts.

Office: Housing.

Description of the need for the Information and its Proposed Use: The Interstate Land Sales Full Disclosure Act requires that developers of certain types of subdivision offerings must register with the U.S. Department of Housing and Urban Development or take other steps to comply with the Federal statute prior to commencing sales. Data defining the type and size of the offering are used to determine

whether or not a developer's subdivision is subject to the Act and, if so, whether it is eligible for an exemption from the Act's registration requirement.

Form Number: HUD-9928, 9929-A, 9929-B, and 9929-C.

Respondents: Business or Other For-Profit and Small Businesses or Organizations.

Frequency of Response: On Occasion.

Estimated Burden Hours: 450

Status: Reinstatement.

Contact: Roger G. Henderson, HUD, (202) 755-0502; John Allison, OMB, (202) 395-6880.

Authority: Sec. 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; Sec. 7(d) of the Department of Housing and Urban Development Act 42 U.S.C. 3535(d).

Dated: May 11, 1987.

John T. Murphy,

Director, Information Policy and Management Division.

[FR Doc. 87-11700 Filed 5-21-87; 8:45 am]

BILLING CODE 4210-01-M

INTERSTATE COMMERCE COMMISSION

Intent To Engage in Compensated Intercorporate Hauling Operations

This is to provide notice as required by 49 U.S.C. 10524(b)(1) that the named corporations intend to provide or use compensated intercorporate hauling operations as authorized in 49 U.S.C. 10524(b).

A. 1. Parent corporation and address of principal office: Ashland Oil, Inc., 1000 Ashland Drive, Russell, KY 41114.

2. Wholly-owned subsidiaries which will participate in the operations and states of incorporation:

Subsidiary and *Jurisdiction of Incorporation*

Ashland Chemical, Inc.—Delaware
Ashland Development, Inc.—Delaware
Ashland Ethanol, Inc.—Delaware
Ashland Oil and Transportation Company—Kentucky
Ashland Petroleum, Inc.—Delaware
Ashland Pipe Line Company.—Ohio
Inland Towing Company—Delaware
Mid-Valley Supply Co.—Kentucky
Southern Oil Company of New York, Inc.—New York
Tri-State Marketing Services, Inc.—Delaware
APAC—Alabama, Inc.—Delaware
APAC—Arkansas, Inc.—Delaware
APAC—Carolina, Inc.—Delaware
APAC—Florida, Inc.—Delaware
APAC—Georgia, Inc.—Delaware
APAC—Inc.—Delaware
APAC—Kansas, Inc.—Delaware
APAC—Mississisppi, Inc.—Delaware
APAC—Oklahoma, Inc.—Delaware
APAC—Texas, Inc.—Delaware
APAC—Viriginia, Inc.—Delaware
Reg X Condor, Inc.—Delaware
Scurlock Oil Company—Delaware
TAP-CO, Inc.—North Carolina
Algonquin Pipe Line Company—Illinois
Ohio River Pipe Line Company—Delaware
Owensboro-Ashland Company—Delaware
SOCO Pipeline Company—Texas

B. 1. Parent Corporation and address of principal office:

A. Burlington Industries, Inc., 3330 West Friendly Avenue, P.O. Box 21207, Greensboro, NC 27420

2. Wholly owned subsidiaries which will participate in the operation, address of its principal offices, and state and country of incorporation:

A. B.I. Transportation, Inc., Tucker Street Extension, P.O. Box 691, Burlington, NC 27216-0691, Incorporated in the State of Delaware
B. Burlington Canada Inc., 205 Bouchard Boulevarad, Dorvale, Quebec H9S 1A9, Incorporated in Canada
C. Texile Morelos, S.A. de C.V., San Juan del Aguila No. 401, Cuetnazaca, Motelos, Mexico, Incorporated in Mexico
D. Noblies-Lees, S.A. de C.V., Calzada Ermita-Ixtapalapa, No. 401 Local "C", Colonial Unidad Modelo, Mexico 13 D.F. Mexico, Incorporated in Mexico
E. C.H. Masland & Sons, Spring Road 1 Box 40, Carlisle, PA 17013, Incorporated in the State, of Pennsylvania
F. Georgia Commercial Carpets, Inc., 444 North Hamilton Street, P.O. Box 13, Dalton, GA 30720, Incorporated in the State of Delaware

C. 1. Parent Corporation and address of principal office: Kraft, Inc., Kraft Court, Glenview, IL 60025.

2. Wholly-owned subsidiaries which will participate in the operations and State(s) of incorporation:

A. American Fruit & Produce Co., Inc. (Minnesota)
B. Duracell, Inc. (Delaware)
C. Duracell International, Inc. (Delaware)
D. Celestial Seasonings, Inc. (Delaware)
E. Celestial Transport, Inc. (Colorado)
F. Consolidated Distribution Center, Inc. (Delaware)
G. Craig Distributing Company (Missouri)
H. I. Feldman & Sons (Washington, D.C.)
I. Holleb & Company (Illinois)
J. Pollio Dairy Products Corporation (New York)
K. Sagecoach Express, Inc. (Illinois)
L. Tombstone Pizza Corporation (Wisconsin)
M. Westman Commission Company (Colorado)

D. 1. Parent corporation and address of principal office: Philips Industries Inc., an Ohio corporation, P.O. Box 943, 4801 Springfield Street, Dayton, OH 45401.

2. Wholly-owned subsidiaries which will participate in the operations, and State(s) of incorporation:

(i) Carroll Shelby Industries, Inc. (California)
(ii) Frenkin Corporation (Washington)
(iii) Hytec, Inc. (Washington)
(iv) Industrial Air, Inc. (Ohio)
(v) Phillips Industrial Components, Inc. (Ohio)
(vi) Shelby Advanced Automotive Technology, Inc. (Texas)

E. 1. Parent corporation and address of principal office: Reckitt & Colman North America Inc., 1 Mustard Street, Rochester, New York 14609

2. Wholly-owned subsidiaries which will participate in the operations, and address of their respective principal offices:

(a) Airwick Industries, Inc., 111 Commerce Road, Carlstadt, New Jersey 07072, State of Incorporation: New Jersey
(b) Durkee Famous Foods Inc., 24600 Center Ridge Road, Westlake, Ohio 44145-5617, State of Incorporation: Delaware
(c) R.T. French Inc., 1 Mustard Street, Rochester, New York 14609, State of Incorporation: Delaware

Noreta R. McGee,

Secretary.

[FR Doc. 87-11781 Filed 5-21-87; 8:45 am]

BILLING CODE 7035-01-M

[Ex Parte No. 388 (Sub-No. 8)]

Intrastate Rail Authority; Indiana

AGENCY: Interstate Commerce Commission.

ACTION: Revocation of certification and assumption of jurisdiction.

SUMMARY: The Commission is revoking the certification of the Public Service Commission of Indiana to regulate intrastate rail rates. The Commission is also assuming jurisdiction over Indiana intrastate rail matters as requested by the Indiana Department of Transportation.

DATE: This decision is effective on June 22, 1987.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 275-7245.

SUPPLEMENTARY INFORMATION: The parties to No. 38056S, *Indianapolis*

Power & Light Co. v. *Consolidated Rail Corp. et al.*, should consult with the Chief Administrative Law Judge regarding further proceedings in that case.

Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to T.S. InfoSystems, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC 20423, or call 289–4357 (DC Metropolitan area)

Decided: May 15, 1987

By the Commission, Chairman Gradison, Vice Chairman Lamboley, Commissioners Sterrett, Andre, And Simmons.

Noreta R. McGee,

Secretary.

[FR Doc. 87–11729 Filed 5–21–87; 8:45 am]

BILLING CODE 7035–01–M

[Docket No. AB–287X]

Port Huron and Detroit Railroad Company—Exemption—Abandonment in St. Clair County, MI

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: Pursuant to 49 U.S.C. 10505, the Commission exempts the Port Huron and Detroit Railroad Company (PH&D) from the requirement of prior approval under 49 U.S.C. 10903 *et seq.*, to abandon a 4.35-mile line of railroad in St. Clair County, MI, between Valuation Station 600+00 (milepost 14.64) at or near Belle River, and the end of the line at or near Valuation Station 829+55 (milepost 18.99) in Marine City, subject to the employee protective conditions imposed in *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979).

DATES: This exemption will be effective on May 2, 1987. Petitions to stay must be filed by June 8, 1987. Petitions for reconsideration must be filed by June 16, 1987.

ADDRESSES:

Send pleadings referring to Docket No. AB–287X to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423

(2) Petitioner's Representative: Lawrence H. Richmond, CSX Transportation, Inc., 100 North Charles Street, Baltimore, MD 21201

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 275–7245.

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to T.S. InfoSystems, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC 20423, or call 289–4357 (DC Metropolitan area).

Decided: May 15, 1987.

By the Commission, Chairman Gradison, Vice Chairman Lamboley, Commissioners Sterrett, Andre, And Simmons. Vice Chairman Lamboley concurred in the result.

Noreta R. McGee,

Secretary.

[FR Doc. 87–11730 Filed 5–21–87; 8:45 am]

BILLING CODE 7035–01–M

[Finance Docket No. 31028]

Carolina and Northwestern Railway Co.; Merger and Assignment of Lease Exemption; Danville and Western Railway Co.; Exemption

Carolina and Northwestern Railway Company (C&NW) and Danville and Western Railway Company (D&W) have filed a notice of exemption in connection with an agreement which involves the (a) merger of D&W into C&NW and (b) assignment of D&W's operating lease with Norfolk and Western Railway Company (NW) to C&NW.[1] The merger will be effected on or after June 1, 1987. D&W and C&NW are wholly owned subsidiaries of Southern Railway Company. Norfolk Southern Corporation owns all the common stock of Southern Railway Company and wholly owns NW. The proposed transaction is intended to simplify Southern Railway Company's corporate structure, and results in various efficiencies and economies.

The merger of D&W into C&NW is a transaction within a corporate family of the type specifically exempted under 49 CFR 1180.2(d)(3), from prior approval. This transaction will not result in any adverse changes in the level of service to shippers, or significant operational changes. Nor will it have any impact on the competitive balance with carriers outside the corporate family. Because NW already has been authorized to operate the facilities of D&W pursuant to a lease arrangement, assignment of that lease from D&W to C&NW, with NW continuing to provide operations under the lease, does not require approval under 49 U.S.C. 11343. Therefore, an exemption of that lease assignment is unnecessary. To ensure that all employees who may be affected by the transaction are given the minimum protection afforded under sections 10505(g)(2) and 11347, the labor conditions set forth in *New York Dock Ry.—Control—Brooklyn Eastern Dist.*, 360 I.C.C. 60 (1979), will be imposed.[2]

Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not stay the transaction. Pleadings must be filed with the Commission and served on: J. Gary Lane, Norfolk Southern Corporation, One Commercial Place, Norfolk, VA 23510.

Dated: May 12, 1987.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Kathleen M. King.

Acting Secretary.

[FR Doc. 87–11733 Filed 5–21–87; 8:45 am]

BILLING CODE 7035–01–M

Decision-Notice

The following applications seek approval to consolidate, purchase, merge, lease operating rights and properties, or acquire control of motor carriers pursuant to 49 U.S.C. 11343 or 11344. Also, applications directly related to these motor finance applications (such as conversions, gateway eliminations, and securities issuances) may be involved.

The applications are governed by 49 CFR 1182.1 of the Commission's Rules of Practice. See Ex Parte 55 (Sub-No. 44), *Rules Governing Applications Filed By Motor Carriers Under 49 U.S.C. 11344 and 11349*, 363 I.C.C. 740 (1981). These rules provide among other things, that opposition to the granting of an application must be filed with the Commission in the form of verified statements within 45 days after the date of notice of filing of the application is published in the **Federal Register** and I.C.C. *Register*. Failure seasonably to oppose will be construed as a waiver of opposition and participation in the preceeding. If the protest includes a request for oral hearing, the request shall meet the requirements of Rule 242 of the special rules and shall include the certification required.

Persons wishing to oppose an application must follow the rules under 49 CFR 1182.2. A copy of any application, together with applicant's supporting evidence, can be obtained from any applicant upon request and

[1] The lease of D&W's properties by NW was approved by the Commission in Finance Docket No. 30598, *Carolina & N. Ry. Co. and Norfolk & W. Ry. Co.—Lease Exemption—Danville & W. Ry. Co.*, served February 12, 1985.

[2] The Railway Labor Executives' Association (RLEA) filed a request for labor protection. The United Transportation Union has asked to become a party to this protest. Since this transaction involves an exemption from 49 U.S.C. 11343, the imposition of the labor protective condition is mandatory and it has been imposed above.

payment to applicant of $10.00, in accordance with 49 CFR 1182.2(d).

Amendments to the request for authority will not be accepted after the date of this application. However, the Commission may modify the operating authority involved in the application to conform to the Commission's policy of simplifying grants of operating authority.

We find, with the exception of those applications involving impediments (e.g., jurisdictional problems, unresolved fitness questions, questions involving possible unlawful control, or improper divisions of operating rights) that each applicant has demonstrated, in accordance with the applicable provisions of 49 U.S.C. 11301, 11302, 11343, 11344, and 11349, and with the Commission's rules and regulations, that the proposed transaction should be authorized as stated below. Except where specifically noted this decision is neither a major Federal action significantly affecting the quality of the human environment nor does it appear to qualify as a major regulatory action under the Energy Policy and Conservation Act of 1985.

In the absence of legally sufficient protests as to the finance application *or* to any application directly related thereto filed within 45 days of publication (or, if the application later becomes unopposed), appropriate authority will be issued to each applicant (unless the application involves impediments) upon compliance with certain requirements which will be set forth in a notification of effectiveness of this decision-notice. To the extent that the authority sought below may duplicate an applicant's existing authority, the duplication shall not be construed as conferring more than a single operating right.

Applicant(s) must comply with all conditions set forth in the grant or grants of authority within the time period specified in the notice of effectiveness of this decision-notice, or the application of a non-complying applicant shall stand denied.

James H. Bayne,

Secretary.

MC-F-18277, filed March 20, 1987, published April 28, 1987 and Republished, as corrected, this issue.

MC-F-18277, filed March 20, 1987. *Funbus Systems, Inc.* (FunBus) (304 Katella Way, Anaheim, CA 92802)—*Purchase—Airport Service, Incorporated* (Airport) (851 East Cerritos Avenue, Anaheim, CA 92805). Representatives: William J. Monheim, P.O. Box 1756, Whittier, CA 90609, and Eldon Johnson, 825 Van Ness Avenue, Suite 601, San Francisco, CA 94109.

FunBus (MC-145992) and Michael L. Valen, an individual and majority stockholder, seek authority to acquire the interstate and California intrastate operating rights of Airport (MC-176193) and California Public Utilities Decisions 83743 as amended in 84583, 82-03-028, Resolution PE 499 and 90383 as restated in 91578 (PSC 869) and TCP 163A), as well as specified non-operating rights properties. Airport's interstate certificate authorizes the transportation of passengers, in charter and special operations, beginning and ending at points in Imperial, Los Angeles, Orange, Riverside, San Bernardino, San Diego, and Ventura Counties, CA, and extending to points in the United States (except HI). Its California intrastate rights authorize the transportation of passengers, in general, over specified routes in Los Angeles and Orange Counties, CA, to and from Los Angeles International Airport, Lockheed Air Terminal, Long Beach Municipal Airport, John Wayne (Orange County) Airport, and Ontario International Airport.

Note: FunBus has filed an application for temporary authority to lease the above operating rights of Airport pending the final disposition of this application.

Note: The purpose of this republication is to include the wording "as well as specified non-operating rights properties," in the caption.

[FR Doc. 87-11732 Filed 5-21-87; 8:45 am]

BILLING CODE 7035-01-M

[Finance Docket No. 31042]

Lewis & Clark Railway Co.; Exemption Operation; Chelatchie Prairie Railroad, Inc.

Lewis & Clark Railway Company has filed a notice of exemption to acquire by lease and to operate the entire line of Chelatchie Prairie Railroad, Inc., between Rye, WA (milepost 3.62), and Chelatchie, WA (milepost 33.10), a distance of 29.5 miles in Clark County, WA. Any comments must be filed with the Commission and served on Edward M. Berntsen, President, Lewis & Clark Railway Company, 5224 12th Street East, Post Office Box No. 4, Tacoma, WA 98401, (206) 922-1700, and on Fritz R. Kahn, Esq., Suite 1000, 1660 L Street NW, Washington, DC, 20036, (202) 775-1084.[1]

The notice is filed under 49 CFR 1150.31. If the notice contains false or misleading information, the exemption is void *ab initio.* Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the tranaction.

Decided: May 14, 1987.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 87-11734 Filed 5-21-87; 8:45 am]

BILLING CODE 7035-01-M

[No. MC-F-18099]

MNVA Railroad, Inc.; Continuance in Control Exemption

AGENCY: Interstate Commerce Commission.

ACTION: Notice of proposed exemption.

SUMMARY: MNVA Railroad, Inc. (MNVA), a rail carrier, has filed a petition under 49 U.S.C. 11343(e). MNVA seeks an exemption from the requirement of prior regulatory approval for its institution of operations as a motor carrier pursuant to its application in No. MC-197660. In that proceeding, it seeks authority as a contract carrier of general commodities (except classes A and B explosives, household goods, and commodities in bulk), between points in the United States (except Alaska and Hawaii), serving the class of commercial shippers or receivers of such commodities. MNVA will conduct motor carrier operations under the name "MNVA Trucking Co."

MNVA is a shortline railroad operating approximately 146 miles of trackage between Minneapolis and Hanley Falls, MN. Ninety-six percent of its stock is owned by Larry Wood and Diane Wood, of Morton, MN. Larry Wood is MNVA's president. Because MNVA is a rail carrier that has applied for motor carrier authority, the proposed transaction appears to fall under *Motor Carrier Operating Authority—Railroads,* 132 M.C.C. 978 (1982).

Under 49 U.S.C. 11343(a)(3), the Commission's prior approval is required for the acquisition of control of a carrier by any number of carriers. Thus, the transaction is subject to our jurisdiction and can be carried out only under our

[1] The Railway Labor Executives' Association (RLEA) filed an unsupported request for labor protection claiming that this transaction is subject to the mandatory labor protection provisions of 49 U.S.C. 11347. Since this transaction involves an exemption from 49 U.S.C. 10901, only a showing of exceptional circumstances will justify the imposition of labor protective conditions. RLEA's request is denied, because the requisite showing has been made. *See Class Exemption—Acq. & Oper. of R. Lines Under 49 U.S.C. 10901,* 1 I.C.C. wd 810 (1985).

regulation or an exemption from regulation.

MNVA argues that its entry into regulated motor carrier transportation will promote the National Transportation Policy by allowing a more responsive intermodal service to be offered, inuring to the benefit of area consumers by affording its existing rail shippers an expanded service. MNVA asserts that the transaction is of limited scope in that it will start operations with only two tractors and two trailers. It argues that because of the competitive transportation environment in which it operates, the transaction will have a minimal overall economic impact. Thus, petitioner concludes, there will be no potential for abuse of market power.

DATES: Comments must be received by June 22, 1987.

ADDRESSES: Send comments (an original and 10 copies), referring to Docket No. MC–F–18099, to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

(2) Petitioner's representative: Robert E. Gillespie, P.O. Box 3854, Sioux City, IA 51102.

FOR FURTHER INFORMATION CONTACT: Marion E. Guyton (202) 275–7965.

SUPPLEMENTARY INFORMATION: Petitioner seeks an exemption under 49 U.S.C. 11343(e) and the Commission's regulations in *Procedures—Handling Exemption Filed by Motor Carriers*, 367 I.C.C. 113 (1982).

A copy of the petition may be obtained from petitioner's representative, or it may be inspected at the Washington, DC office of the Interstate Commerce Commission during normal business hours.

Decided: May 15, 1987.

By the Commission, Chairman Gradison, Vice Chairman Lamboley, Commissioners Sterrett, Andre, and Simmons. Vice Chairman Lamboley, joined by Commissioner Simmons dissented in part with a separate expression.

Noreta R. McGee,

Secretary.

Vice Chairman Lamboley, joined by Commissioner Simmons, dissenting in part:

I would consider this exemption under section 10505. As I have stated many times previously, I do not believe that section 11343(e) was intended to apply and to impart antitrust immunity to intermodal transactions such as this.

[FR Doc. 87–11731 Filed 5–21–87; 8:45 am]

BILLING CODE 7035–01–M

[Finance Docket No. 31033]

The Baltimore and Ohio Railroad Company and the Chesapeake and Ohio Railway Co.; Notice of Merger Exemption

CSX Corporation (CSX), The Baltimore and Ohio Railroad Company (B&O), and The Chesapeake and Ohio Railway Company (C&O) have filed a notice of exemption for B&O to merge into C&O on April 30, 1987. The merger participants are part of the CSX System and have been commonly controlled and managed since 1963. *See Chesapeake & O. Ry. Co.—Control—Baltimore and O. R. Co.*, 317 I.C.C. 261 (1962) and *CSX Corp.—Control—Chessie and Seaboard C.L.I.*, 363 I.C.C. 518 (1980).

C&O owns approximately 95 percent of the outstanding common shares of B&O and approximately 99.9 percent of B&O's outstanding preferred shares. CSX owns 100 percent of the voting equity securities of C&O. This merger constitutes one aspect in an overall process of consolidating the CSX rail companies into a single, efficient operating company. Consummation of the merger will eliminate the inefficiencies inherent in maintaining two carrier entities, particularly with regard to record keeping, and through coordination and consolidation improve the efficiency of the operations and services now being provided by the carriers as separate entities. No adverse changes in the level of transportation services or significant operational changes are contemplated to result from the merger.

Under the merger plan, B&O will cease to exist as a separate entity and C&O will succeed to all of its rights, assets, liabilities, and obligations. All shares of B&O stock held by C&O will be cancelled. All shares of B&O stock held by others will be automatically converted into a right to receive cash pursuant to the plan of the merger.

This is a transaction within a corporate family [1] of the type specifically exempted from prior review and approval under 49 CFR 1180.2(d)(3). It is a transaction which will not result in adverse changes in service levels, significant operational changes, or a change in the competitive balance with carriers outside the corporate family.

As a condition to the use of this exemption, any employees affected by the merger shall be protected pursuant to *New York Dock Ry.—Control—Brooklyn Eastern District*, 360 I.C.C. 60 (1979).

Petitions to revoke this exemption under 49 U.S.C. 10505(d) may be filed at any time.[2] The filing of a petition to revoke will not stay the transaction.[3] Pleadings must be filed with the Commission and served on: Peter J. Shudtz, 100 North Charles Street, Baltimore, MD 21201.

Decided: May 19, 1987.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 87–11909 Filed 5–21–87; 8:45 am]

BILLING CODE 7035–01–M

[1] The Commission has recognized the existence of a corporate family relationship in situations involving less than 100 percent ownership of an affected entity. *See* Finance Docket No. 29757, *Colorado and Southern Railway Co.—Merger into Burlington Northern Railroad Company—Exemption and Request for Determination of Fairness* (not printed) served December 31, 1981, in which a carrier controlled by BN for more than 70 years with 92.6 percent of its voting stock held by BN was acknowledged to be within the BN corporate family. Here C&O has controlled B&O for 24 years and owns approximately 95 percent of B&O's common shares.

[2] On April 14, 1987, a petition to partially revoke this notice of exemption was filed by Eric Ryback. On April 28, 1987, a petition to revoke this notice of exemption was filed by Margaretha Walk, an individual; Maurice Walk, Trustee for the Cynthia Walk Trust, the Dinand M. Walk Trust, and the Margaretha Walk Trust; and Vincent Ciarlante. B&O stock filed a petition to join in the Ryback petition. When filed these petitions were assigned to Finance Docket No. 31035. Petitioners are owners of B&O stock, part of the minority shareholder interest, who seek clarification of the forum that will determine the fair value of their B&O shares. The issues raised by these petitioners will be considered in a subsequent decision to be issued by the Commission.

[3] On April 29, 1987, Acting Chairman Lamboley deined a petition for stay filed by Mr. Ryback. Stay is no longer available.

DEPARTMENT OF JUSTICE

Antitrust Division

United States v. The Dow Chemical Co. and Ethyl Corp.; Proposed Final Judgment and Competitive Impact Statement

Notice is hereby given pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b)–(h), that a Complaint, proposed Final Judgment, Stipulation and Competitive Impact Statement have been filed with the United States District Court for the Northern District of Illinois, Eastern Division, in *United States v. The Dow Chemical Company and Ethyl Corporation.*

The Complaint of the United States alleges that the proposed acquisition by Ethyl of Dow's Bromine and Brominated

Chemicals Division would violate section 7 of the Clayton Act, 15 U.S.C. 18, because it may substantially lessen competition in the United States in the manufacture and sale of bromides used in brominated clear brine fluids ("brominated CBFs").

Brominated CBFs are dense fluids that are used in the oil and gas industry to counterbalance the downhole pressure of oil and gas wells during completion and workover procedures in order to prevent blowouts or geysers. In 1986, sales to the U.S. oil and gas industry, which currently is depressed, of bromides used in brominated CBFs totaled over $30 million, a decline from about $60 million in sales in 1984. Dow is the second largest producer of these bromides and Ethyl is the third largest. Only one other domestic company (Great Lakes Chemical Corporation) and one foreign company (Dead Sea Bromine Company Limited, an Israeli firm) compete for U.S. sales of bromides used in brominated CBFs.

Under the proposed Final Judgment, an independent trustee, Oppenheimer & Co., Inc. of New York City (telephone: 212/667-5036), has been appointed to divest the assets included in Dow's brominated CBF business. Oppenheimer will have six months to find a purchaser for the business. The proposed Final Judgment contemplates that the divestiture will be made to a purchaser that intends to and can compete effectively in the market for bromides used in brominated CBFs. The proposed Final Judgement is structured to permit a purchaser of Dow's brominated CBF business to begin competing immediately in the sale of bromides used in brominated CBFs at costs no greater than Dow would have if it were to remain in the business.

Public comment is invited within the statutory 60-day comment period. Such comments, and responses thereto, will be published in the **Federal Register** and filed with the Court. Comments should be directed to Kent Brown, Chief, Midwest Field Office, Antitrust Division, Department of Justice, Room 3820, Kluczynski Building, 230 South Dearborn Street, Chicago, Illinois 60604 (312/353-7530).

Joseph H. Widmar,

Director of Operations, Antitrust Division.

United States District Court, Northern District of Illinois, Eastern Division

United States of America, Plaintiff, v. *The Dow Chemical Company and Ethyl Corporation,* Defendants.

[Civil Action No.]

Filed——

Satipulation

It is stipulated by and between the undersigned parties, by their respective attorneys, that:

1. The parties consent that a Final Judgment in the form hereto attached may be filed and entered by the Court, upon the motion of any party or upon the Court's own motion, at any time after compliance with the requirements of the Antitrust Procedures and Penalties Act (15 U.S.C. 16), and without further notice to any party or other proceedings, provided that plaintiff has not withdrawn its consent, which it may do at any time before the entry of the proposed Final Judgment by serving notice thereof on defendants and by filing that notice wih the Court.

2. The parties shall abide by and comply with the provisions of the Final Judgment pending entry of the Final Judgment, and shall, from the date of the filing of this Stipulation, comply with all the terms and provisions thereof as though the same were in full force and effect as an order of the Court.

3. In the event plaintiff withdraws its consent or if the proposed Final Judgment is not entered pursuant to this Stipulation, this Stipulation shall be of no effect whatever and the making of this Stipulation shall be without prejudice to any party in this or any other proceeding.

Dated: ——

Charles F. Rule,

Acting Assistant Attorney General,

Judy Whalley,

Kent Brown,

Mary E. Jones,

Attorneys, United States Department of Justice, Antitrust Division.

Barry J. Kaplan,

Ann M. Gales,

Sarah L. Grieb,

Christopher J. Kelly,

Mark R. Ortlieb,

Gregory J. Scandaglia,

Attorneys, United States Department of Justice, Antitrust Division, 230 South Dearborn Street, Chicago, Illinois 60604, (312) 353-7530

For the Defendant the Dow Chemical Company:

Shearman & Sterling, (by) James T. Halverson, *a Member of the Firm, 53 Wall Street, New York, New York 10005.*

For the Defendant Ethyl Corporation:

Hunton & Williams, (by) Daniel A. Carrell, *a Member of the Firm, 707 East Main Street, Richmond, Virginia 23213.*

United States District Court, Northern District of Illinois, Eastern Division

United States of America, Plaintiff, v. *The Dow Chemical Company and Ethyl Corporation,* Defendants.

[Civil Action No. ——

Filed: ——

Final Judgment

Whereas plaintiff, United States of America, has filed its Complaint herein on May ——, 1987, and plaintiff and defendants, by their respective attorneys, have consented to the entry of this Final Judgment without trial or adjudication of any issue of fact or law herein, and without this Final Judgment constituting any evidence against, or any admission by, any party with respect to any issue of fact or law herein;

And Whereas the defendants have agreed to be bound by the provisions of this Final Judgment pending its approval by the Court;

And Whereas prompt divestiture is the purpose of this Final Judgment;

Now, Therefore, before the taking of any testimony, and without trial or adjudication of any issue of fact or law herein, and upon consent of the parties hereto, it is hereby

Ordered, Adjudged and Decreed as follows:

I

This Court has jurisdiction over the subject matter of this action and over each of the parties hereto. The Complaint states a claim upon which relief may be granted against defendants under section 7 of the Clayton Act, as amended (15 U.S.C. 18).

II

Definitions

As used in this Final Judgment:

A. "Dow" means the Dow Chemical Company, each division, subsidiary or affiliate thereof, and each officer, director, employee, attorney, agent or other person acting for or on behalf of any of them.

B. "Ethyl" means Ethyl Corporation, each division, subsidiary or affiliate thereof, and each officer, director, employee, attorney, agent or other person acting for or on behalf of any of them.

C. "Defendants" means Dow and Ethyl.

D. "Asset purchase agreement" means the agreement between Dow and Ethyl dated September 11, 1986, whereby Ethyl agreed to purchase Dow's worldwide bromine and bromine derivatives business.

E. "Bromides" means bromide salts, specifically sodium bromide, calcium bromide, and zinc bromide, used in blending brominated clear brine fluids,

which are clear brine fluids containing one of more bromides.

F. "Clear brine fluids" or "CBFs" means solids-free brine (*i.e.*, salt) solutions used as weighting fluids during drilling, completion and workover operations on oil and gas wells.

G. "CBF business" means the following assets:

(1) The Magnolia calcium bromide plant, as described in section II.M.;

(2) All other tangible assets solely dedicated, or anticipated to be solely dedicated, to Dow's business operation of researching, developing, engineering, testing, manufacturing, or selling bromides, which may be reasonably necessary for the purchaser to operate the Magnolia calcium bromide plant as a commercially viable, independent business operation; provided, however, that such assets do not include real property and stationary, nonmovable buildings located in or near Midland, Michigan, cash and checks on hand or on deposit, accounts and notes receivable or inventories of the CBF business;

(3) The Crone Option, as defined in section II.J. and described in Schedule 1 to this Final Judgment, and Dow's lease rights to subsurface minerals in portions of the western one-half of sections 8, 17, and 20 of Township 17 South, Range 21 West, Columbia County, Arkansas, constituting approximately seven hundred (700) acres adjoining the Crone Option area;

(4) All intangible assets, wherever located (except that if the purchaser is Dead Sea, Dow may limit such assets to those applicable to North America), that relate in any way to the assets described in sections II.G.(2) and II.G.(3), including but not limited to: Exclusive, assignable rights to all proprietary technology and other proprietary business information solely dedicated to the tangible assets; nonexclusive rights to all related proprietary technology and other proprietary business information not solely dedicated to the tangible assets; nonexclusive rights to any available space included in rights-of-way or easements between the Magnolia calcium bromide plant and the Crone Option area that were held by Dow as of April 14, 1987; and Dow's lease rights to personal property, such as trucks, storage facilities and equipment. As to any nonassignable rights described in this section II.G.(4), Dow shall grant licenses to such rights, on the same terms and conditions as the licenses conveying such rights to the purchaser, to any person who is a successor to the purchaser's entire rights to the CBF business.

The assets described in this section II.G. must be accompanied by a commitment by Dow to defend and indemnify the purchaser against any liability arising from or attributable in any way to any use of the assets by Dow at any time before the purchaser take possession of them.

H. "CBF employees" means all of the employees listed in Schedule 2 to this Final Judgment.

I. "CBF-related employees" means all of the employees listed in Schedule 3 to this Final Judgment.

J. "Crone Option" means Dow's option to purchase rights to subsurface minerals from the persons listed in Schedule 1 to this Final Judgment, for the tracts of land described therein.

K. "Dead Sea" means Dead Sea Bromine Company Limited, each division, subsidiary or affiliate thereof, and each officer, director, employee, attorney, agent or other person acting for or on behalf of any of them.

L. "Disposal property" means the three injection wells described in Schedule 4 to this Final Judgment, finished pipelines and any other appurtenances relating to the injection wells, and sufficient nonexclusive rights-of-way or easements as may be reasonably necessary for the purchaser to construct such additional improvements as pipelines that might help the purchaser to use or maximize the use of the disposal property and to have reasonable access to the disposal property and any additional improvements. The property described in this section II.L. must be accompanied by a commitment by defendants to defend and indemnify the purchaser against any liability arising from or attributable in any way to any use of the property at any time before the purchaser takes possession of it. If the purchaser conveys property to Ethyl pursuant to section IX.D.(2), the purchaser must commit to defend and indemnify Ethyl against any liability arising from or attributable in any way to any use of the conveyed property by the purchaser.

M. "Magnolia calcium bromide plant" means the Dow tangible and intangible assets that were designed or constructed for use in the production of calcium bromide in or near Magnolia, Arkansas, including but not limited to exclusive, assignable rights to all proprietary technology and other proprietary business information solely dedicated to the assets or the operation of the assets and nonexclusive rights to all related proprietary technology and other business information not solely dedicated to the assets or the operation of the assets. Unless Dow shall give its prior consent, which Dow shall not withhold if the purchaser offers reasonable terms and conditions, the exclusive and nonexclusive rights described in this section II.M. may be limited to the use of the pertinent technology or other business information in connection with the researching, developing engineering, testing, manufacturing, or selling of bromides and brominated CBFs. Unless Dow shall give its prior consent, the assignability of any such assignable rights described in this section II.M. may be limited to an assignment to any person who is a successor to the purchaser's entire rights to the Magnolia calcium bromide plant. As to any nonassignable rights described in this section II.M., Dow shall grant licenses to such rights, on the same terms and conditions as the licenses conveying such rights to the purchaser, to any person who is a successor to the purchaser's entire rights to the Magnolia calcium bromide plant.

N. "Person" means any natural person, corporation, association, firm, partnership, or other business or legal entity.

O. "Purchaser" means a person obtaining ownership of assets pursuant to this Final Judgment and any successor to, or assignee or, all or substantially all of the assets obtained by the purchaser pursuant to this Final Judgment.

P. "Qualified purchaser" means a prospective purchaser for whom it is demonstrated to plaintiff's satisfaction that:

(1) The purchase is for the purpose of competing effectively in the production and sale of bromides;

(2) The prospective purchaser has the managerial, operational, and financial capability to compete effectively in the manufacture and sale of bromides; and

(3) the prospective purchaser can reasonably be anticipated to operate the CBF business in a responsible and lawful manner.

III

A. The provisions of this final Judgment shall apply to defendants, each of their successors and assigns, and all other persons in active concert or participation with any of them who receive actual notice of this Final Judgment by personal service or otherwise.

B. Except for section IV.E., with respect to prospective purchasers, and sections II.M., VIII., IX., X., XI., and XIII., with respect to the purchaser, nothing herein contained shall suggest that any portion of this Final Judgment is or has

been created for the benefit of any third party, and nothing herein shall be construed to provide any rights to any third party.

C. Each defendant shall require, as a condition of the sale of all or substantially all its assets or stock, that the acquiring party agree to be bound by the provisions of this Final Judgment.

IV

A. Dow is hereby ordered and directed to divest to a qualified purchaser, if any, all of its direct and indirect ownership and control of the CBF business.

B. Dow may divest less than all of the CBF business but only with the written approval of the plaintiff. In the event that the plaintiff approves a sale to a purchaser pursuant to this section IV.B., such sale shall fully discharge Dow's obligation to divest the CBF business under section IV.A.

C. The divestiture shall be made to the qualified purchaser that offers the highest price for the CBF business. The divestiture shall not be made to Ethyl or to Great Lakes Chemical Corporation or to any division, subsidiary or affiliate (including Arkansas Chemicals, Inc.) of Great Lakes Chemical Corporation and shall not be made, without plantiff's permission, to any other producer of bromides.

D. Until the divestiture contemplated by section IV.A. is completed, Dow:

(1) May, at its option, operate all or part of the CBF business as a going business;

(2) Shall take all steps necessary to assure that the CBF business is fully maintained in operable condition at the current capacity configuration;

(3) Shall take all steps necessary to assure that none of its proprietary technology and other proprietary business information specific to the CBF business is transferred, or otherwise becomes known or available, to Ethyl or any other person, except as provided in this Final Judgment;

(4) Shall take no steps, other than ceasing operations, with respect to the CBF business that in any way would negatively affect the purchaser's ability to operate the CBF business, regardless of any actual or possible negative impact on Ethyl's or Dow's profits;

(5) Shall maintain and adhere to normal repair and maintenance schedules for the CBF business and at least preserve and adhere to such schedules as they existed on December 1, 1986;

(6) Shall refrain from altering or selling any assets of the CBF business, other than in the ordinary course of business

(7) Shall refrain from taking any action that would jeopardize the sale of the CBF business as a viable competitor in any market in which it participated in 1986;

(8) Shall not terminate or reduce one or more current employment, salary, or benefit agreements for any CBF-related employees without prior approval of plaintiff.

E. Subject to the provisions set out in section IV.F., DOW shall:

(1) Furnish to all bona fide prospective purchasers who so request all pertinent information regarding the CBF business and the advice, assistance and services defendants shall provide pursuant to sections VIII. and IX.D.;

(2) Provide such information to the plaintiff at the time it furnishes such information to any other person;

(3) Permit all bona fide prospective purchasers to have access to Dow personnel who have had responsibilities for any part of Dow's CBF business, and to make such inspection of the physical assets of the CBF business, and any and all financial and operation records, documents, and information as may be relevant to a divestiture under section IV.A

F. Dow may refuse to furnish or grant any prospective purchaser access to the assets of the CBF business or to any confidential or proprietary information relating to the CBF business, unless such person shall have executed an appropriate confidentiality agreement that shall prohibit such person from disclosing or using (except for purposes of evaluating the acquisition of the assets to be divested pursuant to the terms of this Final Judgment, or unless such person purchases the assets to be divested pursuant to the terms of this Final Judgment) any confidential information of Dow for a period of ten (10) years from the date of the confidentiality agreement.

V

A. Oppenheimer & Co., Inc. shall act as a trustee with full power and authority to carry out the divestiture ordered in section IV.A. at such price and on such terms as are then obtainable upon a reasonable effort by the trustee, subject to the provisions of section VI., and shall have such other powers as the Court deems appropriate. Only the trustee, and not defendants, shall have the right to effect divestiture under section IV.A., but defendants shall use all reasonable efforts to assist the trustee in accomplishing a divestitute. Except as permitted in the next sentence, Ethyl and Dow may not object to a proposed divestiture pursuant to this Final Judgment, but Ethyl and Dow may provide plaintiff with any views or information (in addition to information that the plaintiff may request pursuant to section VI.) that may be pertinent to plaintiff's evaluation of a proposed divestiture. Dow shall not object to a sale by the trustee on any grounds other than malfeasance. Any such objection by Dow must be conveyed in writing to the plaintiff and the trustee within fifteen (15) days after the trustee has notified Dow of the proposed sale.

B. The trustee shall commence efforts to find a bona fide prospective purchaser and to effect a divestiture immediately after the date of the filing of the Complaint in this civil action. The trustee shall at all times use its best efforts to effect divestiture of the CBF business. Each defendant shall promptly notify the trustee of any contact it has had with any person that has made an offer or expressed an interest or desire to acquire the CBF business together with full details of the same.

C. The trustee shall serve at the cost and expense of Dow and shall account of all monies derived from a sale of the CBF business and all costs and expenses so incurred. After approval by the Court of the trustee's accounting, including fees for its services, all remaining monies shall be paid to Dow and the trust shall be terminated. The compensation of the trustee shall be based on a fee arrangement providing the trustee with an incentive based on the price and terms of the divestiture and the speed with which it is accomplished.

D. The trustee shall have full and complete access to the personnel, books, records, and facilities of the defendants related to the CBF business, and Dow shall develop such financial or other information relevent to the CBF business as the trustee may request. Defendants shall take no action to interfere with or impede the trustee's efforts to accomplish a divestiture.

E. In an effort to accomplish a divestiture, the trustee shall make known in the United States and elseqhere, by usual and customary means, the availability of the CBF business for sale. The trustee shall notify any person making an inquiry regarding the possible purchase of the CBF business that the sale is being made pursuant to this Final Judgment and provide such person with a copy of this Final Judgment. The trustee, with defendants' cooperation, also shall furnish to all bona fide prospective purchasers who so request, and subject to confidentiality assurances of the type specified in section IV.F., all pertinent

information and inspections regarding the CBF business. At the time it furnishes such information to any person, the trustee shall notify plaintiff of the name, address, and telephone number of the person to whom the information was provided.

F. Thirty (30) days from the date of the filing of the Complaint in this civil action and every thirty (30) days thereafter until a divestiture has been completed, the trustee shall submit a confidential report to the parties and the Court setting forth the trustee's efforts to accomplish a divestiture. If the trustee has not accomplished such divestiture within one hundred and eighty (180) days after the date of the filing of the Complaint in this civil action, the trustee shall thereupon promptly file with the Court a report setting forth: (1) The trustee's effort to accomplish a divestiture, (2) the reasons, in the trustee's judgment, why a divestiture has not been accomplished, and (3) the trustee's recommendations. The trustee shall at the same time furnish such report to the parties, which shall each have the right to be heard and to make additional recommendations consistent with this Final Judgment. The Court shall thereafter enter such orders as it shall deem appropriate, which shall include extending the term of the trustee's appointment if the trustee is in active negotiations with a prospective purchaser or if the Court finds that either or both of the defendants have failed to comply with their obligations under this Final Judgment, or, in the alternative, shall include an order: (1) Deeming this Final Judgment to have been fully complied with by the efforts made by the trustee through such date, (2) vacating at the time of the order sections IV., V., VII., VIII., IX. and XI. of this Final Judgment, and (3) vacating the remainder of this Final Judgment two (2) years after the date of the order.

VI

At least thirty (30) days prior to the scheduled closing date of the proposed divestiture pursuant to section IV.A., the trustee shall notify the plaintiff and defendands of the proposed divestiture. The notice shall set forth the details of the proposed transaction and, for each person not previously identified who offered or expressed an interest or desire to acquire any ownership interest in the CBF business, the name, address, and telephone number of that person together with full details of that person's interest or desire to acquire such ownership interest. Within fifteen (15) days after receipt of notice of the proposed divestiture, the plaintiff may request from defendants and the proposed purchaser additional information concerning the proposed divestiture. Each defendant and the proposed purchaser shall furnish the additional information requested from it within twenty (20) days of the receipt of the request, unless plaintiff shall agree to extend the time. Until plaintiff certifies in writing that it is satisfied that the proposed purchaser has provided the additional information requested from it, the divestiture shall not be consummated. Within thirty (30) days after receipt of the notice or within fifteen (15) days after receipt of the additional information from defendants and the proposed purchaser, whichever is later, unless defendants shall agree to extend the time, plaintiff shall notify in writing defendants and the trustee if it objects or does not object to the proposed divestiture. If plaintiff does not object, the divestiture may be consummated, subject only to Dow's right to object to the sale under the provision in section V.A. Upon objection by the plaintiff, the proposed divestiture shall not be consummated unless approved by the Court. Upon objection by Dow under section V.A., the proposed divestiture shall not be consummated unless approved by the Court. The one hundred and eighty (180) day time period set forth in section V.F. shall be tolled from the time either the plaintiff or Dow files with the Court such an objection to the proposed divestiture, until the conclusion of any Court proceeding relating to such objection. In any such proceeding involving any objection by Dow, Dow shall have the burden of proof.

VII

Neither defendant shall finance without the plaintiff's permission all or any part of the purchase of the CBF business pursuant to the divestiture.

VIII

A. Not later than thirty (30) days after the closing date of the divestiture, Dow shall take, at its own expense, all steps, listed in Schedule 5 of this Final Judgment, that it has identified as of March 25, 1987, as actions to improve the operating efficiency of the Magnolia calcium bromide plant at the current capacity and product quality configuration.

B. Upon the request of the purchaser, Dow shall use its best efforts to provide in an expedient manner, at any time within a period not to exceed four (4) years from the closing date of the divestiture, such advice and engineering, management and contracting services as the purchaser may seek or specify in an effort to enhance the operation capabilities (including capacity, efficiency and product quality) of the Magnolia calcium bromide plant.

C. Upon the request of the purchaser, defendants shall use their best efforts to provide in an expedient manner, at any time within a period not to exceed four (4) years from the closing date of the divestiture, such advice and engineering, management and contracting services of defendant's personnel specifically excluding the provision of equipment, machinery, construction materials, supplies and other tangible property), as the purchaser may seek or specify in connection with the operation of the CBF business, with respect to any or all of the following:

(1) Drilling production and reinjection brine wells;

(2) Constructing pipelines for transporting brine, natural gas and waste materials;

(3) Advising the purchaser in negotiating for and obtaining certain property rights, including such rights-of-way or easements as may be reasonably necessary for the construction and maintenance of wells and pipelines;

(4) Constructing facilities for the treatment, storage and disposal of waste;

(5) Constructing facilities necessary for the pretreatment of brine, including but not limited to wellhead equipment for separating brine from hydrogen sulfide, natural gas or other minerals, a stripping facility, a sodium hydrosulfide facility (or "NaSH unit"), an amine facility (or "sweetener"), and pipes for carrying materials to and from the pretreatment facilities.

D. Upon request of the purchaser, defendants shall use their best efforts to make available, at a reasonable time and place and for a period not to exceed four (4) years from the closing date of the divestiture, those CBF employees and other qualified technical personnel employed by the defendants to assist the purchaser it its efforts to operate and maximize the profitability of the CBF business.

E. If the purchaser elects to relocate the Magnolia calcium bromide plant to some other location, upon request of the purchaser made within three (3) years from the closing date of the divestiture, defendants shall use their best efforts to make available, at a reasonable time and place and until two hundred (200) days following the request, qualified technical personnel to advise the purchaser on transferring and reassembling the production equipment. In the event that the purchaser chooses to transfer the Magnolia calcium bromide plant to some other location

pursuant to this section VIII.E., and at the request of the purchaser, the time periods provided for in sections VIII.B., VIII.C., VIII.D., VIII.G. and IX.D. shall be tolled from the time the purchaser requests assistance in relocating the facility until such time as the relocated facility is operable, but the tolling shall not exceed one (1) year.

F. The purchaser, at its option, may request advice, assistance or services under sections VIII.C., VIII.D. and VIII.E from either or both defendants, and the purchaser in all cases may enforce the obligations created by sections VIII.C., VIII.D., and VIII.E. against either or both defendants, jointly or individually, except that neither defendant may be required to engage the services of third parties, hire employees, or develop or acquire new capabilities to provide any such requested advice, assistance or services.

G. If, purusant to the divestiture, the purchaser acquires any assets of the CBF business that are located in or near Midland, Michigan, Dow shall use its best efforts, for a period not to exceed one (1) year from the closing date of the divestiture, to assist the purchaser in removing such assets from Midland to a location to be designated by the purchaser.

H. The purchaser may request advice, assistance or services pursuant to sections VIII.B., VIII.C., VIII.D., VIII.E. and VIII.G. by providing notice to the defendant from which advice, assistance or services are requested at least twenty (20) days before the defendant must begin providing the requested advice, assistance or services. In the event of an emergency relating to the Magnolia calcium bromide plant, the defendants shall use their best efforts to provide the requested advice, assistance or services as soon as possible. The total number of man-hours of advice, assistance and services that the defendants may be required to provide under sections VIII.B., and VIII.C., and VIII.D. to any purchaser other than Dead Sea shall not exceed seventeen thousand (17,000) hours. If the purchaser is Dead Sea, the total number of man-hours of advice, assistance and services that the defendants may be required to provide under section VIII. shall not exceed five thousand (5,000) hours. The advice, assistance and services made available to the purchaser pursuant to sections VIII.B., VIII.C., VIII.D., VIII.E. and VIII.G. shall be subject to the following limitations:

(1) The first two hundred (200) man-hours of such advice, assistance and services shall be provided at no cost to the purchaser;

(2) The remainder of such advice, assistance and services shall be provided at cost, determined in accordance with generally accepted accounting principles;

(3) If the purchaser is Dead Sea, any such advice, assistance and service, including the first two hundred (200) man-hours, shall be provided at fair market value;

(4) With respect to CBF employees, the total number of man-hours of advice, assistance and services that the defendants may be required to provide shall not exceed fifteen thousand (15,000) hours;

(5) With respect of CBF employees, six (6) months from the date that any requested advice, assistance or services are first provided to the purchaser, the defendants shall not thereafter be required to provide the advice, assistance or services of more than three (3) CBF employees at any one time;

(6) With respect to persons other than CBF employees, the total number of man-hours of advice, assistance and services that each defendant may be required to provide shall not exceed two thousand five hundred (2,500) hours;

(7) Other than CBF employees, no individual employee of either defendant shall be required to provide advice, assistance or services for more than one-third (1/3) of the individual's normal working hours in any three (3) month period;

(8) All such advice, assistance and services shall be provided with the good faith belief that it is sound, reliable and representative of current technology known to the defendant providing such advice, assistance or services; however, such advice, assistance and services shall be provided without warranty of any kind, express or implied;

(9) Any controversy concerning the cost (or with respect to Dead Sea, the fair market value) or the number of man-hours of such advice, assistance or services shall be settled by arbitration.

I. For each CBF-related employee:

(1) No later than twenty (20) days before the closing date of the divestiture, Dow shall identify the employee to the purchaser and shall provide the purchaser, on a confidential basis and as permitted by law, with information disclosing the employee's job description (if any), salary or wages and other benefits, and any other information that the employee may authorize to be disclosed;

(2) Upon the request of the purchaser at any time within a period not to exceed ninety (90) days from the closing date of the divestiture, Dow shall provide the purchaser with an opportunity, during regular office hours, to meet in private with the employee for the purpose of discussing the purchaser's potential hiring of the employee, and Dow shall encourage the employee to participate in any such meeting with the purchaser.

J. As soon as practicable and in accordance with applicable law, but no later than one and one-half (1½) years after the closing date of the divestiture, if the purchaser maintains, or within one (1) year after such closing has adopted, a defined benefit plan that is qualified under section 401(a) of the Internal Revenue Code of 1986 ("the Purchaser's plan"), Ethyl shall cause a transfer of assets from the Retirement Income Plan for the Employees of Ethyl Corporation and the Ethyl Corporation Retirement Income Plan for the Hourly Employees at Magnolia, Arkansas ("the Ethyl plans") to the Purchaser's plan. The amount to be transferred shall equal the portion of the Transferred Amount (as defined in the Asset purchase agreement) applicable to those CBF employees who terminate their employment with Ethyl in order to accept employment with the purchaser within ninety (90) days of the closing date of the divestiture. No assets shall be transferred, however, unless the Purchaser's plan recognizes employee service with Dow prior to the closing date of the divestiture for all purposes. If the closing date of the divestiture occurs before the transfer of assets to the Ethyl plans from the Dow Chemical Company Employees' Retirement Plan ("the Dow plan"), then in lieu of a transfer to the Purchaser's plan from the Ethyl plans, Dow shall cause the transfer to the Purchaser's plan of assets contemplated by this section VIII.J. The defendants, the Dow plan and the Ethyl plans shall have no further obligations with respect to the CBF employees' pension or other employee benefits following a transfer of assets from the Ethyl plans or the Dow plan to the Purchaser's plan in accordance with this section VIII.J.

K. Ethyl shall only be required to disclose to the purchaser proprietary technology or other proprietary business information pursuant to this section VIII. if such technology or information relates to the assets included in the CBF business or if such disclosure is necessary for Ethyl to fulfill its obligations under section VIII.C., but nothing herein shall be construed to require Ethyl to disclose proprietary technology or other proprietary business information of persons other than Ethyl (except Dow) if Ethyl is contractually

bound not to disclose such technology or information.

IX

A. Ethyl is hereby enjoined from:

(1) Acquiring any direct or indirect ownership or control of all or any part of the CBF business without prior approval of the plaintiff;

(2) Taking any action that would restrict the purchaser's reasonable access to all or any part of the CBF business or any disposal facilities used in connection with the operation of the CBF business;

(3) Taking any action for the purpose of preventing the purchaser from constructing pipelines for use in connection with the operation of the CBF business along the most direct and reasonable routes.

B. For each CBF employee and CBF-related employee that Ethyl may hire:

(1) Ethyl shall use its best efforts to make the employee available to Dow, under such terms and conditions as Ethyl and Dow may agree among themselves or, in the absence of such an agreement, as the Court may prescribe, for such time and at such place as may be reasonably necessary for Dow to fulfill its obligations under sections VIII.A. and VIII.B.;

(2) Except for CBF-related employees, prior to the closing date of the divestiture, Ethyl shall not, without prior approval of the plaintiff, relocate, offer to relocate, or suggest the possibility of relocating the employee to any location other than Magnolia, Arkansas;

(3) No later than twenty (20) days before the closing date of the divestiture, Ethyl shall identify the employee to the purchaser and shall provide the purchaser, on a confidential basis and as permitted by law, with information disclosing the employee's job description (if any), salary or wages and other benefits, and any other information that the employee may authorize to be disclosed;

(4) Upon the request of the purchaser at any time within a period not to exceed ninety (90) days from the closing date of the divestiture, Ethyl shall provide the purchaser with an opportunity, during regular office hours, to meet in private with the employees for the purpose of discussing the purchaser's potential hiring of the employee, and Ethyl shall encourage the employee to participate in any such meeting with the purchaser.

C. Ethyl shall take all steps necessary to assure that:

(1) It does not receive, except as a result of arm's length bargaining with the purchaser conducted after the divestiture has been accomplished, any proprietary technology or other proprietary business information specific to the CBF business, other than the technology and other information that Ethyl may already have received prior to February 13, 1987;

(2) No proprietary technology and other business information specific to the CBF business that Ethyl may have received prior to February 13, 1987, is further disseminated within Ethyl or used to compete with the purchaser of the CBF business.

(D) Upon the request of any purchaser other than Dead Sea, Ethyl shall enter into a supply agreement with the purchaser. The terms of the supply agreement shall be subject to the plaintiff's approval, and shall include the following provisions:

(1) A provision obligating Ethyl, for a period not to exceed three and one-half (3½) years from the closing date of the divestiture, to provide, at the location of the Magnolia calcium bromide plant as of April 14, 1987, from the developed and undeveloped portions of the brine field held by Dow as of the date of consummation of the Asset purchase agreement, all of the purchaser's requirements of pretreated brine ready for use in the purchaser's production of bromides, except that, in any calendar year or portion thereof, Ethyl need not provide more pretreated brine than the purchaser would require if it were to operate the Magnolia calcium plant at approximately sixty (60) percent of the original design capacity;

(2) A provision obligating Ethyl to convey to the purchaser the disposal property for the consideration of $10.00, with the provision that, within ninety (90) days after either the termination of the supply agreement or the purchaser's permanent abandonment of the disposal property for use in the disposal of spent brine, whichever is the first to occur, the purchaser shall convey and Ethyl shall purchase the disposal property, together with such improvements as pipelines, but specifically excluding holding ponds or any improvements located on the real property listed in Schedule 6 to this Final Judgment that the purchaser may elect to convey, or equivalent terms and conditions as the property was conveyed to the purchaser and for the consideration of $10.00 plus the lesser of (a) the cost of such improvements to the purchser less depreciation or (b) the reasonable replacement cost of improvements of like utility less depreciation (both as determined in accordance with generally accepted accounting principles) of any improvements that the purchaser elects to convey to Ethyl, except that Ethyl shall not be required to purchase any property or improvements that are at the time of the proposed conveyance contaminated as determined in accordance with, or not operable in conformance with, all applicable federal and state environmental law;

(3) A provision obligating Ethyl, for a period not to exceed nine (9) months from the closing date of the divestiture, to provide all of the purchaser's requirements of calcium bromide, sodium bromide and zinc bromide for reesale (and not for storage or inventory accumulation) by the purchaser;

(4) A provision that the supply by Ethyl of pretreated brine and bromides pursuant to sections IX.D.(1) and IX.D.(3) shall be at cost, as determined in accordance with generaly accepted accounting principles, such cost to be invoiced monthly by Ethyl, upon terms of payment of net ten (10) days, with interest charged against delinquent amounts at five (5) percent per annum above the Federal Reserve Discount Rate at the time of the delinquency;

(5) A provision stating that in the event of a breach by either party of any of its obligations under the supply agreement, in addition to actual damages, the damaged party shall be entitled to any other appropriate relief, such as the right of specific performance;

(6) A provision stating that any controversy between Ethyl and the purchaser relating to the performance of Ethyl's or the purchaser's obligations under the supply agreement shall be settled by arbitration.

X

A. The purchaser of the CBF business must consent to be bound by the provisions of this Final Judgment.

B. If the purchaser acquires the disposal property, the purchaser shall make a reasonable effort to enter into an agreement with Ethyl providing for the use of the disposal property (including any improvements thereto) in coordination with the operation of the developed and undeveloped portions of the brine field held by Dow as of the date of consummation of the Asset purchase agreement, except that the purchaser shall not agree to use the disposal property in a manner that: (1) Conflicts with federal or state environmental law; (2) would be more costly than the purchaser's minimum cost of compliance with all federal or state laws if the property were used in the absence of an agreement; or (3) would otherwise impose any limits on the purchaser's production of bromides.

C. In the event of a divestiture, Ethyl and the purchaser each shall exercise

reasonable efforts in the operation of its respective business in and around the Magnolia, Arkansas area to minimize disruption to the physical operation of the other's business in and around such area, provided, however, that this section X.C. shall not be construed to impose any obligations or to immunize any conduct that might in any way reduce competition between Ethyl and the purchaser or tend to frustrate accomplishment of any other purposes of this Final Judgment.

D. Ethyl and the purchaser of the CBF business must consent to the inclusion of mutually enforceable covenants running with the real property listed in Schedule 6 to this Final Judgment, such covenants to be enforceable by Ethyl (which for purposes of the covenants shall include any successor to, or assignee of, all or substantially all of the Magnolia, Arkansas, assets conveyed to Ethyl under the the Asset purchase agreement) or by the purchaser, to the effect that:

(1) If the purchaser proposes to convey such property to a bona fide purchaser who does not intend to use the property in connection with the researching, developing, engineering, testing, manufacturing or selling of bromides, the purchaser shall give Ethyl the right to acquire the property by meeting or exceeding the provisions of the offer that the purchaser proposes to accept;

(2) If the purchaser moves the Magnolia calcium bromide plant from its location at the date of consummation of the Asset purchase agreement to another location and does not intend to use the real property listed in Schedule 6 in connection with operations of a chemical manufacturing facility in the Magnolia, Arkansas, area, and if Ethyl conducts at the time of the move any operations on the Magnolia, Arkansas, real property conveyed to Ethyl under the Asset purchase agreement, the purchaser shall sell to Ethyl and Ethyl shall purchase from the purchaser the real property listed in Schedule 6, together with any remaining improvements thereon that have related to the operation of a chemical manufacturing facility, at the fair market value of such property based upon the average of three (3) appraisals of which one appraisal each shall be obtained by Ethyl and the purchaser, and the third provided by an appraiser mutually acceptable to the first two appraisers; provided, however, that Ethyl shall not be required to purchase such property if at the time of the proposed conveyance to Ethyl the property is contaminated as determined in accordance with, or not operable in conformance with, all applicable federal and state environmental law.

XI

A. At the time of the divestiture, the defendants shall enter into a reasonable arbitration agreement with the purchaser concerning controversies to be settled by arbitration pursuant to this Final Judgment. The agreement shall provide that:

(1) Any arbitration shall be governed by the Federal Arbitration Act, 9 U.S.C. 1, *et seq.*;

(2) Any controversy to be settled by arbitration shall be submitted to the American Arbitration Association;

(3) Any such controvery shall be settled by arbitration in accordance with the Commercial Arbitration Rules of the American Arbitration Association, and the Expedited Procedures of the Commercial Arbitration Rules shall be followed at least with respect to the requirements for notice, appointment of the arbitrator, and the time period (after the conclusion of any hearings) in which the arbitrator must make an award;

(4) Any award made pursuant to any arbitration shall be final and binding on the parties to the arbitration.

B. When any controversy is submitted to arbitration, Dow or Ethyl, whichever is a party to the arbitration, shall promptly notify plaintiff in writing of the controversy being arbitrated and shall promptly serve a copy of the final award on plaintiff.

XII

For the purpose of determining or securing compliance with this Final Judgment, and subject to any legally recognized privilege, from time to time:

A. Duly authorized representative of the Department of Justice shall, upon written request of the Attorney General or of the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to any defendent or to the purchaser made to its principal office, be permitted:

(1) Access during the office hours of such defendant or purchaser to inspect and copy all books, ledgers, accounts, correspondence, memoranda, and other records and documents in the possession or under the control of such defendant or purchaser, who may have counsel present, relating to any matters contained in this Final Judgment; and

(2) Subject to the reasonable convenience of such defendant or purchaser and without restraint or interference from it, to interview officers, employees and agents of such defendant or purchaser, who may have counsel present, regarding any such matters.

B. Upon the written request of the Attorney General or of the Assistant Attorney General in charge of the Antitrust Division made to any defendant or to the purchaser's principal office, such defendant or purchaser shall submit such written reports, under oath if requested, with respect to any of the matters contained in this Final Judgment as may be requested.

C. No information or documents obtained by the means provided in this section XII. shall be divulged by any representative of the Department of Justice to any person other than a duly authorized representative of the Executive Branch of the United States, except in the course of legal proceedings to which the United States is a party, or for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

D. If at the time information or documents are furnished by a defendant or purchaser to plaintiff, such defendant or purchaser represents and identifies in writing the material in any such information or documents to which a claim of protection may be asserted under Rule 26(c)(7) of the Federal Rules of Civil Procedure, and said defendant or purchaser marks each pertinent page of such material, "Subject to claim of protection under Rule 26(c)(7) of the Federal Rules of Civil Procedure," then ten (10) days notice shall be given by plaintiff to such defendant or purchaser prior to divulging such material in any legal proceeding (other than a grand jury proceeding).

XIII

Jurisdiction is retained by this Court for the purpose of enabling any of the parties to this Final Judgment to apply to this Court at any time for such further orders or directions as may be necessarry or apropriate for the construction or carrying out of this Final Judgment, for the modification of any of the provisions hereof, for the enforcement of compliance herewith, and for the punishment of any violation hereof.

XIV

This Final Judgment will expire on the tenth anniversary of its date of entry.

XV

Entry of this Final Judgment is in the public interest.

United States District Judge.

Dated: _____

Schedule 1.—Description of Crone Option

Description					Surface acres owned by—	
Tracts and subsection	Section	Township (South)	Range (West)	CO	Sarai Crone	S.T. Crone, Ltd.
1. NW.NE less 8.867 A in E½	6	17	22	COL		[1] 31.133
2. SW.NE	6	17	22	COL		40
3. W½.SE	6	17	22	COL		80
4. N¾ NE.SE less 5.349 A NE cor	6	17	22	COL		[1] 24.651
5. NE.SW	6	17	22	COL		40
6. S½.SW	6	17	22	COL		80
7. NE¼	7	17	22	COL		160
8. S½.SE	7	17	22	COL	80	
9. SE.SW	7	17	22	COL	40	
10. W½.SW	7	17	22	COL	80	
11. NE.NW	7	17	22	COL		40
12. W.½.NW	7	17	22	COL	80	
13. W½.NW	8	17	22	COL	80	
14. NE.NW less 18.417 A NE cor	8	17	22	COL	[1] 21.583	
15. SE.NW	8	17	22	COL	40	
16. NW.NW	17	17	22	COL	40	
17. N½.NE	18	17	22	COL	80	
18. SW.NE	18	17	22	COL	40	
19. E½.SW	18	17	22	COL		80
20. NE.NW	18	17	22	COL	40	
21. SE.NW	18	17	22	COL	40	
22. W½.NW	18	17	22	COL	80	
23. E½.NE	12	17	23	COL	80	
24. SW.NE	12	17	23	LAF	40	
25. NW.NE	12	17	23	LAF	40	
26. SE.SE	12	17	23	COL	40	
27. SW.SE	12	17	23	LAF	40	
28. NE.NE	12	17	23	COL	40	
29. W½.NE	13	17	23	LAF	80	
30. NE.SE	13	17	23	COL	40	
31. SE.SE	13	17	23	COL	40	
32. W½.SE	13	17	23	LAF	80	
33. NE.SW	13	17	23	LAF	40	
34. SE.SW	13	17	23	LAF	40	
35. NE.NW	24	17	23	COL	40	
36. 5 A NE corner SW.NE	24	17	23	COL		5
37. E.½.SE	20	17	22	COL		80
Subtotal of Acreage, more or less					1,381.583	660.784
38 Owned by Magnolia Municipal Water System [1]					18.417	14.216
Total acreage, more or less					1,400.000	675.000

[1] Means balance of 40 surface acres owned by Magnolia Municipal Water System.
COL means located in Columbia County, Arkansas.
LAF Means located in Lafayette County, Arkansas.

Persons Who Own the Crone Option

1. S. T. Crone, Ltd., c/o John T. Crone, 351 Terrell Road, San Antonio, Texas 78209
2. Cronest, Ltd., c/o Woodward, Kinard and Epley, 118 E. Calhoun Street, Magnolia, Arkansas 71753
3. Cynthia and Steve Brown, 366 Jefferson Street, Natchitoches, Louisiana 71457
4. Jose Amaya, Attorney-in-Fact for Sylvia T. Amaya and Mario Amaya, c/o Cynthia Brown, 366 Jefferson Street, Natchitoches, Louisiana 71457
5. Roberta Q. Evans, 1 Melborn Place, Vicksburg, Mississippi 39180
6. Rosemary Sorrels Cole and William S. Cole, 1961 Bayou Drive, Shreveport, Louisiana 71102
7. Samuel S. Sorrels and Margie Day Sorrels, c/o Rosemary S. Cole, 1961 Bayou Drive, Shreveport, Louisiana 71102
8. Tom Sorrels/Laverna Sorrels, c/o Rosemary S. Cole, 1961 Bayou Drive , Shreveport, Louisiana 71102

Schedule 2.—CBF Employees

Employee Name and Position

R.W. Menzel, Jr., Superintendent
M.D. Aldridge, Operations Superviser
M.J. Shemas, Sr. Process Engineer
J.G. Taylor, Engineer
J.L. Ford, Gen. Maintenance Technician
J.W. Moore, Gen. Maintenance Technician
J.E. Souter, General Technician
J.L. Goddard, General Technician
S. Yates, General Technician
D.M. Colten, Unit Technician
W.L. Grant, Unit Technician
M.L. Henry, Unit Technician
C.L. Jones, Unit Technician
T.D. Wooley, Unit Technician
P.S. Hughes, Production Clerk

Schedule 3.—CBF-Related Employees

Name and Position

Richard Aiken, Midland Calcium Bromide Plant Supt.

E.H. Beadle, Reservoir Engineer
John Belleau, Industry Sales Manager
Paul Cicio, Marketing Manager
Roger Daniels, Commercial Director
D.W. Evans, Mod V
Marilyn Hanover, Midland Zinc Bromide and Sodium Bromide Plant Supt.
John Kalvins, Development Chemist
John Krokosky, Development Chemist
Nancy Lindley, Product Marketing Manager
J.F. Lynn, Project Manager
Ed Newlin, Sr. Sales Specialist
Chuck Peil, Technical Service and Development
T.C. Perilloux, Magnolia Site Manager
Paul I. Reis, Project Manager
Jim Snyder, District Sales Manager
Gordon Thompson, Sales Specialist
J.C. Walling, Project Manager

Schedule 4.—Disposal Property

1. The cased hole equipped for brine infection known as the Parham No. 1 Well, located in the NE ¼ NW ¼, Section 17, Township 17 South, Range 21 West, Columbia County, Arkansas.
2. The cased hole equipped for brine injection known as the Whitehead No. 1 Well, located in the SW ¼ SE ¼, Section 8, Township 17 South, Range 21 West, Columbia County, Arkansas.
3. The cased hole equipped for brine injection known as the Dow Fee No. 1 Well, located in the SW ¼ NE ¼, Seciton 18, Township 17 South, Range 21 West, Columbia County, Arkansas.

Schedule 5.— Steps to be Taken by Dow to Improve the Operating Efficiency of the Magnolia Calcium Bromide Plant at Its Current Capacity and Product Quality Configuration

1. Repack the bottom section with one-inch packing.
2. Redesign the air inlet sparger for better distribution.
3. Connect additional chlorine entry point in the mid-section at the bottom packing.

Schedule 6.—Real Property Referenced in Sections IX and X of Final Judgment*

Area C

Pt. of the SW¼NE¼ of section 18, Township 17S; Range 21W, Columbia County, Arkansas

Described as: Commencing at the Northeast corner of said section 18, run S–0°41'W—1715.58'; thence run N–89°23'W—1420.32' to the point of beginning; thence run S–0°37'W—393.08'; thence run N–89°23'W—296.48'; thence run N–0°37'E—393.07'; thence run S–89°23'E—296.49' to the point of beginning, containing *2.68* AC.

Area D

Pt. of the NW¼SE¼ and SW¼NE¼ of Section 18, Township 17S; Range 21W, Columbia County, Arkansas

Described as: Commencing at the Northwest corner of the NW¼SE¼ of said Section 18, run N–89°53'E—583.88' to the point of beginning; thence run S–70°49'E—175.00'; thence run S–19°11'W—550.00'; thence run N–70°49'W—175.00'; thence run N–19°11'E—550.00'; to the point of beginning, containing *2.21* AC.

*Surveys for the real property described in Area C and Area D were performed on March 12, 1987, by Crisp Surveying Service, P.O. Box 812, Magnolia, Arkansas 71753.

United States District Court, Northern District of Illinois, Eastern Division

United States of America, Plaintiff, v. *The Dow Chemical Company and Ethyl Corporation*, Defendants.

[Civil Action No. ——]

Filed: ——

Competitive Impact Statement

Pursuant to section 2(b) of the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b)–(h), the United States of America files this Competitive Impact Statement relating to the proposed Final Judgment submitted for entry with the consent of the defendants in this civil antitrust proceeding.

I

Nature and Purpose of the Proceedings

On May ——, 1987, the United States filed a civil antitrust complaint under section 15 of the Clayton Act, U.S.C. 25, challenging the acquisition of the bromine and brominated products business of The Dow Chemical Company ("Dow") by Ethyl Corporation ("Ethyl") as a violation of section 7 of the Clayton Act, 15 U.S.C. 18. The complaint alleges that the effect of the acquisition may be substantially to lessen competition in the United States market for the production and sale of bromides, such as calcium bromide, sodium bromide, and zinc bromide. Bromides are blended with other substances to produce clear brine fluids ("CBFs"), which are used as weighting fluids during completions and workover operations on oil and gas wells. The complaint requests that Dow and Ethyl be enjoined from carrying out any agreement or plan, the effect of which would be to combine or otherwise reduce the competitive viability of the bromide business of Dow or Ethyl.

The United States and defendants have stipulated that the proposed Final Judgment may be entered after compliance with the Antitrust Procedures and Penalties Act, unless the United States withdraws its consent. Entry of the proposed Final Judgment will terminate the action, except that the Court will retain jurisdiction to construe, modify, or enforce the provisions of the proposed Judgment and to punish violations of the proposed Judgment.

II

Events Giving Rise to the Alleged Violation

1. Introduction

On September 11, 1986, Ethyl agreed to acquire Dow's bromine and brominated products business for approximately $55 million. Pursuant to the agreement, Ethyl would acquire: (a) Substantialy all of Dow's real property and equipment used or to be used in the production of bromine, bromides, and other brominated products in Arkansas, (b) an option to take possession of much of Dow's equipment used in the production of bromides and other brominated products in or near Midland, Michigan, (c) Dow's inventories of bromine, bromides, and other brominated products, and (d) a variety of intangible assets including copyrights, patents, technology and know-how. After consummation of the agreement, Dow would no longer produce or sell bromides, and following a transition period, Dow would cease its production of bromine (except as a by-product) and other brominated products in Arkansas and Midland, Michigan.

Dow, which produces and sell chemicals, plastic materials, and a variety of pharmaceutical, agricultural, and consumer products, reported net sales of about $11.5 billion in 1985. Dow's Basic Chemicals Segment, which had about $5.2 billion in sales to unaffiliated customers in 1985, produces and sells inorganic and organic chemicals, including bromine and bromides. Ethyl is a diversified producer of performance chemicals for the petroleum industry, high technology chemicals, plastics and aluminum products, and has interests in oil, gas and coal. It reported net sales of about $1.5 billion in 1985. Its Special, Industrial and Bromine Chemicals Division, which accounted for about $500 million in net sales in 1985, produces a broad range of chemicals, including bromine and bromides.

Five companies produce virtually all of the bromine that is sold, or used in brominated products that are sold, in the

United States. These companies are Dow, Ethyl, Great Lakes Chemical Corporation ("Great Lakes") (the largest domestic bromine producer), Arkansas Chemicals, Inc. ("ACI") (an affiliate of Great Lakes that is managed and fifty-percent owned by Great Lakes), and Dead Sea Bromine Company Limited ("Dead Sea") (the only foreign firm that participates in the sale of bromine and brominated products in the United States).

Bromine has no significant use in and of itself. Rather, it is an intermediate product which must be processed into an end product, such as bromides, before it has commercial significance. Dow, Ethyl, Great Lakes and Dead Sea are vertically integrated into the production of such products and are the major producers of such products. ACI conveys the bromine it produces to Great Lakes.

2. Effect of the Proposed Acquisition in the United States Bromide Market

The complaint alleges that the production and sale of bromides comprises a relevant product market for antitrust purposes and that the effect of Ethyl's proposed acquisition may be substantially to lessen competition in the production and sale of bromides in the United States in violation of section 7 of the Clayton Act.

Both Dow and Ethyl produce bromides for use in CBFs. The CBFs serve as weighting fluids that totally or partially counterbalance an oil or gas well's down-hole pressure and thereby prevent, or reduce the potential for, a blowout. Drilling muds are also used as weighting fluids, and in most completions and workover operations, operators of oil and gas wells use drilling muds or CBFs that do not include bromides. Because CBFs that include bromides ("brominated CBFs") generally are the most expensive weighting fluids, operators use brominated CBFs only when they determine that the physical characteristics of a well's geological formation require the use of a CBF with properties that only the bromides can provide. Thus, other CBF ingredients and drilling muds do not serve as viable substitutes for bromides in CBFs for those wells.

Brominated CBFs are used as weighting fluids primarily in high pressure oil or gas producing formations that consist of highly unconsolidated sands or shale or that contain a significant amount of hydratable clays. In the United States, these formations are concentrated primarily in the coastal areas around the Gulf of Mexico, offshore in the Gulf of Mexico, and offshore near California. In these wells, the use of brominated CBFs in lieu of drilling muds in completions and workover operations helps the operator to maximize oil or gas production, minimize formation damage, reduce the necessity and frequency of subsequent workover operations on the well, and protect the capital investment in the well.

Dow and Ethyl produce bromides in solution and concentrate forms and sell them as commodity products to oilfield service companies. Oilfield service companies then blend the bromides with other CBF ingredients to form brominated CBFs having the precise densities and crystallization temperatures desired by operators for completion and workover operations on particular oil and gas wells. The service companies sell the brominated CBFs to the operators, which include major oil companies and independent oil exploration firms.

The complaint alleges that the United States bromide market is highly concentrated. Only two firms other than Dow and Ethyl, Great Lakes and Dead Sea, produce bromides for sale in the United States. Dead sea produces bromides in Israel and exports them to the United States for sale through a wholly-owned subsidiary. Dead Sea has only a very small presence in the United States market. Of about $50 million in total 1985 sales in the United States bromide market, Dow had about 24 percent, and Ethyl had about 17 percent, making them the second and third largest firms in the market, respectively. Based on 1985 sales, the combination of the two firms would increase the Herfindahl-Hirschman Index ("HHI"), a measure of market concentration, by about 816, from 3710 to about 4526. Based on projected 1986 sales in the market, of which Dow was projected to have about 30 percent, and Ethyl about 16 percent, the combination of the two firms would increase the HHI by about 960, from 3582 to about 4542.

The complaint alleges that a *de novo* entrant into the production of bromides for sale in the United States bromide market would need to invest significant amounts of time and money to become a significant competitor. In addition to constructing one or more bromide processing facilities and developing commercially acceptable products, a new entrant would incur other costs in the storage, transportation, and marketing of bromides. In order to secure a supply of bromine-bearing brines or other bromine-bearing raw materials independent of its competitors, and in order to be cost-competitive with other producers of bromides, a new entrant would also need to develop its own brine field, and possibly a bromine processing plant.

Due to currently depressed conditions in the oil and gas industry, the number of completions and workover operations has declined considerably, and the demand for brominated CBFs has been sharply reduced. Sales of bromides in the United States dropped from about $59 million in 1984 to a projected $31 million in 1986. The decline in sales of bromides has depressed the United States bromide market and created substantial excess production capacity in the market. The depressed condition of the United States bromide market and the substantial excess production capacity in the market serve as significant disincentives to *de novo* entry into the production of bromides.

The bromine industry in general also is depressed, and significant excess production capacity exists in that industry. The depressed condition of the bromine industry and the excess production capacity in that industry create additional disincentives for *de novo* entry into the United States bromide market.

Explanation of the Proposed Final Judgment

As described above, the United States brought this action because the effect of Ethyl's acquisition of Dow's bromine and brominated products business may be substantially to lessen competition in violation of section 7 of the Clayton Act in the production and sale of bromides. The United States believes that there may be other potential purchasers of Dow's bromide business that would not pose the same competitive concerns.

The 1970's and early 1980's, Dow developed a new proprietary process for producing calcium bromide, by far the largest selling bromide, directly from bromine-bearing brines. In 1986, Dow completed construction of a new calcium bromide processing plant near Magnolia, Arkansas that incorporates Dow's new process technology. A purhaser of the assets to be divested, by using Dow's new process technology, could limit its investment and the scope of its entry to the bromide market. Unlike a producer that might rely on the traditional technology for processing calcium bromide, a producer that uses Dow's new technology would not be required to construct a bromine processing plant and possibly to enter into the production and sale of brominated products other than calcium bromide.

The purposes of the proposed Final Judgement are twofold: First, the

proposed Judgment seeks to transfer Dow's new process technology, as well as its new calcium bromide plant and certain other assets, to a buyer that has the capability of participating in the market as an independent producer of bomides; second, pending the purchaser's development of a compeletly independent business operation, the proposed Judgment seeks to provide the purchaser with a temporary means of competing in the supply of calcium bromide and other bromides at a cost that is no higher than the costs Dow would have if it were to remain in the market.

As to the first purpose, section IX.A. of the proposed Judgment enjoins Ethyl from acquiring Dow's CBF business, and section IV requires Dow to divest its CBF business to a purchaser for whom it is demonstrated to the United States' satisfaction that: The purchase is for the purpose of permitting the purchaser to compete effectively in the production and sale of bromides; the purchaser has the capabilities to complete effectively in the production and sale of bromides; and the purchaser can be anticipated to operate the CBF business in a responsible and lawful manner. Included in the CBF business to be divested are rights to Dow's proprietary technology (including its new process technology) and other intangible assets that relate to Dow's CBF business; Dow's new calcium bromide plant in Magnolia, Arkansas; the other tangible assets in Midland, Michigan and elsewhere that Dow has dedicated to its CBF business; the Crone Option; and Dow's lease rights to subsurface minerals in approximately 700 acres of land adjoining the Crone Option. The Crone Option is Dow's option to purchase rights to subsurface minerals in an area in Arkansas that comprises about 2045 acres. The purchaser of Dow's CBF business could develop the Crone Option area and the 700 adjoining acres as a brine field to supply bromine-bearing brine for the calcium bromide plant. All available information shows that the brine field has sufficient reserves to supply Dow's calcium bromide plant at its current capacity for at least ten years. Moreover, the purchaser could elect to expand the brine field by leasing additional rights to subsurface minerals in an area adjoining the Crone Option area.

The divestiture will be carried out by a trustee, Oppenheimer & Co., Inc., which will start its efforts to divest the CBF business immediately after the filing of the complaint. Section V of the proposed Judment provides that only the trustee, and not Dow or Ethyl, shall have the right to effect the divestiture, but Dow and Ethyl are required to use all reasonable efforts to assist the trustee in fulfilling its responsibilities. Section V.F. provides that, if the trustee has not accomplished the divestiture within one hundred and eighty days after the complaint is filed, the Court will have the power to enter any appropriate orders, which may include extending the term of the trustee's appointment if it is in active negotiations with a purchaser or if Dow Ethyl have not complied with the Judgment, or, in the alternative, vacating Dow's obligation to divest the CBF business and terminating the injunction preventing Ethyl from acquiring it.

Section VI of the proposed Final Judgment provides the United States with an opportunity to review any proposed divestiture before it occurs. If the United States objects to a divestiture, it may not be completed unless approved by the Court.

Pending the divestiture, section IV.D. requires Dow to preserve and maintain its CBF business in operable condition. After the divestiture, the purchaser will need to construct or develop a number of supporting assets before the calcium bromide plant can be operated as a completely independent business operation. These assets include brine production wells, injection wells for disposing spent brine, brine pretreatment facilities, a holding pond for spent brine, and pipelines. Moreover, over time, the purchaser may want to take steps to improve the operating efficiency or change the capacity of the calcium bromide plant. Because the plant is new, the purchaser may perceive that certain adjustments could be made to improve its efficiency. Indeed, Dow has already identified several such adjustments, and section VIII.A. requires Dow to make those adjustments at no cost to the purchaser. Because of the currently depressed condition of the CBF industry, Dow has adjusted the plant to operate at approximately sixty percent of its original design capacity. Over time, the purchaser may want to make other adjustments to the plant's capacity.

Section VIII requires the defendants to provide the purchaser engineering, management and contracting advice and services with respect to the CBF business. The purchaser may seek advice and services both with respect to the supporting assets that it will need to construct or develop and with respect to any changes or improvements it may seek for the calcium bromide plant. The purchaser generally may seek advice and services under section VIII for a period of four years, and such advice and services generally will be available at Dow's or Ethyl's cost.

The assets that the purchaser must construct or develop to operate the CBF business as an independent operation are not technically complex or difficult to construct or develop. However, because of the currently depressed condition of the CBF industry, the purchaser may choose not to develop immediately all of the necessary assets. The second purpose of the proposed Judgment is to provide the purchaser with a temporary means of competing in the supply of calcium bromide and other bromides at a cost no higher than the cost Dow would have if it were to remain in the market.

Section IX.D. implements this purpose by requiring Ethyl to enter into a supply agreement with the purchaser. Under the supply agreement, Ethyl will be required, for three and one-half years, to supply the purchaser's requirements of pretreated brine ready for use in the production of bromides. The purchaser may require Ethyl to supply as much brine as it would require to operate the calcium bromide plant at its current sixty percent capacity configuration. In addition, Ethyl will be required to convey to the purchaser for a nominal sum ($10.00), during the term of the supply agreement, three injection wells and connecting pipleline that the purchaser may use to dispose of its spent brine.

With the supply of pretreated brine and the injection wells, the purchaser can begin operation of the calcium bromide plant immediately after it constructs a holding pond and some additional pipeline connecting the holding pond to the plant and the injection wells. During this construction period, which should not take more than a few months, the purchaser will have bromides to sell because the supply agreement also will require Ethyl, for a period of nine months, to supply the purchaser's requirements for resale of calcium bromide, sodium bromide, and zinc bromide. Under the supply agreement, Ethyl must supply the purchaser's requirements of pretreated brine and finished bromides at cost.

Because of the close physical proximity of the CBF business to be divested and the other bromine-related assets that Ethyl plans to purchase from Dow, section X requires Ethyl and the purchaser to exercise reasonable efforts in the operation of their respective businesses to minimize disruption to the physical operation of the other's business. In addition, section X provides that Ethyl and the purchaser must

consent that the conveyance of the real property included in the CBF business be subject to mutually enforceable covenants, which will provide the purchaser with an opportunity to sell the property to Ethyl if the property will no longer be used in connection with the operation of a chemical manufacturing facility.

The proposed Judgment provides that controversies concerning the supply agreement or the provision of advice or services under section VIII shall be settled by arbitration. Section XI requires the defendants and the purchaser to enter into a reasonable arbitration agreement concerning those controversies that are to be settled by arbitration.

IV

Remedies Available to Potential Private Litigants

Section 4 of the Clayton Act (15 U.S.C. 15) provides that any person who has been injured as a result of conduct prohibited by the antitrust laws may bring suit in federal court to recover three times the damages the person has suffered, as well as costs and reasonable attorney fees. Entry of the proposed Final Judgment will neither impair nor assist the bringing of any private antitrust damage action. Under the provisions of section 5(a) of the Clayton Act (15 U.S.C. 16(a)), the proposed Final Judgment has no *prima facie* effect in any subsequent private lawsuit that may be brought against the defendants.

V

Procedures Available for Modification of the Proposed Final Judgment

The United States and defendants have stipulated that the proposed Final Judgment may be entered by the Court after compliance with the provisions of the Antitrust Procedures and Penalties Act, provided that the United States has not withdrawn its consent. The Act conditions entry upon the Court's determination that the proposed Final Judgment is in the public interest.

The Act provides a period of at least sixty (60) days preceding the effective date of the proposed Final Judgment within which any person may submit to the United States written comments regarding the proposed Final Judgment. Any person who wants to comment should do so within sixty (60) days of the date of publication of this Competitive Impact Statement in the **Federal Register**. The United States will evaluate the comments, determine whether it should withdraw its consent, and respond to the comments. The comments and the response of the United States will be filed with the Court and published in the **Federal Register**.

Written comments should be submitted to: Kent Brown, Chief, Midwest Office, Antitrust Division, United States Department of Justice, Room 3820, Kluczynski Federal Building, 230 South Dearborn Street, Chicago, Illinois 60604.

Under section XIII of the proposed Judgment the Court will retain jurisdiction over this matter for the purpose of enabling any of the parties to apply to the Court for such further orders or directions as may be necessary or appropriate for the construction, implementation, modification, or enforcement of compliance with the Judgment, or for the punishment of any violations of the Judgment.

VI

Alternatives to the Proposed Final Judgment

The proposed Final Judgment will provide all of the relief necessary to address the violation alleged in the complaint. The proposed Judgment provides an independent trustee with a significant time period (six months) to locate a purchaser of Dow's CBF business that would be preferable to Ethyl from a competitive standpoint. Moreover, it also assures that any purchaser of the CBF business can participate immediately in the market for bromides at costs no greater than Dow would have if it were to remain in the business.

The United States considered, and rejected, two alternatives to the Final Judgment. Initially, the United States considered whether to file suit and seek a preliminary injunction to enjoin Ethyl's proposed acquisition of Dow's bromine and brominated products business. The United States rejected this alternative because the divestiture required under the Final Judgment should establish an independent viable competitor in the bromide market and prevent the merger from having any anticompetitive effect in that market.

The other alternative considered by the United States would have required including additional assets in the divestiture package. Under this alternative, in addition to Dow's calcium bromide plant, the divestiture package would have included other assets in Magnolia, Arkansas, including Dow's entire brine field (which, for geological reasons, cannot be divided), its production and injection wells, its brine pretreatment facilities, and its holding ponds. The purpose of requiring the divestiture of these additional assets would be to provide the purchaser with the means to begin the immediate production of calcium bromide without having to enter into any supply agreement.

Ordinarily, the United States does not consider a supply agreement to be an acceptable alternative to a divestiture that immediately results in a completely independent competitor. Divestitures without supply agreements create completely independent businesses, eliminate any need for interaction between competitors, and reduce the prospects that the United States or the Court will become involved as a referee in future disputes in the industry.

In this case, however, the United States concluded that the divestiture and supply agreement provided for by the proposed Judgment were the best solution for promptly establishing an independent competitor in the United States bromide market. Inclusion of the additional assets in the divestiture package would significantly increase the necessary cost and scope of entry into the bromine industry by a prospective purchaser. These assets were designed for operation in connection with, and are partially integrated into, Dow's elemental bromine production plant, and are much larger than necessary for use only with the calcium bromide plant. The costs of operating these larger assets would be much higher than the costs of operating assets specifically designed for use with the calcium bromide plant. In the context of the depressed conditions of the bromide market and the overall bromine industry, the United States concluded that increasing the necessary cost and scope of entry by a purchaser would decrease the attractiveness of the divestiture package and thereby reduce the prospects for a successful divestiture. The United States believes that the better alternative is to have the purchaser of the CBF business construct or develop supporting assets that are appropriately scaled to its own operations. This is the result contemplated by the proposed Judgment.

VII

Determinative Documents

Two documents, a letter from counsel for Dow dated May 8, 1987 and a letter from Ethyl dated May 7, 1987, were determinative in the formulation of the proposed Final Judgment. These two letters are attached to this Competitive Impact Statement.

Dated: _____

Respectfully submitted,
Barry J. Kaplan,
Ann M. Gales,
Sarah L. Grieb,
Christopher J. Kelly,
Mark R. Ortlieb,
Gregory J. Scandaglia,
Attorneys, Department of Justice, Room 3820, John C. Kluczynski Bldg. Chicago, Illinois 60604, (312) 353-7530.

May 8, 1987.

Barry J. Kaplan, Esq.,
U.S. Department of Justice, Antitrust Division, Room 3820, Kluczynski Fed. Bldg., 230 South Dearborn Street, Chicago, IL 60604.

Re: Ethyl Corporation Acquisition of Dow Chemical Brominated Chemicals Business

Dear Mr. Kaplan: As part of the settlement negotiations between The Dow Chemical Company ("Dow") and the United States Department of Justice, Antitrust Division, in this matter, Dow makes the following representations, based on all current information known to Dow:

A. With respect to the Crone Option, as defined in section II.J. and described in Schedule 1 to the proposed Final Judgment:

(1) The Crone Option comprises an area of about two thousand and forty-five (2045) acres;

(2) If exercised, the Crone Option comprises an area that qualifies under all applicable statutes and regulations as a "lease block" for a producing bromine-bearing brine field;

(3) When supplemented by Dow's rights to subsurface minerals in the adjoining approximately seven hundred (700) acres described in section II.G. (3) to the proposed Final Judgment, the Crone Option will have sufficient, bromine-bearing brine reserves in commercially recoverable quantities to operate the Magnolia calcium bromide plant at approximately sixty (60) percent of the original design capacity for a period of ten (10) years;

(4) Rights to subsurface minerals with bromine-bearing brine reserves in commercially recoverable quantities are available for leasing in the area adjoining and extending to the west of the Crone Option;

B. With respect to disposal property, as defined in section II.L. and described in Schedule 4 to the Proposed Final Judgment:

(1) The injection wells included in the disposal property are equipped and suitable for handling the disposal of all spent brine to be generated by the Magnolia calcium bromide plant while operating at approximately sixty (60) percent of the original design capacity for a period of at least four (4) years;

(2) The injection wells, pipelines, and all other appurtenances thereto included in the disposal property are not contaminated as determined in accordance with, and are operable in conformance with, all applicable federal and state environmental law;

(3) The pipelines included in the disposal property are now equipped and suitable for transporting to two of the injection wells, for all but approximately one thousand eight hundred (1800) feet of the distance between the proposed location for the purchaser's holding pond and the injection wells, all of the spent brine to be generated by the Magnolia calcium bromide plant while operating at approximately thirty-five (35) percent of the original design capacity for at least four (4) years.

Further, Dow represents that all the assets defined in Section II.G.(2) of the proposed Final Judgment consist of the assets described in Attachment A to this letter.

Sincerely,
James T. Halverson.
Enclosure.
cc: Kevin W. Johnson, Esq.

Attachment A.—Tangible Assets Dedicated to CBF Business

*A. Real Property for the CBF Business.**

Area C

Pt. of the SW¼NE¼ of Section 18, Township 17S; Range 21W, Columbia County, Arkansas

Described as: Commencing at the Northeast corner of said Section 18, run S-0°41'W—1715.58'; run N-89°23'W—1420.32' to the point of beginning; thence run S-0°37'W—393.08'; thence run N-89°23'W—296.48'; thence run N-0°37'E—393.07'; thence run S-89°23'E—296.49' to the point of beginning, containing *2.68* AC.

Area D

Pt. of the NW¼SE¼ and SW¼NE¼ of Section 18, Township 17S; Range 21W, Columbia County, Arkansas

Described as: Commencing at the Northwest corner of the NW¼SE¼ of said Section 18, run N-89°53'E—583.88' to the point of beginning; thence run S-70°49'E—175.00'; thence run S-19°11'W—550.00'; thence run N-70°49'W—175.00'; thence run N-19°11'E—550.00'; to the point of beginning, containing *2.21* AC.

B. CBF Equipment in Midlond

Bldg. No.	Process	System	No.
1028	$CaBr_2$ tanks	Reactor system—brick lined steel	1
1028	$CaBr_2$	6,000 gal. lead lined storage tanks	2
1028	$CaBr_2$ tanks	Tabor bromine sump pumps—nickel	2
1028		Liquification/Purification system (System components: 1. 2 carbon steel carbon beds; 2. 2 gas coolers; 3. 12" dia. × 14' stainless steel purification column; 4. 2 HBr gas filters, 12" dia. × 3', 304 stainless steel with Hastalloy demister pad; 5. Condenser; 6. Liquid AHBr storage tank; 7. Revaporizer system; 8. Vaporizer).	
1028		Refrigeration system, (System components: 1. Screw compressor; 2. 3 700 VMC reciprocation compressors)	1
1028	$CaBr_2$	Hoescht Filter Press	1
794	NaBr-KBr tanks	Reactor System—brick lined steel	2
794	NaBr-KBr	Crystallizer—nickel clad tank with titanium heating coils	1
794	NaBr-KBr	Rotary Dryer—direct fired nickel dryer with internal recycle screw	1
794	$ZnBr_2$ tanks	Reactor system—brick lined steel	2
794		Stainless steel Tolhurst centrifuge	1
794		Nickel wet hopper and nickel screw feeder	1
794		8' × 8'9" Pfaudler vessel	1
794		316 stainless steel heat exchanger, 8.625" × 7' 4.5"	1

May 7, 1987

Barry J. Kaplan, Esq.,
U.S. Department of Justice, Antitrust Division, Room 3820, Kluczynski Fed. Bldg., 230 South Dearborn Street, Chicago, IL 60604.

Re: Ethyl Corporation Acquisition of Dow Chemical Brominated Chemicals Business

Dear Mr. Kaplan: As part of the settlement negotiations between Ethyl Corporation ("Ethyl") and the United States Department of Justice, Antitrust Division in this matter, Ethyl makes the following representations, based on all current information known to Ethyl:

A. With respect to the Crone Option, as defined in section II.J. and described in Schedule 1 to the proposed Final Judgment:

(1) The Crone Option comprises and area of about two thousand and forty-five (2045) acres;

(2) If exercised, the Crone Option comprises an area that qualifies under all applicable statutes and regulations as a

* Surveys for the real property described in Area C and Area D were performed on March 12, 1987, by Crisp Surveying Service, P.O. Box 812, Magnolia, Arkansas 71753.

"lease block" for a producing bromine-bearing brine field;

(3) When supplemented by Dow's rights to subsurface minerals in the adjoining approximately seven hundred (700) acres described in section II.G. (3) to the proposed Final Judgment, the Crone Option will have sufficient, bromine-bearing brine reserves in commercially recoverable quantities to operate the Magnolia calcium bromide plant at approximately sixty (60 percent of the original design capacity for a period of ten (10) years;

(4) Rights to subsurface minerals with bromine-bearing brine reserves in commercially recoverable quantities are available for leasing in the area adjoining and extending to the west of the Crone Option.

B. With respect to disposal property, as defined in section II.L. and described in Schedule 4 to the proposed Final Judgment:

(1) The injection wells included in the disposal property are equipped and suitable for handling the disposal of all spent brine to be generated by the Magnolia calcium bromide plant while operating at approximately sixty (60) percent of the original design capacity for a period of at least four (4) years;

(2) The injection wells, pipelines, and all other appurtenances thereto included in the disposal property are not contaminated as determined in accordance with, and are operable in conformance with, all applicable federal and state environmental law;

(3) The pipelines included in the disposal property are now equipped and suitable for transporting to two of the injection wells, for all but approximately one thousand eight hundred (1800) feet of the distance between the proposed location for the purchaser's holding pond and the injection wells, all of the spent brine to be generated by the Magnolia calcium bromide plant while operating at approximately thirty-five (35) percent of the original design capacity for a period of at least four (4) years.

Sincerely,

Ethyl Corporation.

Ray Wilkins, Jr.,

[FR Doc. 87-11719 Filed 5-21-87; 8:45 am]

BILLING CODE 4410-01-M

Office of Justice Programs

Office of Juvenile Justice and Delinquency Prevention; Missing Children's Assistance Act Program Priorities Proposed

AGENCY: Office of Juvenile Justice And Delinquency Prevention.

ACTION: Notice of Proposed Program Priorities for Missing Children's Assistance Act.

SUMMARY: The Office of Juvenile Justice and Delinquency Prevention is publishing for public comment a notice of proposed program priorities for making grants and contracts under the Missing Children's Assistance Act, Title IV of the Juvenile Justice and Delinquency Prevention Act for 1974, in Fiscal Year 1987.

DATE: Comments are due on or before July 21, 1987.

ADDRESS: Send comments to Verne L. Speirs, Acting Administrator, Office of Juvenile Justice and Delinquency Prevention, 633 Indiana Avenue, NW., Washington, DC 20531, (202) 724-7751.

FOR FURTHER INFORMATION CONTACT: Michelle Easton, Director, Missing Children's Program, Office of Juvenile Justice and Delinquency Prevention, 633 Indiana Avenue, NW., Washington, DC 20531, (202) 724-7655.

SUPPLEMENTARY INFORMATION: Responsibility for establishing annual research, demonstration, and service program priorities for making grants and contracts pursuant to section 406 of the Missing Children's Assistance Act rests with the Administrator of the Office of Juvenile Justice and Delinquency Prevention. As required by the Act, the Administrator has consulted with the Advisory Board on Missing Children and is, therefore, announcing his proposed priorities and inviting public comment on these priorities for sixty days.

The new proposed priorities are as follows:

1. Prevention. A variety of programs are currently used to educate parents, children, and community agencies and organizations in ways to prevent the abduction and sexual exploitation of children. As few programs target the broad range of children's ages, standards for curricula need to be developed for pro-active prevention education programs that would apply to children of all ages.

2. Training for Local Officials on Exploitation of Children. Current emphasis on training in this area has been primarily at the State and Federal levels. It is important that local officials become better informed on issues relating to child exploitation, including how best to deal with those who exploit children and the children harmed by the exploitation.

3. Training and Policy Development for Law Enforcement Administrators on Missing and Exploited Children Policies and Procedures. Expansion of current training programs in this area is needed to further educate elected officials appointed managers, judges and district attorneys, in addition to law enforcement officials.

4. Comparative Systems Responses to the Return of Missing Children to Their Families. The project would examine the processes, and improvements that could be made in the processes, for returning missing children to their families.

The following programs, already published for comment in the **Federal Register** in 1985 and 1986, are also programs that we anticipate will be funded with 1987 funds.

5. The Child Victim as Witness Research and Development Program. This study will design, implement and test new strategies to be used to improve court policies and practices for handling child victim witnesses.

6. Families of Missing Children: Psychological Consequences and Promising Interventions.

This research will increase our knowledge of and develop effective treatment of alternatives for the psychological consequences of families with missing and exploited children.

7. Public Awareness Campaign. This will be a public campaign of education and awareness focusing on prevention of missing and exploited children.

Pusuant to section 404(a) and (b), the following programs were awarded or will be awarded with FY 1987 Missing Children's funds:

1. The National Center for Missing and Exploited Children to: a. Provide the information derived from the National Toll-Free telephone line to appropriate law enforcement entities and to enable individuals to report information regarding the location of any missing child, or child 13 years of age or younger, whose whereabouts are unknown to such child's legal custodian, and request information pertaining to procedures necessary to reunite such children with such child's legal custodian. (Section 404(a)(3), 404(b)(1))

b. Serve as a national resource center and clearinghouse. (Section 404(b)(2))

2. Institute for Non-profit Organization Management (INPOM) to: Serve as a national resource center and clearinghouse that focus on providing technical assistance to private voluntary organizations working on the issue of missing and exploited children. (Section 404(b)(2))

3. National Incidence Study: Having completed serveral pilot studies, funding of the first national incidence study will begin in 1987. Result of the study are anticipated in 1988. (Section 404(b)(3))

Dated: May 15, 1987.

Approved:

Verne L. Speirs,

Acting Administrator, Office of Juvenile Justice and Delinquency Prevention.

[FR Doc. 87-11692 Filed 5-21-87; 8:45 am]

BILLING CODE 4410-18-M

DEPARTMENT OF LABOR

Office of the Secretary

Agency Recordkeeping/Reporting Requirements Under Review by the Office of Management and Budget (OMB)

Background

The Department of Labor, in carrying out its responsibilities under the Paperwork Reduction Act (44 U.S.C. Chapter 35), considers comments on the reporting and recordkeeping requirements that will affect the public.

List of Recordkeeping/Reporting Requirements Under Review

As necessary, the Department of Labor will publish a list of the Agency recordkeeping/reporting requirements under review by the Office of Management and Budget (OMB) since the last list was published. The list will have all entries grouped into new collections, revisions, extensions, or reinstatements. The Departmental Clearance Officer will, upon request, be able to advise members of the public of the nature of the particular submission they are interested in.

Each entry may contain the following information:

The Agency of the Department issuing this recordkeeping/reporting requirement.

The title of the recordkeeping/reporting requirement.

The OMB and Agency identification numbers, if applicable.

How often the recordkeeping/reporting requirement is needed.

Who will be required to or asked to report or keep records.

Whether small businesses or organizations are affected.

An estimate of the total number of hours needed to comply with the recordkeeping/reporting requirements.

The number of forms in the request for approval, if applicable.

An abstract describing the need for and uses of the information collection.

Comments and Questions

Copies of the recordkeeping/reporting requirements may be obtained by calling the Departmental Clearance Officer, Paul E. Larson, telephone (202) 523-6331. Comments and questions about the items on this list should be directed to Mr. Larson, Office of Information Management, U.S. Department of Labor, 200 Constitution Avenue, NW., Room N-1301, Washington, DC 20210. Comments should also be sent to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for (BLS/DM/ESA/ETA/OLMS/MSHA/OSHA/PWBA/VETS), Office of Management and Budget, Room 3208, Washington, DC 20503 (Telephone (202) 395-6880).

Any member of the public who wants to comment on a recordkeeping/reporting requirement which has been submitted to OMB should advise Mr. Larson of this intent at the earliest possible date.

Revision

Bureau of Labor Statistics
Standard Industrial Classification Refiling Forms
1220-0032; BLS-3023R
Once
All public and private employers, including small businesses, whose industrial classification may change due to the 1987 revision of the *Standard Industrial Classification Manual*
800,000 responses; 91,200 hours; 1 form

A special version of the Industry Classification Statement (SIC Refiling Form) is being used by the Bureau of Labor Statistics and its cooperating State Employment Security Agencies to obtain information necessary to assign 1987 codes to employers whose SIC code may change due to the 1987 revision of the *SIC Manual* (See **Federal Register**, Wednesday, October 1, 1986, pp. 35170-35188).

Extension

Employment and Training Administration
Disaster Unemployment Assistance (DUA) Handbook Program Operating Forms 1205-0051; ETA 81, 81A, 82, 83, 84
On occasion; Weekly
Individuals or households
11,000 respondents; 12,483 hours; 5 forms

Pub. L. 93-288 (Sec. 407) provides for benefit assistance to "any individual unemployed as a result of a major disaster." The forms in Chapters II to VII of the DUA Handbook are used by State agencies in connection with the provision of this benefit assistance.

Extension

Employment and Training Administration
Disaster Payment Activities under the Disaster Relief Act of 1974
1205-0234 ETA 90-2
Monthly
State or local governments
50 respondents; 150 burden hours; 1 form

Data on disaster unemployment assistance (DUA) activity are needed for timely program evaluation necessary for competent administration of section 407 of the Act. Workload items are also used with fiscal reports to estimate the cost of administering the Act.

Extension

Occupational Safety and Health Administration
Temporary Labor Camps
1218-0096; OSHA 165
On occasion
Farms; Businesses or other for profit
1,379 responses; 138 hours

This information is required to safeguard the health of temporary labor camp residents. The information is used to reduce the incidence of communicable disease among temporary labor camp residents.

Signed at Washington, DC, this 19th day of May, 1987.

Paul E. Larson,

Departmental Clearance Officer.

[FR Doc. 87-11759 Filed 5-21-87; 8:45 am]

BILLING CODE 4510-30-M

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance; ACCO Babcock Industries, Inc., et al.

Petitions have been filed with the Secretary of Labor under section 221 (a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to section 221 (a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than June 1, 1987.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than June 1, 1987.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 601 D Street, NW., Washington, DC 20213.

Signed at Washington, DC this 11th day of May 1987.

Glen M. Zech,

Acting Director, Office of Trade Adjustment Assistance.

APPENDIX

Petitioner (union/workers/firm)	Location	Date received	Date of petition	Petition No.	Articles produced
ACCO Babcock Industries, Inc. (UAW)	South Bend, IN	5/11/87	4/28/87	19,651	Wire.
A.P. Green Refractories (A.B.G.W)	Pueblo, CO	5/11/87	4/29/87	19,652	Refractories.
AT&T Information Systems (CWA)	New Brighten, MN	5/11/87	4/28/87	19,653	Telephone apparatus.
American Tubular Systems, Inc. (Company)	Oklahoma City, OK	5/11/87	4/29/87	19,654	Oil Country tubular goods.
Amoco Production, Co. (workers)	Houston, TX	5/11/87	4/24/87	19,655	Crude oil.
Arco Oil and Gas (workers)	Odessa, TX	5/11/87	3/25/87	19,656	Oil & Gas.
Bayly Corp. (workers)	Pleasant Grove, UT	5/11/87	4/30/87	19,657	Men's/boys pants.
Bonanza Packing Co. (CWU)	Spokane, WA	5/11/87	4/28/87	19,658	Processed meat.
Borg Warner Automotive (workers)	Decatur, IL	5/11/87	5/1/87	19,659	Air-conditioning compressors.
Burton/Hawks, Inc (workers)	Casper, WY	5/11/87	4/23/87	19,660	Crude oil.
Calloy Corp. (U.E.)	Pittsburgh, PA	5/11/87	4/27/87	19,661	Steel castings.
Carborundum Abrasives Co. (OCAW)	Niagara Falls, NY	5/11/87	4/28/87	19,662	Sandpaper.
Carroll Shoe Co. (workers)	Mont Alto, PA	5/11/87	4/6/87	19,663	Canvas shoes.
Celebrity, Inc. (workers)	Bronx, NY	5/11/87	5/4/87	19,664	Cosmetic accessories.
Chevron U.S.A., Inc. (workers)	Lafayette, LA	5/11/87	4/27/87	19,665	Crude oil.
Chevron Overseas Petroleum, Inc. (workers)	San Ramon, CA	5/11/87	4/27/87	19,666	Crude oil.
Crown Cork and Seal (workers)	Baltimore, MD	5/11/87	4/29/87	19,667	Bottle caps.
Detroit Gasket (workers)	Marine City, MI	5/11/87	5/1/87	19,668	Fiberglass headliners.
Dresscraft Co, Inc. (ILGWU)	Union City, NJ	5/11/87	4/30/87	19,669	Dresses.
General Well Service (workers)	Duchesne, UT	5/11/87	4/21/87	19,670	Oil & gas.
Hobart Corp., Dayton Commercial Equipment Division & Service Center (IUE).	Dayton, OH	5/11/87	4/23/87	19,671	Grocery scales.
Jantzen, Inc (workers)	Hood River, OR	5/11/87	5/1/87	19,672	Sports/swimwear tops.
Island Leather & Tweed Corp. (company)	Plainview, NY	5/11/87	4/16/87	19,673	Jackets and coats.
Koch Exploration (workers)	Buffalo, SD	5/11/87	1/30/87	19,674	Crude oil.
L & L Manufacturing Corp. (KGWU)	Avon, MA	5/11/87	4/24/87	19,675	Womens' apparel.
Lamb Grays Harbor, Co. (IAMAW)	Hoquiam, WA	5/11/87	4/25/87	19,676	Paper making machinery.
Metaremics (workers)	Sunnyvale, CA	5/11/87	4/30/87	19,677	Micro-electronic packages.
National Forge Co. (workers)	Irvine, PA	5/11/87	4/27/87	19,678	Pressure vessels.
Omega Mud Logging, Inc (company)	Corpus Christi, TX	5/11/87	4/28/87	19,679	Oil & gas.
Purolator Products (company)	Edison, NJ	5/11/87	4/27/87	19,680	Auto fitters.
Reading & Bates (workers)	Lafayette, LA	5/11/87	4/24/87	19,681	Oil and gas.
Stocker & Sitler (workers)	New Philadelphia, OH	5/11/87	5/5/87	19,682	Crude oil.
Stockpole Carbon Co. (IUE)	St. Marys, PA	5/11/87	4/22/87	19,683	Power generator bushes.
Telesciences, Inc (workers)	Fairfield, NJ	5/11/87	5/4/87	19,684	Computer.
Union Carbide Corp; Linde Division (OCAW)	Tonawanda, NY	5/11/87	4/27/87	19,685	Cryogenic processing equipment.
V&O Press Co., Inc. (The) (IUE)	Hudson, NY	5/11/87	4/28/87	19,686	Metal-forming presses.
Wainoco Oil & Gas Co. (workers)	Houston, TX	5/11/87	4/14/87	19,687	Oil & gas.
Whirlpool Corp. IAM)	St. Joseph, MI	5/11/87	4/28/87	19,688	Washer parts.

[FR Doc. 87-11760 Filed 5-21-87; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-18,782]

Atlas Chain Co., West Pittston, PA; Voiding

In accordance with section 223 of the Trade Act of 1974, the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on February 25, 1987 applicable to all workers of the Atlas Chain Company, West Pittston, Pennsylvania who became totally or partially separated from employment on or after December 13, 1985 and before April 21, 1986. The Certification was published in the **Federal Register** on March 24, 1987 (52 FR 9364).

The subject certification was issued in error as all workers at Atlas Chain Company, West Pittston, Pennsylvania were already covered under certification TA-W-15,261. The certification period covering worker separations under TA-W-15,261 was from March 19, 1983 until July 23, 1986. The plant closed on March 21, 1986 within the coverage period of TA-W-15,261.

Consequently, Certification TA-W-18,782 is voided.

Signed at Washington, DC, this 12th day of May, 1987.

Harold A. Bratt,

Deputy Director, Office of Program Management, UIS.

[FR Doc. 87-11761 Filed 5-21-87; 8:45 am]

BILLING CODE 4510-30-M

Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance; Lingl Corp. et al.

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor herein presents summaries of determinations regarding eligibility to apply for adjustment assistance issued during the period May 4, 1987-May 8, 1987.

In order for an affirmative determination to be made and a certification of eligibility to apply for adjustment assistance to be issued, each of the group eligibility requirements of section 222 of the Act must be met.

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated,

(2) That sales or production, or both, of the firm or subdivision have decreased absolutely, and

(3) That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

Negative determinations

In each of the following cases the investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

TA-W-19,264; Lingl Corporation, Paris, TN;

TA-W-19,240; Lake Shore, Inc., Kingsford, Mi;
TA-W-19,306; Kofabco, Inc., Peru, IN;
TA-W-19,288; Clicker City Corp., Haverhill, MA;
TA-W-19,220; Roper Eastern Products, Baltimore, MD;
TA-W-19,297; Gilman Engineering & Manufacturing C., Janesville, WI;
TA-W-19,317; Riddle Oil Co., San Antonio TX;
TA-W-19,296; FMC Corporation, Citrus Machinery Div., Lakeland, FL;

In the following cases the investigation revealed that criterion (3) has not been met for the reasons specified.

TA-W-19,287; Carville National Leather Corp., Johnstown, NY

U.S. imports of tanned and finished cattlehides decreased in 1986 compared to 1985.

TA-W-19,459; Amboy Terminating Co., Inc., Perth Amboy, NJ

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA-W-19,376; Gilbert Development Corporation, Cedar City, UT

Increased imports did not contribute importantly to workers separations at the firm.

TA-W-19,374; G.R. Manufacturing, Grand Rapids, MI

The investigation revealed that criterion (2) has not been met. Sales or production did not decline during the relevant period as required for certification.

TA-W-19,307; Louisiana Pacific Corp., Ridgeway, PA

Increased imports did not contribute importantly to workers separations at the firm.

TA-W-19,280; Zale Corp., International Diamond Div. (AMANTA), New York, NY

Increased imports did not contribute importantly to workers separations at the firm.

TA-W-19,331; Zale Manufacturing Division, New York, NY

Increased imports did not contribute importantly to workers separations at the firm.

TA-W-19,259; C.E. Natco, New Iberia, LA

Increased imports did not contribute importantly to workers separations at the firm.

TA-W-19,260; C.E. Natco, Harvey, LA

Increased imports did not contribute importantly to workers separations at the firm.

TA-W-19,261; C.E. Natco, Electra, TX

Increased imports did not contribute importantly to workers separations at the firm.

TA-W-19,262; C.E. Natco, Tulsa, OK

Increased imports did not contribute importantly to workers separations at the firm.

Affirmative Determinations

TA-W-19,325; U.S. Shoe Corp. Womens Shoe Manufacturing Div., Harrison, OH

A certification was issued covering all workers of the firm separated on or after February 23, 1986.

TA-W-19,301; J.I. Case Co., Bettendorf, IA

A certification was issued covering all workers of the firm separated on or after February 25, 1986.

TA-W-19,302; J.I. Case Co., Rock Island, IL

A certification was issued covering all workers of the firm separated on or after February 26, 1986.

TA-W-19,333; Hagglunds-Denison Corp., Delaware, OH

A certification was issued covering all workers of the firm separated on or after March 5, 1986.

TA-W-19,283; The Black Clawson Co., Shartle-Pandra Div., Middletown, OH

A certification was issued covering all workers of the firm separated on or after February 24, 1986.

TA-W-19,411; Smith Valve Corp., Westboro, MA

A certification was issued covering all workers of the firm separated on or after February 26, 1986.

TA-W-19,267; Davis Cabinet Co., Nashville, TN

A certification was issued covering all workers of the firm separated on or after February 18, 1986.

TA-W-19,268; Davis Cabinet Co., Portland, TN

A certification was issued covering all workers of the firm separated on or after February 18, 1986.

TA-W-19,235; Olla Industries, Inc., Fairview, NJ and Union City, NJ

A certification was issued covering all workers of the firm separated on or after February 2, 1986.

TA-W-19,282; Bestform Corp., Johnstown, PA

A certification was issued covering all workers of the firm separated on or after February 18, 1986.

TA-W-19,467; Bandera Energy Co., Midland, TX

A certification was issued covering all workers of the firm separated on or after March 11, 1986.

TA-W-19,316; Rex Sportswear, Irvington, NJ

A certification was issued covering all workers of the firm separated on or after February 26, 1986.

TA-W-19,236; Posh & Associates, Inc., Miami, FL

A certification was issued covering all workers of the firm separated on or after February 4, 1986.

TA-W-19,322; Total Petroleum, Inc., Oil and Gas Div., Exploration & Production Group, Denver, CO

A certification was issued covering all workers of the firm separated on or after March 3, 1986.

TA-W-19,322A; Total Petroleum, Inc., Oil and Gas Div., Exploration & Production Group, Houston, TX

A certification was issued covering all workers of the firm separated on or after March 3, 1986.

I hereby certify that the aforementioned determinations were issued during the period May 4, 1987–May 8, 1987. Copies of these determinations are available for inspection in Room 6434, U.S. Department of Labor, 601 D Street, NW., Washington, DC 20213 during normal business hours or will be mailed to persons who write to the above address.

Dated: May 12, 1987.

Glenn M. Zech,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 87-11762 Filed 5-21-87; 8:45 am]
BILLING CODE 4510-30-M

[TA-W-19,030]

Optimized Gas Systems, Inc., Tulsa, OK; Dismissal of Application for Reconsideration

Pursuant to 29 CFR 90.18 an application for administative reconsideration was filed with the Director of the Office of Trade Adjustment Assistance for workers at Optimized Gas Systems, Incorporated, Tulsa, Oklahoma. The review indicated that the application contained no new substantial information which would bear importantly on the Department's determination. Therefore, dismissal of the application was issued.

TA-W-19,030; Optimized Gas Systems, Inc. Tulsa, Oklahoma (May 15, 1987)

Signed at Washington, DC, this 15th day of May 1987.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 87-11763 Filed 5-21-87; 8:45 am]

BILLING CODE 4510-30-M

Employment Standards Administration, Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR Part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR Part 1, Appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedeas decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. These decisons are to be used in accordance with the provisions of 29 CFR Parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR Part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts," shall be the minimum paid by contractors and subcontractors to labors and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purposes of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Divison of Wage Determinations, 200 Constitution Avenue, NW., Room S-3504, Washington, DC 20210.

Modifications to General Wage Determination Decisions

The numbers of the decisions listed in the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Realted Acts" being modified are listed by Volume, State, and page number(s). Dates of publication in the **Federal Register** are in parentheses following the decisions being modified.

Volume I

Florida:
- FL87-1 (Jan. 2, 1987) ..... pp. 111-112.

Georgia:
- GA87-10 (Jan. 2, 1987)..... p. 245.

New York:
- NY87-6 (Jan. 2, 1987)..... p. 728.

Pennsylvania:
- PA87-5 (Jan. 2, 1987) ..... p. 885.
- PA87-6 (Jan. 2, 1987) ..... pp. 898-899.
- PA87-14 (Jan. 2, 1987) ..... pp. 948-951.

Listing by Location (index)..... pp. xxiii-xxiv.

Volume II

Illinois:
- IL87-1 (Jan. 2, 1987) ..... p. 68.
- IL87-2 (Jan. 2, 1987) ..... p. 96.
- IL87-4 (Jan. 2, 1987) ..... p. 120.
- IL87-6 (Jan. 2, 1987) ..... p. 132.
- IL87-7 (Jan. 2, 1987) ..... p. 136.
- IL87-8 (Jan. 2, 1987) ..... p. 142.
- IL87-9 (Jan. 2, 1987) ..... p. 148.

Kansas:
- KS87-8 (Jan. 2, 1987)..... p. 356.

Michigan:
- MI87-3 (Jan. 2, 1987)..... p. 439.

Missouri:
- MO87-2 (Jan. 2, 1987)..... p. 602.
- MO87-9 (Jan. 2, 1987)..... p. 645.
- MO87-11 (Jan. 2, 1987)..... p. 658.

Nebraska:
- NE87-1 (Jan. 2, 1987) ..... p. 667.

Oklahoma:
- OK87-18 (Jan. 2, 1987)..... p. 912h.

Listing by Location (index)..... pp. xxxv-xxxvi.

Volume III

Montana:
- MT87-1 (Jan. 2, 1987)..... pp. 166-182.

Oregon:
- OR87-1 (Jan. 2, 1987)..... p. 285.

Washington:
- WA87-2 (Jan. 2, 1987) ..... p. 354.

Listing by Location (index)..... p. xxix.

General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts". This publication is available at each of the 50 Regional Governmental Libraries and many of the 1,400 Government Depository Libraries across the Country. Subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 783-3238.

When ordering subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the three separate volumes, arranged by State. Subscriptions include an annual edition (issued on or about January 1) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates will be distributed to subscribers.

Signed at Washington, DC, This 15th Day of May 1987.

Alan L. Moss,

Director, Division of Wage Determinations.

[FR Doc. 87-11554 Filed 5-21-87; 8:45 am]

BILLING CODE 4510-27-M

Mine Safety and Health Administration

[Docket No. M-87-101-C]

C & B Coal Co., Inc.; Petition for Modification of Application of Mandatory Safety Standard

C & B Coal Company, Inc., Route 1, Box 507, Norton, Virginia 24273 has filed a petition to modify the application of 30 CFR 75.1710 (cabs and canopies) to its Run Coal No. 2 Mine (I.D. No. 15–15274) located in Letcher County, Kentucky. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that cabs or canopies be installed on the mine's electric face equipment.

2. Petitioner states that the use of cabs or canopies on the mine's electric face equipment would result in a diminution of safety to the miners affected because the cabs or canopies would limit the equipment operator's visibility. Due to uneven roof and soft and uneven bottom, the cabs or canopies could strike and dislodge roof support, thereby creating chances of an accident.

3. For these reasons, petitioner requests a modification of the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before June 22, 1987. Copies of the petition are available for inspection at that address.

Dated: May 12, 1987.

Patricia W. Silvey,

Associate Assistant Secretary for Mine Safety and Health.

[FR Doc. 87–1764 Filed 5–21–87; 8:45 am]

BILLING CODE 4510–43–M

[Docket No. M-87-89-C]

Davidson Mining, Inc.; Petition for Modification of Application of Mandatory Safety Standard

Davidson 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. 46–06898) 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 statement 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. Petitioner requests a modification of the standard to allow mining to within 100 feet of the Quinland No. 1 Mine North Limits, without the drilling of boreholes. In support of this request, petitioner states that:

(a) North Limits of the Quinland No. 1 Mine are being ventilated and evaluated by bleeder evaluation points;

(b) North Limits of Quinland No. 1 Mine do not contain dangerous accumulations of either water or gas;

(c) Davidson and Quinland employ the same engineering firm for engineering services (spades and maps) which gives assurance that the mine maps of the Quinland No. 1 and Davidson No. 1 Mines are compatible and contain consistent references to each mine since both mines are on the same coordinate system;

(d) The North Limits of Quinland No. 1 Mine are higher than the elevations of the Davidson No. 1 Mine working sections; therefore, these areas will not impound water; and

(e) The North Limits of Quinland No. 1 Mine were never roomed nor pillared, therefore, all underground workings in the area have been mapped.

3. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before June 22, 1987. Copies of the petition are available for inspection at that address.

Dated: May 12, 1987.

Patricia W. Silvey,

Associate Assistant Secretary for Mine Safety and Health.

[FR Doc. 87–11765 Filed 5–21–87; 8:45 am]

BILLING CODE 4510–43

[Docket No. M-87-11-M]

Empire Sand & Gravel Co., Inc.; Petition for Modification of Application of Mandatory Safety Standard

Empire Sand & Gravel Company, Inc., P.O. Box 1215, Billings, Montana 59103 has filed a petition to modify the application of 30 CFR 56.12028 (testing grounding systems) to its Base Crusher (I.D. No. 24–01360), its Billings Crusher (I.D. No. 24–01685), both located in Yellowstone County, Montana and its Wyoming Pit (I.D. No. 48–01464) located in Sheridon County, Wyoming. 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 continuity and resistance grounding systems be tested immediately after installation, repair, and modification, and annually thereafter.

2. Petitioner requests a modification of the standard as it pertains to the testing of the resistance of the grounding electrodes where the portable plants relocate.

3. In support of this request, petitioner states that—

(a) When a grounding electrode system is made, one or more of the electrodes specified below will be imbedded below the permanent moisture level;

(b) Made electrodes will be free from nonconductive coatings such as paint or enamel;

(c) Where more than one electrode system is used (including those used for lightning rods), each electrode of one system will not be less than 6 feet from the other electrode of another system;

(d) Rod and pipe electrodes will not be less than 8 feet in length;

(e) Electrodes of pipe or conduct will not be smaller than ¾ inch trade size

and, where of iron or steel, shall have the outer surface galvanized or otherwise metal-coated for corrosion protection;

(f) Electrodes of rods of steel or iron shall be at least ⅝ inch diameter. Nonferrous rods or their equivalent will not be less than ½ inch in diameter;

(g) Where rock bottom is not encountered, the electrodes will be driven to a depth of 8 feet. Where rock bottom is encountered at a depth of less than 4 feet, electrodes not less than 8 feet long will be buried in a trench;

(h) The ground rods and associated bonds will be visually inspected for physical deterioration and mechanical bonding each time a portable operation is relocated;

(i) Annual ground bed measurements shall be performed at the site where any portable plant remains in the same location for more than one calendar year; and

(j) The grounding conductor is most susceptible to breaking due to flexing and disconnecting/reconnecting during these moves. Therefore, equipment grounding conductor continuity measurements will be performed after each relocation of a portable plant.

4. For these reasons, petitioner requests a modification of the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before June 22, 1987. Copies of the petition are available for inspection at that address.

Dated: May 12, 1987.

Patricia W. Silvey,

Associate Assistant Secretary for Mine Safety and Health.

[FR Doc. 87-11766 Filed 5-21-87; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-87-116-C]

Greenwich Collieries; Petition for Modification of Application of Mandatory Safety Standard

Greenwich Collieries, P.O. Box 367, Ebensburg, Pennsylvania 15931 has filed a petition to modify the application of 30 CFR 75.1100-2(b) (quantity and location of firefighting equipment—belt conveyers) to its No. 1 Mine (I.D. No. 36-02405) located in Indiana County, Pennsylvania and its Mine No. 2 (I.D. No. 36-02404) located in Cambria County, Pennsylvania. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that waterlines be installed parallel to the entire length of belt conveyors and be equipped with firehose outlets with valves at 300-foot intervals along each belt conveyor and at tailpieces. At least 500 feet of firehose with fittings suitable for connection with each belt conveyor waterline system shall be stored at strategic locations along the belt conveyor. Waterlines may be installed in entries adjacent to the conveyor entry belt as long as the outlets project into the belt conveyor entry.

2. Petitioner states that due to the extremely cold weather experienced during the winter months, the waterlines used for fire protection freeze and become inoperative.

3. As an alternate method, petitioner proposes to install a dry waterline system with automatic and manual water-charging capabilities. In support of this request, petitioner states that:

(a) The waterlines will be maintained along the No. 1 belt in each mine, from the surface to the belt tail (approximately 2,000 feet);

(b) An automatic actuating valve will be connected to the automatic fire sensors, and when activated will send a signal to the actuator valve, causing the valve to open, allowing the waterlines to be pressurized with water for fire protection. Manual bypass valves will also be installed in the system to allow the waterlines to be pressurized; and

(c) All persons located in the vicinity of the No. 1 belt in each mine will be instructed as to the operation of the dry waterline 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 22, 1987. Copies of the petition are available for inspection at that address.

Dated: May 12, 1987.

Patricia W. Silvey,

Associate Assistant Secretary for Mine Safety and Health.

[FR Doc. 87-11767 Filed 5-21-87; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-87-12-M]

The Morie Co., Inc.; Petition for Modification of Application of Mandatory Safety Standard

The Mories Company, Inc., 1201 N. High Street, Millville, New Jersey 08332 has filed a petition to modify the application of 30 CFR 56.9087 (audible warning devices and back-up alarms) to its Morie Division (I.D. No. 28-00526) located in Cumberland County, New Jersey. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that heavy duty mobile equipment be provided with audible warning devices. When the operator of such equipment has an obstructed view to the rear, the equipment shall have either an automatic reverse signal alarm which is audible above the surrounding noise level or an observer to signal when it is safe to back up.

2. Petitioner has received numerous complaints from community residents concerning the noise of the back-up alarms and the time of day it occurs. Presently, operations extend from 6 a.m. until 10 p.m. but plans are being made to operate the plant 24 hours per day.

3. As an alternate method, petitioner proopses to install and use strobe light back-up devices to front-end loaders from 8:00 p.m. to 8:00 a.m. From 8:00 p.m. to 8:00 a.m., the strobes will be used in addition to the back-up alarms.

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 22, 1987. Copies of the petition are available for inspection at that address.

Dated: May 14, 1987.

Patricia W. Silvey,

Associate Assistant Secretary for Mine Safety and Health.

[FR Doc. 87-11768 Filed 5-21-87; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-87-86-C]

Turris Coal Co.; Petition for Modification of Application of Mandatory Safety Standard

Turris Coal Company, P.O. Box 21, Elkhart, Illinois 62634 has filed a petition to modify the application of 30 CFR 75.319-1 (mechanized mining section) to its Elkhart Mine (I.D. No. 11-02664) located in Logan County, Illinois. 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 the term "mechanized mining seciton" means an area of a mine in which coal is mined with one set of production equipment, characterized in a conventional mining section by a single loading machine, or in a continuous mining section by a single continuous mining machine, and which is comprised of a number of contiguous working places.

2. Petitioner requests a modification of the standard to allow the use of a second continuous miner for clean-up of previously cut faces on a single split of air.

3. In support of this request, petitioner states that:

(a) Perceptible movement of ventilation will be maintained in the previously-mined area to prevent methane accumulations;

(b) A scrubber and water sprays will be used to minimize dust being suspended. The continuous miners have water-cooled tram motors, and water has to be on to tram the machine;

(c) This will provide a cleaner area for the bolters to support the roof in a more timely manner, which is critical in roof control;

(d) Eliminating a third piece of equipment, such as a scoop, reduces the amount of exposure persons have to equipment. In addition, a scoop can only clean 11 feet into a cut; and

(e) Methane monitors are used as an extra assurance to monitor the level of methane.

4. In addition, petitioner proposes a clean-up plan using the second miner on a supersection as follows:

(a) After completing the cut of coal, the miner operator will communicate by permissible radio with the second miner operator to start advancing with the second miner;

(b) The #1 miner will back up and proceed to clean up the loose coal, shale and gob;

(c) Perceptible movement of ventilation will still be maintained in the area to prevent methane accumulation;

(d) Water sprays will be utilized to reduce dust suspension; and

(e) After clean-up, the miner will move to the next face to be cut and wait for the cycle to be prepared with the other miner.

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 22, 1987. Copies of the petition are available for inspection at that address.

Dated: May 12, 1987.

Patricia W. Silvey,

Associate Assistant Secretary for Mine and Safety and Health.

[FR Doc. 87-11769 Filed 5-21-87; 8:45 am]

BILLING CODE 4510-43-M

NUCLEAR REGULATORY COMMISSION

Draft Regulatory Guide; Issuance, Availability

The Nuclear Regulatory Commission has issued for public comment a draft of a new guide planned for its Regulatory Guide Series together with a draft of the associated value/impact statement. This series has been developed to describe and make available to the public such information as methods acceptable to the NRC staff for implementing specific parts of the Commission's regulations, techniques used by the staff in evaluating specific problems or postulated accidents, and data needed by the staff in its review of applications for permits and licenses.

The draft guide, temporarily identified by its task number, WM 503-4 (which should be mentioned in all correspondence concerning this draft guide), is entitled "Calculation of Radon Flux Attenuation by Earthen Uranium Mill Tailings Covers" and is intended for Division 3, "Fuels and Materials Facilities." The guide is being developed to describe methods acceptable to the NRC staff for calculating radon fluxes through earthen tailings covers and for calculating the resulting minimum cover thickness needed to meet NRC and EPA standards.

This draft guide and the associated value/impact statement are being issued to involve the public in the early stages of the development of a regulatory position in this area. They have not received complete staff review and do not represent an official NRC staff position.

Public comments are being solicited on both drafts, the guide (including any implementation schedule) and the draft value/impact statement. Comments on the draft value/impact statement should be accompanied by supporting data. Written comments may be submitted to the Rules and Procedures Branch, Division of Rules and Records, Office of Administration and Resources Management, U.S. Nuclear Regulatory Commission, Washington, DC 20555. 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. Copies of comments received may be examined at the NRC Public Document Room, 1717 H Street NW., Washington, DC. Comments will be most helpful if received by July 24, 1987.

Although a time limit is given for comments on these drafts, comments and suggestions in connection with: (1) Items for inclusion in guides currently being developed or (2) improvements in all published guides are encouraged at any time.

Regulatory guides are available for inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, DC. Requests for single copies of draft guides (which may be reproduced) or for placement on an automatic distribution list for single copies of future draft guides in specific divisions should be made in writing to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of Information Support Services. Telephone requests cannot be accommodated. Regulatory guides are not copyrighted, and Commission approval is not required to reproduce them.

(5 U.S.C. 552(a))

Dated at Rockville, Maryland, this 18th day of May 1987.

For the Nuclear Regulatory Commission.

Guy A. Arlotto,

Director, Division of Engineering, Office of Nuclear Regulatory Research.

[FR Doc. 87-11795 Filed 5-21-87; 8:45 am]

BILLING CODE 7590-01-M

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC -15740; 812-6610]

ASW Residential Mortgage Financial Corp.; Application

May 15, 1987.

AGENCY: Securites and Exchange Commission ("SEC").

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 (the "1940 Act").

Applicant: ASW Residential Mortgage Financial Corporation.

Relevant 1940 Act Section: Exemption requested under Section 6(c) from all provisions of the 1940 Act.

Summary of Application: Applicant seeks an order conditionally exempting Applicant from all provisions of the 1940 Act for the limited purpose of issuing collateralized mortgage obligations and investing in certain mortgage certificates.

Filing Date: The application was filed January 30, 1987, and amended on April 3 and April 29, 1987.

Hearing or Notification of Hearing: If no hearing is ordered, an order disposing of the application will be issued. Any interested person may request a hearing on this application, or ask to be notified if a hearing is ordered. Any requests must be received by the SEC no later than 5:30 p.m., on June 8, 1987. Requests must be in writing, setting forth the nature of your interest, the reasons for the request, and the issues contested. Applicant should be served with a copy of the request, either personally or by mail, and the request should also be sent to the Secretary of the SEC, along with proof of service (by affidavit or, in the case of an attorney-at-law, by certificate). Notification of the date of a hearing should be requested by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549; Applicant, 15650 North Black Canyon Hwy, Suite 120, Phoenix, Arizona 85023.

FOR FURTHER INFORMATION CONTACT: Special Counsel Curtis R. Hilliard (202) 272-3026, Office of Investment Company Regulation.

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application is available for a fee from either the SEC's Public Reference Branch in person or the SEC's commercial copier (800) 231-3282 (in Maryland (301) 258-4300).

Applicant's Representations

1. Applicant is an Arizona corporation incorporated on May 13, 1986, as a limited purpose finance corporation wholly owned by limited purpose financing companies (the "Finance Companies"), each of which is principally owned by or otherwise affiliated with one or more concerns engaged in the homebuilding business (the "Builders"), or is a mortgage banking or other financial institution providing financing or other services to Builders. None of such Finance Companies owns more than five percent of the Applicant. Applicant was incorporated to facilitate the long-term financing of residential mortgage loans through the direct or indirect reinvestment on Bond Proceeds in housing or housing-related assets, and will not engage in any other unrelated business activities.

2. Each Series of Bonds will be either registered under the Securities Act of 1933, as amended (the "1933 Act"), or sold in transactions exempt from registration pursuant to section 4(2) of the Securities Act. Each Series of Bonds will be issued pursuant to an indenture (the "Indenture") between Applicant and an independent trustee (the "Bond Trustee") as supplemented by one or more supplemental indentures.

3. Each Series of Bonds will consist of one or more classes ("Classes"), which may include one or more Classes of Bonds bearing fixed interest rates and one or more Classes of Bonds bearing variable interest rates. A variable interest rate Bond is one on which the interest rate adjusts periodically according to a fixed index set forth in the Prospectus Supplement and the Indenture with respect to such Series of Bonds.

4. The Mortgage Collateral securing a Series of Bonds will consist of one or more of the following: Conventional mortgage loans secured by first liens on single (one-to-four) family residential properties, mortgage loans insured by the Federal Housing Administration ("FHA Loans") or partially guaranteed by the Veterans Administration ("VA Loans") (collectively "Pledged Loans"), fully-modified pass-through certificates ("GNMA Certificates") guaranteed as to timely payment of principal and interest by the Government National Mortgage Association ("GNMA") mortgage pass-through certificates ("FNMA Certificates") guaranteed as to timely payment of principal and interest by the Federal National Mortgage Association ("FNMA"), mortgage participation certificates ("Freddie Mac Certificates") guaranteed as to timely payment of interest and ultimate collection of principal by the Federal Home Loan Mortgage Corporation ("Freddie Mac") and other types of mortgage collateral including mortgage pass-through certificates, mortgage-collateral obligations, or other interests in mortgages that are first liens on single (one-to-four) family residential properties ("Other Mortgage Certificates"). (As used herein, the term "Mortgage Certificates" includes GNMA Certificates, FNMA Certificates, Freddie Mac Certificates and Other Mortgage Certificates, and the term "Mortgage Collateral" includes Mortgage Certificates and Pledged Loans.) Each Series of Bonds also may be secured by certain funds and accounts (including proceeds accounts, debt service funds, reserve funds and over-collateralization funds) and by servicing agreements, insurance policies and other credit enhancement devices described in the Prospectus Supplement for such Series of Bonds.

5. The Mortgage Collateral securing each Series of Bonds will have scheduled cash flows sufficient (together with cash available to be withdrawn from any debt service funds, reserve funds, over-collateralization funds or other funds), together with reinvestment income thereon at assumed reinvestment rates acceptable to each rating agency rating the Bonds of such Series ("Rating Agency") to make timely payments or principal of and interest on the Bonds of such Series in accordance with their terms and to pay all of the fees and expenses of the issuance of such Series of Bonds. The Outstanding Bond value of the Collateral securing a Series of Bonds will be described in the Indenture for such Series and will be at least equal to the initial principal amount of such Bonds on their date of issuance.

6. The Collateral securing each Series of Bonds will be owned either by Applicant or by the Finance Companies and pledged to secure such Series of Bonds pursuant to funding agreement with respect to such Series of Bonds (the "Funding Agreements"). Such Collateral will consist of or include mortgage loans (1) that were initially originated by or on behalf of an affiliate of a Finance Company participating in such series of Bonds or (2) that were purchased by Applicant or an affiliate of a Finance Company participating in such Series of Bonds in the mortgage market. The Bond

Trustee for such Series of Bonds will be granted a first priority perfected security or lien interest in and to all Mortgage Collateral and other items of Collateral securing such Series of Bonds.

7. Each Finance Company participating in a Series of Bonds will enter into a Funding Agreement with respect to such Series of Bonds pursuant to which the Finance Company will (i) borrow a portion of the proceeds of the sale of such Series of Bonds; (ii) repay such loan by causing payments to be made to the Bonds Trustee for such Series of Bonds in such amounts as are necessary to pay the accrued interest on such loan and to repay the principal amount of such loan; and (iii) pledge Mortgage Collateral to the Applicant as security for its loan. Applicant will assign to the Bond Trustee for such Series of Bonds as security for such Series of Bonds its entire right, title and interest in the collateral and all proceeds thereof pledged under the Funding Agreements (except for its right to receive certain fees and reimbursement for certain expenses and its right to indemnification).

8. The Bonds of a Series may be subject to redemption by Applicant under the circumstances set forth in the Prospectus Supplement for such Series of Bonds. Such redemption, if provided, will not render the Bonds of such Series "redeemable securities" within the meaning of section 2(a)(32) of the Act. The Bonds of a Series will not be redeemable at the option of holders of Bonds of such Series except that certain Series of Bonds may provide for the establishment of a redemption fund and, subject to the limitations and priorities set forth in the Prospectus Supplement for each such Series of Bonds, requests for redemption by holders of such Bonds will be honored to the extent funds are available in such redemption fund. Unless an event of default with respect to a Series of Bonds has occurred and is continuing, the holders of Bonds of such Series will not be entitled to accelerate payment of the Bonds of such Series or otherwise to compel the liquidation of the remaining Collateral.

Applicant's Conditions

Applicant agrees that if an order is granted it will be expressly conditioned on the following conditions:

(1) Each Series of Bonds will be registered under the 1933 Act, unless offered in a transaction exempt from registration pursuant to section 4(2) of the 1933 Act.

(2) The Bonds of each Series will be "mortgage related securities" within the meaning of section 3(a)(41) of the Securities Exchange Act of 1934. However, the Mortgage Collateral directly securing each Series of Bonds (whether owned by the Applicant or pledged pursuant to the Funding Agreements) will be limited to Pledged Loans, GNMA Certificates, FNMA Certificates, Freddie MAc Certificates and Other Mortgage Certificates.

(3) If new Mortgage Collateral is substituted as security for a Series of Bonds, the substitute collateral must: (i) Be of equal or better quality than the Mortgage Collateral replaces; (ii) have similar payment terms and cash flow as the Mortgage Collateral replaced; (iii) be insured or guaranteed to the same extent as the Mortgage Collateral replaced; and (iv) meet the conditions set forth in paragraph 2, 4 and 6. In addition, new collateral may not be substituted for more than 20% of the aggregate face amount of the Pledged Loans initially pledged as Mortgage Collateral or for more than 40% of the aggregate face amount of the Mortgage Certificates initially pledged as Mortgage Collateral. New Pledged Loan may be substituted for Pledged Loan initially pledged as Mortgage Collateral only in the event of default, late payments or defect in the Mortgage Collateral being replaced. In no event may any new Mortgage Collateral be substituted for any substitute Mortgage Collateral. New Funding Agreements may be substituted for Funding Agreements initially pledged only if the substitution of Mortgage Collateral underlying those instruments would be permitted under this condition.

(4) The Mortgage Collateral and other items of Collateral securing a Series of Bonds will be assigned to and held by the Bond Trustee for such Series of Bonds, or on behalf of such Bond Trustee by an independent custodian, pursuant to the Indenture under which such Bonds were issued. Neither the Bond Trustee nor the custodian for a Series of Bonds may be an affiliate (as the term "affiliate" is defined in 1933 Act Rule 405, 17 CFR 230.405) of the Applicant, the master servicer for such Series of Bonds or the originator of any Pledged Loan securing such Series of Bonds. The Bond Trustee for such Series of Bonds will be granted a first priority perfected security or lien interest in and to all Mortgage Collateral securing such Series of Bonds.

(5) Each Series of Bonds will be rated in one of the two highest bond rating categories by at least one nationally recognized statistical rating organization that is not affiliated with the Applicant. The Bonds of each Series will not be considered redeemable securities within the meaning of section 2(a)(32) of the 1933 Act.

(6) The master servicer of the Pledged Loans securing a Series of Bonds may not be an affiliate of the Bond Trustee for such Series of Bonds. If there is no master servicer for the Pledged Loans securing a Series of Bonds, no servicer of such pledged loans may be an affiliate of the Bond Trustee for such Series of Bonds. Each such master servicer and servicer will be approved by FNMA or Freddie Mac as an "eligible seller/servicer" of conventional, residential mortgage loans. The servicing agreements covering each Pledged Loan securing a Series of Bonds will obligate the servicer to provide substantially the same services with respect to such Pledged Loans as the servicer is then currently required to provide in connection with the servicing of mortgage loans insured by FHA, guaranteed by VA or eligible for purchase by FNMA or Freddie Mac.

(7) No less often than annually, an independent public accountant will audit the books and records of the Applicant and in addition will report on whether the anticipated payments of principal and interest on the Mortgage Collateral securing each Series of bonds continue to be adequate to pay the principal of and interest on the Bonds of each such Series in accordance with their terms. Upon completion of such audits, copies of the accountants' report will be provided to the Bond Trustee for each Series of Bonds.

(8) Each Class of Bonds of a Series bearing a variable interest rate will have a set maximum interest rate.

(9) At the time of the deposit of the collateral for a Series of Bonds, as well as during the life of the Bonds, the Mortgage Collateral securing such Series of Bonds will have scheduled cash flows sufficient (together with cash available to be withdrawn from any debt service funds, reserve funds, overcollateralization funds or other funds), together with reinvestment income thereon at assumed reinvestment rates acceptable to each Rating Agency rating the Bonds of such Series, to make all payments of principal and interest on the Bonds of such Series in accordance with their terms and to pay all of the fees and expenses of the Applicant with respect to such Series of Bonds, assuming the maximum interest rate on each Class of Bonds bearing a variable interest rate. Such Collateral will be paid down as the mortgages underlying the Mortgage Collateral are repaid, but will not be released from the lien of the Indenture prior to payment of the Bonds.

(10) The election by any Issuer to be treated as a real estate mortgage

investment conduit (a "REMIC") will have no effect on the level of the expenses that would be incurred by any such Issuer. Any Issuer that elects to be treated as a REMIC will provide that all administrative fees and expenses in connection with the issuance of a Series of Bonds will be paid or provided for in a manner satisfactory to the Rating Agency rating such Series of Bonds.

If any issuer elects to be treated as a REMIC, such Issuer will provide for the payment of the administrative fees and expenses incurred in connection with the issuance of a Series of Bonds by one of the following methods or a combination of one or more of such methods:

(a) A third party, whose credit is acceptable to the Bond Trustee and to the Rating Agency rating the Series of Bonds, will guarantee the payment of such fees and expenses.

(b) One or more reserve funds will be established to provide for the payment of such fees and expenses, which fees typically shall be projected, assuming current inflation factors scenarios required by the Rating Agency rating the Bonds, at the time of the issuance of such Bonds and at the time of the establishment of such reserve funds. Thereafter, the Bond Trustee will look solely to such reserve funds for the payment of certain fees and expenses.

(c) The Bonds will be secured by Collateral the value of which will be in excess of the amount necessary to make payments of principal of and interest on the Bonds. Such excess or a portion thereof will be applied to the payment of such fees and expenses, and may be used in combination with any of the other methods described herein. In no event shall any Issuer pledge Collateral with a Collateral Value which exceeds 120% of the aggregate principal amount of the related Bonds.

Applicant hereby represents that the anticipated level of fees and expenses will be more than adequately provided for regardless of which of the above methods (which methods may be used in combination) are reflected by such Issuer to provide for the payment of such fees and expenses.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 87-11721 Filed 5-21-87; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC-15741; 812-6705]

The First Boston Corp.; Issuance of Stripped Certificates Representing Interests in Bonds Held in the Custody of a Bank

Dated: May 15, 1987.

AGENCY: Securities and Exchange Commission (the "SEC").

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 (the "1940 Act").

Applicant: The First Boston Corporation.

Relevant 1940 Act Section: Exemption requested under section 6(c) from all provisions of the 1940 Act.

Summary of Application: Applicant requests an exemption from all provisions of the 1940 Act so that it can issue "stripped" certificates representing interests in the principal or interest payments due on certain bonds held in the custody of a major commercial bank.

Filing Date: The application was filed on May 4, 1987.

Hearing or Notification of Hearing: If no hearing is ordered, the application will be granted. Any interested person may request a hearing on this application, or ask to be notified if a hearing is ordered. Any requests must be received by the SEC by 5:30 p.m., on June 5, 1987. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve the Applicant with the request, either personally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit, or, for attorneys, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. Applicant, Park Avenue Plaza, New York, New York 10055. Attention: Michael G. Zeiss, Esq.

FOR FURTHER INFORMATION CONTACT: Sherry A. Hutchins, Staff Attorney at (202) 272-2799 or Brion R. Thompson, Special Counsel at (202) 272-3016, Office of Investment Company Regulation, Division of Investment Management.

SUPPLEMENTARY INFORMATION: Following is a summary of the application; the complete application is available for a fee from either the SEC's Public Reference Branch in person or the SEC's commercial copier, (800) 231-3282 (in Maryland (301) 258-4300)).

Applicant's Representations

1. Applicant is a Massachusetts corporation and a wholly-owned subsidiary of First Boston, Inc. Applicant also is registered as a broker-dealer under the Securities Exchange Act of 1934.

2. Applicant proposes to offer for sale component parts of interest-bearing bonds (the "Bonds") issued or to be issued by an international financial institution (e.g., the World Bank, the Inter-American Development Bank or the Asian Development Bank), foreign sovereign government, or corporation (the "Obligor"). Applicant anticipates that the Bonds will be intermediate term securities with maturities ranging from five to eight years.

3. Applicant or an affiliate thereof (as "Depositor") will purchase directly from the Obligor, or in the secondary market, some or all of the Bonds of a single series and deposit them with a bank (the "Custodian"). The Bonds will be held in the Custodian's name pursuant to a custody and agency agreement (the "Custody Agreement") meeting the requirements for unit investment trusts in section 26(a) of the 1940 Act.[1] Applicant proposes that the corporate trust department of a major commercial bank (with total assets of not less than $500,000,000) act as its Custodian, and states that it will pay the annual fee and certain expenses of the Custodian.

4. Upon deposit of the Bonds, the Custodian will deliver to Applicant certain deposit receipts (the "Certificates") representing interests in the serially maturing interest and principal payments on the Bonds. Thereafter, the Certificates will be offered only to institutional investors who are "accredited investors" for purposes of Regulation D under the Securities Act of 1933 ("1933 Act"), 17 CFR 230.501-506 (as now or hereafter in effect), and who have knowledge and experience in financial and business matters to be able to evaluate the risks associated with investing in instruments, such as the Certificates, that are not redeemable and represent interests in the principal or interest payments on the underlying Bonds. The Certificates will not be offered to individuals. The minimum purchase price for Certificates will be $150,000. Since Certificates will be sold at a discount, such minimum purchase price

[1] Section 26(a) requires, among other things, the custodial arrangement to provide that the Custodian may not make any payment to the Depositor except for payments not exceeding what the Commission may prescribe as a reasonable amount for providing bookkeeping and other administrative services; the Custodian shall have possession of all the securities in which the assets of the trust are invested; and the Custodian shall not resign until the trust is liquidated or a successor Custodian has been designated.

will correspond to a face amount in excess of $150,000.

5. Applicant further expects to (but is not required to) maintain a secondary market for the Certificates. Each Certificate will be transferable and represent the right to receive the single payment of interest or principal to which such Certificate relates at the date of maturity of the Certificate, the payment being equal to the face amount of the Certificate.

6. The issue price of each Certificate will be equal to the present value of the face amount of such Certificate. Each series of Certificates will be offered pursuant to an offering circular containing appropriate disclosure of all material aspects of the Certificates and relevant information concerning the Bonds and the Obligor, the custodial arrangement and tax consequences. If the Certificates are issued in connection with a primary distribution of Bonds that is required to be registered under the 1933 Act, the offering circular may be in the form of, or accompanied by, the Bond prospectus.

7. The Bonds may or may not be exempt from the registration provisions of the 1933 Act. In the case of Bonds that are so exempt (for example, obligations issued by certain international financial institutions of which the United States is a member), no trustee typically is appointed or indenture entered into with respect to the initial issuance of the Bonds. For exempt Bonds, however, there is typically a fiscal agency agreement pursuant to which a bank as agent for the Obligor of the Bonds agrees to disburse principal and interest to holders. Bonds that are registered will generally be issued pursuant to an indenture qualified under the Trust Indenture Act of 1939 ("1939 Act").

8. Under the proposed arrangement, the Bonds will be held in the name of the Custodian for the benefit of the Certificateholders. The Obligor will pay all interest and principal payments due on the Bonds held in custody directly to the Custodian. The Custodian will disburse the payments to holders of the Certificates to which such payments relate upon their presentation and surrender. In addition, a holder owning Certificates evidencing beneficial ownership of the entire principal amount of a Bond and the remaining unpaid interest due thereon ("Whole Certificate") will be entitled to surrender such Whole Certificate to the Custodian and direct the Custodian to register on the books of the Obligor's fiscal agent a transfer to that holder of a Bond in an aggregate principal amount corresponding to the Whole Certificate so surrendered. The Custodian will, in effect, act as both the receiving and disbursing agent, and may appoint sub-paying agents.

9. The Custody Agreement will provide that Certificateholders, as owners of direct interests in the Bonds, will possess all of the rights and privileges of owners of the Bonds, except that the Custodian shall have the sole and exclusive right to hold the underlying Bonds on behalf of Certificateholders and to act on behalf of the Certificateholders in the event of a default should they so request (as described below). The Custodian will acknowledge in writing in the Custody Agreement that the Bonds are held for the accounts of Certificateholders and will not be subject to any right, charge, security interest, lien or claim of any kind in favor of the Custodian or any person claiming through it. All payments received by the Custodian will be immediately available upon receipt to holders of Certificates entitled to such payments, and the Custodian will not be authorized to exercise, with regard to any such payment received, any investment discretion whatsoever.

10. Applicant's compensation for its activities in connection with the proposed issuance of the Certificates will be an amount equal to the difference between the aggregate amount it receives from the sale of the Certificates and the cost of acquiring the underlying Bonds and the related transaction expenses (including the expenses and charges of the Custodian), and the profits realized, if any, as a result of trading Certificates in the secondary market. Applicant asserts that the purpose of the proposed arrangement is to provide a more flexible market for debt securities of the Obligor, thereby increasing liquidity and assisting financially sophisticated institutional investors in matching their portfolio requirements with such available investments.

11. The indentures governing the issuance of the Bonds will contain provisions permitting acceleration of interest and principal payments upon the occurrence of certain events. Acceleration provisions contained in Bond indentures generally provide that if the Obligor is in default for a given period on the payment of the principal or interest on any bonds or notes (including the Bonds) or of certain other obligations, then the holder of any of the Bonds may elect to accelerate the principal of the Bonds held by him, and the Obligor must pay such principal, together with interest accrued thereon through the date of payment, unless prior to that time all such defaults are cured.

12. In the aggregate, the Certificateholders' rights in the event of a default on the underlying Bonds will be the same as direct holders of the Bonds, i.e., to elect to accelerate the principal of the Bonds, and thereby make the Obligor pay such principal, together with interest accrued thereon through the date of payment, unless prior to that time all such defaults are cured. However, under the proposed arrangement, individual Certificateholders will have to notify the Custodian of such holders' election to accelerate and the Custodian will only notify the Obligor that the principal on all of the Bonds represented by a specific Certificate is accelerated if a stated percentage of holders so notify it. Moreover, in the event of such a default by the Obligor, a holder of a Whole Certificate representing ownership of all the principal and remaining unpaid interest due on a Bond will continue to have the above-mentioned right to surrender such Whole Certificate and direct the Custodian to register on the books of the Obligor's fiscal agent a transfer to that holders of such Bond in the appropriate aggregate principal amount. Such Whole Certificateholder will have the same rights with regard to the defaulted Bond as any other Bondholder.

13. If the Obligor fails to make any payment due on the bonds, the holder of any Certificate not paid by virtue of such default may sue the Obligor directly, or, if not permitted to maintain such an action under applicable law, he may cause the Custodian to commence or join such an action against the Obligor to recover the amount due on such Certificate at the holder's expense. Also, in the event of a default on any Bonds which triggers acceleration (*e.g.*, non-payment which continues beyond the specified cure period), the holders of 25 percent in the aggregate of "amortized face amount" (as defined in the application) of Certificates then outstanding may direct the Custodian to take such action as such holders deem appropriate with regard to all of the Bonds of the defaulting Obligor then held by the Custodian.

14. In the case of an acceleration, the Custodian, as representative of the Certificateholders, will have the same rights as any other Bondholder to deliver notice to the Obligor (or to the Bond trustee, in a case of Bonds issued pursuant to an indenture qualified under the 1939 Act) stating that the Custodian elects to declare the principal of all of the Bonds then held by the Custodian to be immediately due and payable. At such time as the Bonds are accelerated,

the interest of each holder of Certificates in the Bonds would be transformed into an undivided interest in all of the proceeds thereafter received on such Bonds, allocated in proportion to the relative amortized face amounts of the respective Certificates.

15. Without conceding the applicability of the 1940 Act to the proposed offering of the Certificates (absent an acceleration of the obligation to pay the principal and interest on the underlying Bonds upon a default), Applicant asserts that it would be appropriate in the public interest and consistent with the protection of investors and the purposes of the 1940 Act to exempt the proposed arrangement from all provisions of the 1940 Act. Applicant submits that, except in the event of an acceleration of principal and interest payments on the bonds, the Certificates will represent a direct ownership interest in the principal or interest in the underlying Bonds. Applicant further submits that neither the structure nor the mode of operations of the proposed arrangement resembles a typical investment company, and that offering the Certificates to financially sophisticated institutional investors is not the type of transaction that needs to be regulated under the 1940 Act. Applicant contends that the Custodian will not be trading, dealing, or generally investing in securities and, thus, will not exercise any investment discretion, but will perform only administrative and mechanical functions.

16. Applicant aseserts that the selection of the underlying securities will be made prior to the purchase of Certificates, and, thus, will be known by the purchaser at the time of purchase. Morever, since the Certificates will be sold on the basis of the credit of the Obligor on the underlying Bonds, Applicant asserts that the Certificateholders will look ultimately to the Obligor for their assurance of repayment, not to the Applicant, Depositor or Custodian. Applicant further asserts that even if an investment company is formed upon acceleration of interest and principal payments on the Bonds, such company would be engaged in activities associated with its liquidation and, thus, should be deemed exempt from all provisions of the 1940 Act under section 7(b) of the 1940 Act.

17. In addition, Applicant represents that each Certificate and the Custody Agreement will provide that the Certificateholder is the real party in interest and shall have the right upon default to proceed directly and individually against the Obligor (to the extent permitted by law) in the manner such holder deems appropriate. Because of the structure of the proposed arrangement and the nature of the direct interests represented by Certificates, Applicant asserts that the arrangement will present no risk of loss separate from or in addition to that presented by the underlying investment in the Bonds themselves. Applicant believes that the Custodian's obligation under the Custody Agreement to enforce the Certificateholders' rights will provide a sufficient safeguard against the potential problems associated with a pool of liquid assets that are the principal concern of the 1940 Act and, more generally, will provide adequate assurance that the Certificates will be paid in accordance with their terms.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 87-11720 Filed 5-21-87; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC—15742; 812-6689]

Investment Company Institute; Application for Order Permitting Organization of Captive Mutual Fund Insurance Co.

Dated: May 15, 1987.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Exemption Under the Investment Company Act of 1940 ("the 1940 Act").

Applicant: Investment Company Institute ("ICI").

Relevant 1940 Act Sections: Order pursuant to section 17(d) and Rule 17d-1 thereunder.

Summary of Application: Applicant seeks an order permitting ICI members which are investment companies registered under the Act, their principal underwriters and all affiliated persons of such companies and underwriters (collectively, "ICI Members") to become members of a captive mutual insurance company ("Company") sponsored by the ICI, and to purchase fidelity bonds and/or directors and officers and errors and omissions liability insurance therefrom and, for that purpose, to pay annual and reserve premiums and make secured and unsecured commitments for assessments to the Company as described below.

Filing Date: The application was filed on April 20, 1987, and amended on May 14, 1987.

Hearing or Notification of Hearing: If no hearing is ordered, the Application will be granted. Any interested person may request a hearing on this Application, or ask to be notified if a hearing is ordered. Any requests must be received by the SEC by 5:30 p.m. on June 8, 1987. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve the Applicant with the request either personally or by mail, and also sent it to the Secretary of the SEC, along with proof of service by affidavit, or, for lawyers, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 5th Street, NW, Washington, DC 20549. Applicant, 1600 M Street, NW., Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: Brion R. Thompson, Special Counsel (202) 272-3016 or Curtis R. Hilliard, Special Counsel (202) 272-3026 (Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application is available for a fee from either the Commission's Public Reference Branch in person, or the Commission's commercial copier (800) 231-3282 (in Maryland (301) 258-4300).

Applicant's Representations: 1. The ICI is the national association for the American mutual fund industry. Its members include investment companies, their investment advisers and principal underwriters, and sponsors of unit investment trusts which account for over 90 percent of the funds invested in such trusts. Its mutual fund members have assets accounting for over 90 percent of total industry assets and approximately 27 million shareholders. In addition, the ICI has over 450 associate members which render investment advisory services exclusively to noninvestment company clients.

2. The Company is to be formed as a mutual company, under Vermont law unless the Commission is notified otherwise by amendment to the application, and acting as primary insurer would offer members and associate members of the ICI initially up to $10 million of fidelity bond coverage and up to $10 million of directors and errors and omissions ("D&O/E&O") liability insurance. Membership in the Company would not be a requirement of ICI membership. Such fidelity bond coverage would be issued on an "each and every occurrence" basis, which

absent formation of the company the ICI believes may not generally be available in the commercial insurance market.

3. To be eligible to purchase fidelity bonds or D&O/E&O liability insurance from the Company, an ICI Member will be required, in addition to paying an annual premium, to become a member of the Company by paying the Company a reserve premium equal to 100 percent of its initial annual premium (for ICI Members applying for membership in the Company during the Enrollment Period as defined below), and by committing to provide up to 300 percent of its initial annual premium to the Company if and when called by the Company's Board of Directors; two-thirds of the commitment would be secured by letters of credit. Because not all ICI Members will purchase both fidelity bonds and D&O/E&O insurance from the Company, calls on the asset commitment would be prioritized depending upon the nature of the losses giving rise to the call.

4. The Company would be organized in mutual form with perpetual existence and would issue no stock or other instrument evidencing an interest in the Company. Each ICI Member's interest in the Company would be non-transferable, except in the case of merger or other form of reorganization. Memberships in the Company will only be offered to, and reserve premiums will only be accepted from, members and associate members of the ICI which obtain insurance from the Company. Upon termination of membership, reserve premiums will be returned to ICI Members, subject to such restrictions as may be set by the Company's Board of Directors. Such restrictions may include deferral of the return of a reserve premium for up to five years, in order to provide stability to the Company, without which the Company might be unable to offer the proposed insurance coverage to ICI Members. Commitments for assessments, both secured and unsecured, will expire upon an ICI Member's termination of membership in the Company except as may be necessary to cover losses of the Company prior to such termination or, to avoid jeopardizing the Company's capital, to comply with insurance regulatory requirements. If the Company should be liquidated, its assets will be distributed to its members in proportion to their interests in the Company's premium reserves, surplus, and other assets. Voting for the election of directors and on other membership matters may be on a weighted basis depending on the amount of total premiums, except that regardless of the volume of their premiums and commitments, no investment company, together with its investment adviser, principal underwriter, and any affiliated persons of such company, adviser or underwriter identified to the Company, will be entitled to cast, in the aggregate, five percent or more of the eligible votes.

5. Because the Company must have the initial capital outlined above to commence operations, reserve premiums and commitments must be obtained from a large percentage of the ICI Members during the Company's organizational period (the "Enrollment Period"). Accordingly, the Company anticipates providing some financial disincentive for ICI Members which do not apply for membership in the Company until after the specified Enrollment Period. Such a disincentive may, for example, be an increase in their reserve premium requirement from 100% to up to 125% of their initial annual premium. The ICI's insurance consultant, which has broad experience in organizing captive insurance companies, advises that such disincentives for late application (or, conversely, financial incentives for early application) are highly desirable and prevalent features of start-up captives. The alternative might be to close the Company to memberships after the Enrollment Period; that alternative would be extremely harmful to the investment management industry and to the Company, whose growth would thereby be precluded. No such disincentive will be applied to ICI Members which were not in existence during the Enrollment Period.

6. During the Enrollment Period, applications will be sought from all ICI Members, including members whose current insurance coverage does not lapse until well after the Enrollment Period. All applicants who sign up to purchase insurance coverage during the Enrollment Period, regardless of the effective date of the Company's insurance coverage, will be required to accept or reject the Company's premium quotation within a specified period after receipt and to pay its reserve premium at the time of such acceptance. The Company, however, intends to pay or credit each member with interest on its reserve premium, calculated on a uniform basis, to the date the Company's insurance coverage becomes effective. Thus, ICI Members who choose to keep their current insurance coverage until it lapses will not be disadvantaged over those who choose to cancel their existing insurance coverage as of the effective date of the Company's coverage.

7. In order to justify granting an order under section 17(d) and Rule 17d–1 approving a joint transaction between a registered investment company and an affiliated person it must be demonstrated that the proposed transaction is consistent with the provisions, policies, and purposes of the 1940 Act and that the participation of the investment company in the transaction will not be on a basis different from or less advantageous than that of other participants. For the following reasons, Applicant argues that participation of ICI Member investment companies in a joint arrangement to become members of and purchase insurance from the Company will be consistent with the provisions, policies, and purposes of the 1940 Act. The purpose of establishing the Company is to provide ICI Members with the opportunity to obtain stable and reliable fidelity bond and D&O/E&O liability insurance coverage at reasonable rates. Fidelity bond coverage is required under Rule 17g–1, adopted pursuant to section 17(g) of the 1940 Act. D&O/E&O liability insurance coverage is in many cases necessary for ICI Members to attract experienced, qualified persons to serve as officers or directors, including as independent directors or trustees of investment companies. The commercial insurance market has historically been cyclical in nature, subject to radical changes in the availability, type, and cost of insurance coverages. In contrast, the Company should be a dependable insurance provider in which the investment management industry will have a voice, dedicated to offering insurance meeting regulatory requirements and tailored to industry needs, at premiums which reflect actual industry experience. The ICI's independent insurance consultants expect that the Company's expense ratios will be appreciably lower than those of commercial insurance companies. These savings are expected to result in lower annual premiums for the Company's members even in initial years. If and to the extent that the Company's actual loss experience results in additional savings, annual premiums may be reduced or coverages increased or both. Accordingly, any such savings will directly benefit ICI Member investment companies and their shareholders.

8. For the following reasons, Applicant argues that participation by ICI Member investment companies in a joint arrangement to become members of and purchase insurance from the

Company will be essentially on the same basis as, and no less advantageous than, that of other participants. Each ICI Member, whether an investment company, investment adviser or principal underwriter, will obtain insurance from the Company and make its reserve premium payment and commitments on the same basis as every other ICI Member. In each case, an ICI Member's application will be independently evaluated by the Company's insurance underwriter. That insurance underwriter, on the basis of information in the application, will determine whether to accept an ICI Member and will set the initial annual premium for the desired insurance coverage. Every ICI Member will pay a reserve premium, will make a commitment secured by letters of credit for 200 percent of its initial annual premium, and will make an unsecured commitment for 100 percent of its initial annual premium. The Company initially expects to offer essentially the same form of fidelity bond and the same form of D&O/E&O liability policy to every ICI Member, subject to risk distinctions which the insurance underwriter may make applicable uniformly to certain classes of ICI Members. Premiums will be determined by the Company's insurance underwriter on the basis of its risk evaluations in accordance with the commercial insurance industry standards. Every ICI Member will have a equal opportunity to apply for membership in the Company during the Enrollment Period, regardless of when its then current insurance coverage lapses. ICI Members who apply for membership on this basis, and who pay their reserve premiums before their current coverage lapses and their new insurance becomes effective will receive interest calculated on a uniform basis on their reserve premiums. The financial disincentive to encourage ICI Members to apply for membership in the Company during the Enrollment Period will not be applied to ICI Members which were not in existence during the Enrollment Period.

9. Because the aggregate reserve premiums and commitments for additonal funding required for membership in the Company during the Enrollment Period will not be applied to ICI Members which were not in existence during the Enrollment Period.

9. Because the aggregate reserve premiums and commitments for additional funding required for membership in the Company will never exceed 400 percent of the initial annual premium (or 425 percent for those ICI Members that apply for men bership after the Enrollment Period), in virtually every case the dollar amount of the reserve premiums and commitments of an ICI Member investment company will be *de minimis* in proportion to the dollar amount of the ICI Member's assets. The only exceptions are likely to be temporary, such as when new investment companies purchase insurance from the Company prior to a substantial offering of their shares.

Applicant's Conditions: If the requested order is granted, the Applicant agrees that the following requirements may be made formal conditions to the order:

1. With respect to joint fidelity bonds, the Company will abide by the provisions of Rule 17g–1(j), insofar as it requires that the terms and provisions of the bonds will comply with the provisions of Rule 17g–1. The Company will require a representation from ICI Members that are insured parties to a joint fidelity bond that they will enter into the agreement referred to in Rule 17g–1(f).

2. With respect to each D&O/E&O liability insurance policy purchased by one ICI Member in a joint arrangement with one or more other ICI Members, the Company will require as a condition to the issuance of such a policy a representation by each ICI Member investment company purchasing such a policy from the Company that its board of directors or trustees, including a majority of the directors or trustees who are not interested persons with respect thereto, will determine no less frequently than annually that the standards described in paragraphs (i) and (ii) of Rule 17d–1(d)(7) have been satisfied.

3. The Company will require as a condition to the issuance of a joint fidelity bond or a D&O/E&O insurance policy purchased by one ICI Member in a joint arrangement with one or more other ICI Members a certification by each ICI Member investment company to be covered by such bond or policy that its board of directors or trustees, including a majority of the directors or trustees who are not interested persons with respect thereto, has determined that the benefits of obtaining the joint fidelity bond and/or such D&O/E&O liability insurance policy from the Company, including the opportunity to obtain stable, low-cost insurance coverage from the Company, justify paying reserve premiums and making commitments for additional payments to the Company, including acceptance of restrictions upon the withdrawal of reserve premiums.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 87–11804 Filed 5–21–87; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–15743; 812–6702]

Goldman, Sachs & Co.; Issuance of Stripped Certificates Representing Interests In Bonds Held in the Custody of a Bank

Dated: May 15, 1987.

AGENCY: Securities and Exchange Commission (the "SEC").

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 (the "1940 Act").

Applicant: Goldman, Sachs & Co.

Relevant 1940 Act Section: Exemption requested under Section 6(c) from all provisions of the 1940 Act.

Summary of Application: Applicant requests an exemption from all provisions of the 1940 Act so that it can issue "stripped" certificates representing interests in the principal or interest payments due on certain bonds held in the custody of a major commercial bank.

Filing Date: The application was filed on May 1, 1987.

Hearing or Notification of Hearing: If no hearing is ordered, the application will be granted. Any interested person may request a hearing on this application, or ask to be notified if a hearing is ordered. Any requests must be received by the SEC by 5:30 p.m., on June 5, 1987. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve the Applicant with the request, either personally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit, or, for attorneys, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. Applicant, c/o Sullivan & Cromwell, 125 Broad Street, New York, New York 10004. Attention: Charles F. Rechlin, Esq.

FOR FURTHER INFORMATION CONTACT: Sherry A. Hutchins, Staff Attorney at (202) 272–2799 or Brion R. Thompson, Special Counsel at (202) 272–3016, Office of Investment Company Regulation, Division of Investment Management.

SUPPLEMENTARY INFORMATION: Following is a summary of the

application; the complete application is available for a fee from either the SEC's Public Reference Branch in person or the SEC's commercial copier (800) 231–3282 (in Maryland (301) 258–4300)).

Applicant's Representations:

1. Applicant is a limited partnership organized under the laws of New York. Applicant also is registered as a broker-dealer under the Securities Exchange Act of 1934.

2. Applicant proposes to offer for sale component parts of interest-bearing bonds (the "Bonds") issued or to be issued by an international financial institution (e.g., the World Bank, the Inter-American Development Bank or the Asian Development Bank), foreign sovereign government, or corporation (the "Obligor"). Applicant anticipates that the Bonds will be intermediate term securities with maturities ranging from five to eight years.

3. Applicant or an affiliate thereof (as "Depositor") will purchase directly from the Obligor, or in the secondary market, some or all of the Bonds of a single series and deposit them with a bank (the "Custodian"). The Bonds will be held in the Custodian's name pursuant to a custody and agency agreement (the "Custody Agreement") meeting the requirement for unit investment trusts in Section 26(a) of the 1940 Act.[1] Applicant proposes that the corporate trust department of a major commercial bank (with total assets of not less than $500,000,000) act as its custodian, and states that it will pay the annual fee and certain expenses of the Custodian.

4. Upon deposit of the Bonds, the Custodian will deliver to Applicant certain deposit receipts (the "Certificates") representing interests in the serially maturing interest and principal payments on the Bonds. Thereafter, the Certificates will be offered only to institutional investors who are "accredited investors" for purposes of Regulation D under the Securities Act of 1933 ("1933 Act"), 17 CFR 230.501–506 (as now or hereafter in effect), and who have knowledge and experience in financial and business matters to be able to evaluate the risks associated with investing in instruments, such as the Certificates, that are not redeemable and represent interests in the principal or interest payments on the underlying Bonds. The Certificates will not be offered to individuals. The minimum purchase price for Certificates will be $150,000. Since Certificates will be sold at a discount, such minimum purchase price will correspond to a face amount in excess of $150,000.

5. Applicant further expects to (but is not required to) maintain a secondary market for the Certificates. Each Certificate will be transferable and represent the right to receive the single payment of interest or principal to which such Certificate relates at the date of maturity of the Certificate, the payment being equal to the face amount of the Certificate.

6. The issue price of each Certificate will be equal to the present value of the face amount of such Certificate. Each series of Certificates will be offered pursuant to an offering circular containing appropriate disclosure of all material aspects of the Certificates and relevant information concerning the Bonds and the Obligor, the custodial arrangement and tax consequences. If the Certificates are issued in connection with a primary distribution of Bonds that is required to be registered under the 1933 Act, the offering circular may be in the form of, or accompanied by, the Bond prospectus.

7. The Bonds may or may not be exempt from the registration provisions of the 1933 Act. In the case of Bonds that are so exempt (for example, obligations issued by certain international financial institutions of which the United States is a member), no trustee typically is appointed or indenture entered into with respect to the initial issuance of the Bonds. For exempt Bonds, however, there is typically a fiscal agency agreement pursuant to which a bank as agent for the Obligor of the Bonds agrees to disburse principal and interest to holders. Bonds that are registered will generally be issued pursuant to an indenture qualified under the Trust Indenture Act of 1939 ("1939 Act").

8. Under the proposed arrangement, the Bonds will be held in name of the Custodian for the benefit of the Certificateholders. The Obligor will pay all interest and principal payments due on the Bonds held in custody directly to the Custodian. The Custodian will disburse the payments to holders of the Certificates to which such payments relate upon their presentation and surrender. In addition, a holder owning Certificates evidencing beneficial ownership of the entire principal amount of a Bond and the remaining unpaid interest due thereon ("Whole Certificate") will be entitled to surrender such Whole Certificate to the Custodian and direct the Custodian to register on the books of the Obligor's fiscal agent a transfer to that holder of a Bond in an aggregate principal amount corresponding to the Whole Certificate so surrendered. The Custodian will, in effect, act as both the receiving and disbursing agent, and may appoint sub-paying agents.

9. Custody Agreement will provide that Certificateholders, as owners of direct interests in the Bonds, will possess all of the rights and privileges of owners of the Bonds, expect that the Custodian shall have the sole and exclusive right to hold the underlying Bonds on behalf of Certificateholders and to act on behalf of the Certificateholders in the event of a default should they so request (as described below). The Custodian will acknowledge in writing in the Custody Agreement that the Bonds are held for the accounts of Certificateholders and will not be subject to any right, charge, security interest, lien or claim of any kind in favor of the Custodian or any person claiming through it. All payments received by the Custodian will be immediately available upon receipt to holders of Certificates entitled to such payments, and the Custodian will not be authorized to exercise, with regard to any such payment received, any investment discretion whatsoever.

10. Applicant's compensation for its activities in connection with the proposed issuance of the Certificates will be an amount equal to the difference between the aggregate amount it receives from the sale of the Certificates and cost of acquiring the underlying Bonds and the related transaction expenses (including the expenses and charges of the Custodian), and the profits realized, if any, as a result of trading Certificates in the secondary market. Applicant asserts that the purpose of the proposed arrangement is to provide a more flexible market for debt securities of the Obligor, thereby increasing liquidity and assisting financially sophisticated institutional investors in matching their portfolio requirements with such available investments.

11. The indentures governing the issuance of the Bonds will contain provisions permitting acceleration of interest and principal payments upon the occurrence of certain events. Accelaration provisions contained in Bond indentures generally provide that if the Obligor is in default for a given period on the payment of the principle or interest on any bonds or notes

[1] Section 26(a) requires among other things, the custodial arrangement to provide that the Custodian may not make any payment to the Depositor except for payments not exceeding what the Commission may prescribe as a reasonable amount for providing bookkeeping and other administrative services; the Custodian shall have possession of all the securities in which the assets of the trust are invested; and the Custodian shall not resign until the trust is liquidated or a successor Custodian has been designated.

(including the Bonds) or of certain other obligations, then the holder of any the Bonds may elect to accelerate the principal of the Bonds held by him, and the Obligor must pay such principal, together with interest accrued thereon through the date of payment, unless prior to that time all such defaults are cured.

12. In the aggregate, the Certificateholders' rights in the event of a default on the underlying Bonds will be the same as direct holders of the Bonds, i.e., to elect to accelerate the principal of the Bonds, and thereby make the Obligor pay such principal, together with interest accrued thereon through the date of payment, unless prior to that time all such defaults are cured. However, under the proposed arrangement, individual Certificateholders will have to notify the Custodian of such holders' election to accelerate and the Custodian will only notify the Obligor that the principal on all of the Bonds represented by a specific Certificate is accelerated if a stated percentage of holders so notify it. Moreover, in the event of such a default by the Obligor, a holder of a Whole Certificate representing ownership of all the principal and remaining unpaid interest due on a Bond will continue to have the above-mentioned right to surrender such Whole Certificate and direct the Custodian to register on the books of the Obligor's fiscal agent a transfer to that holder of such Bond in the appropriate aggregate principal amount. Such Whole Certificateholder will have the same rights with regard to the defaultled Bond as any other Bondholder.

13. If the Obligor fails to make any payment due on the Bonds, the holder of any Certificate not paid by virtue of such default may sue the Obligor directly, or, if not permitted to maintain such an action under applicable law, he may cause the Custodian to commence or join such an action against the Obligor to recover the amount due on such Certificate at the holder's expense. Also, in the event of a default on any Bonds which triggers accelaration (*e.g.*, non-payment which continues beyond the specified cure period), the holders of 25 percent in the aggregate of "amortized face amount" (as defined in the application) of Certificates then outstanding may direct the Custodian to take such action as such holders deem appropriate with regard to all of the Bonds of the defaulting Obligor then held by the Custodian.

14. In the case of an acceleration, the Custodian, as representative of the Certificateholders, will have the same rights as any other Bondholder to deliver notice to the Obligor (or to the Bond trustee, in a case of Bonds issued pursuant to an indenture qualified under the 1939 Act) stating that the Custodian elects to delare the principal of all of the Bonds then held by the Custodian to be immediately due and payable. At such time as the Bonds are accelerated, the interest of each holder of Certificates in the Bonds would be transformed into an undivided interest in all of the proceeds thereafter received on such Bonds, allocated in proportion to the relative amortized face amounts of the respective Certificates.

15. Without conceding the applicability of the 1940 Act to the proposed offering of the Certificates (absent an acceleration of the obligation to pay the principal and interest on the underlying Bonds upon a default), Applicant asserts that it would be appropriate in the public interest and consistent with the protection of investors and the purposes of the 1940 Act to exempt the proposed arrangement from all provisions of the 1940 Act. Applicant submits that, except in the event of an acceleration of principal and interest payments on the Bonds, the Certificates will represent a direct ownership interest in the principal or interest in the underlying Bonds. Applicant further submits that neither the structure nor the mode of operations of the proposed arrangement resembles a typical investment company, and that offering the Certificates to financially sophisticated institutional investors is not the type of transaction that needs to be regulated under the 1940 Act. Applicant contends that the Custodian will not be trading, dealing, or generally investing in securities and, thus, will not exercise any investment discretion, but will perform only administrative and mechancial functions.

16. Applicant asserts that the selection of the underlying securities will be made prior to the purchase of Certificates, and, thus, will be known by the purchaser at the time of purchase. Moreover, since the Certificates will be sold on the basis of the credit of the Obligor on the underlying Bonds, Applicant asserts that the Certificateholders will look ultimately to the Obligor for their assurance of repayment, not to the Applicant, Depositor or Custodian. Applicant further asserts that even if an investment company is formed upon acceleration of interest and principal payments on the Bonds, such company would be engaged in activities associated with its liquidation and, thus, should be deemed exempt from all provisions of the 1940 Act under section 7(b) of the 1940 Act.

17. In addition, Applicant represents that each Certificate and the Custody Agreement will provide that the Certificateholder is the real party in interest and shall have the right upon default to proceed directly and individually against the Obligor (to the extent permitted by law) in the manner such holder deems appropriate. Because of the structure of the proposed arrangement and the nature of the direct interests represented by Certificates, Applicant asserts that the arrangement will present no risk of loss separate from or in addition to that presented by the underlying investment in the Bonds themselves. Applicant believes that the Custodian's obligation under the Custody Agreement to enforce the Certificateholders' rights will provide a sufficient safeguard against the potential problems associated with a pool of liquid assets that are the principal concern of the 1940 Act and, more generally, will provide adequate assurance that the Certificates will be paid in accordance with their terms.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 87-11803 Filed 5-21-87; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF STATE

Bureau of Consular Affairs

[Public Notice 1011]

Termination of Stateside Criteria Program (SCP)

ACTION: Notice.

SUMMARY: Given the very generous legalization and other provisions in Pub. L. 99-603, the Immigration Reform and Control Act of 1986 (IRCA), the Department is terminating its Stateside Criteria Program (SCP). The program has become an anomaly, keeping open a "back door" into the United States in direct contradiction to the goals of the landmark IRCA legislation. While the SCP program is not a regulatory one and is based solely upon administative decisions, the Department is providing for notice and comment on this change since the SCP program constitutes a benefit to aliens within its terms.

DATE: Interested parties are invited to submit, in duplicate, comments relevant to this determination on or before June 12, 1987.

ADDRESS: Send comments to the Assistant Secretary of State for Consular Affairs, Room 6811, Department of State, Washington, DC. 20520.

FOR FURTHER INFORMATION CONTACT: Cornelius D. Scully III, Director, Office of Legislation, Regulations and Advisory Assistance, Visa Office, Department of State, Room 1330, SA-1, Department of State, Washington, DC 20520, (202) 663-1184.

SUPPLEMENTARY INFORMATION: The SCP program constitutes an administrative exception to the general rule that an alien physically present in the United States shall process his or her immigrant visa application at the immigrant visa issuing office having jurisdiction over his or her last place of foreign residence prior to entry into the United States. Aliens who meet the requirements for this benefit are permitted to file their application at one of four posts in Canada (Vancouver, Calgary, Toronto or Montreal) or one of two posts in Mexico (Tijuana or Ciudad Jaurez). The specific SCP post to which the alien should address himself is based upon the alien's nationality and place of residence in the United States.

Initially, the SCP program was established by circular instruction to immigrant visa issuing offices abroad and information concerning the program was disseminated to the interested public informally. In 1978, the general criteria for eligibility for the program were incorporated into Volume 9—Visas, Foreign Affairs Manual, Part III, Immigrant Visas (but not published in the Federal Register). The specific operational details were made available to the interested public in a Visa Office Bulletin. Visa Office Bulletin, Volume V, Number 38 of May 24, 1983 contains the currently applicable operational information.

In substance, the SCP program derives from the enforcement policy of the Immigration and Naturalization Service toward aliens illegally in the United States who have become entitled to immigrant status on the basis of a close relationship (parent, spouse, child, or adult unmarried son or daughter) to a United States citizen or permanent resident, but who are statutorily ineligible to adjust status under section 245 of the Act to that of an alien lawfully admitted for permanent residence. If the Service authorizes such an alien to remain in the United States while his or her immigrant visa application is being processed by a consular office abroad, the alien may have his or her application processed by the appropraite SCP post, rather than by the immigrant visa issuing office having jurisdiction over the alien's last foreign residence prior to arrival in the United States.

An important collateral benefit for an alien entitled to process through the SCP program is a guarantee that the alien will be allowed to return to the United following the immigrant visa interview, even if the visa application is refused. This so-called "letter of guarantee" clearly operates to the benefit of the alien although it has been included as a element in the program to assure the governments of the countries concerned (initially, Canada; more recently, Canada and Mexico) that refusal of a visa applciation in an individual SCP case would not result in the refused applicant's being stranded in its territory. This benefit is not extended to an alien in the United States whose visa application is being processed by the visa issuing office located in his or her country of last foreign residence.

Additionally, over the last three to five years the Department has been increasingly concerned that our visa issuing offices could not cope with mounting workloads. This concern was substantially heightened by the constraints imposed on Fiscal Year 1987 and 1988 budget levels and, more recently by the passge of IRCA. We need the space, facilities, and personnel devoted to SCP to carry out the Department's requirements under IRCA and to meet other high priority needs.

The Department recognizes that transferring applications already of record at the six designated offices to the office in the country of last foreign residence would result in administrative delays and could work a hardship on some SCP aliens whose plans had been made on the basis of SCP processing. The Department therefore, plans to terminate the program July 1, 1987, allowing those applications already in process at one of the six designated offices to be processed to completion by the office in question.

(Sec. 104, 66 Stat. 174, 8 U.S.C. 1104; Sec. 109(b)(1), Pub. L. 95-105, 91 Stat. 847.)

Dated: May 18, 1987.

Joan M. Clark,

Assistant Secretary for Consular Affairs.

[FR Doc. 87-11750 Filed 5-21-87; 8:45 am]

BILLING CODE 4710-06-M

UNITED STATES INFORMATION AGENCY

Radio Engineering Advisory Committee; Meeting

The Radio Engineering Advisory Committee of the United States Information Agency (USIA) will meet in Winchester, Virginia, on Friday, June 10, 1987, to discuss current operations and future plans of the Voice of America (VOA). The meeting will be held at the Corps of Engineers, 385 Bataille Drive, Ingram Building (Executive Conference Room). The meeting will begin at 9 a.m. Point of contact for the meeting is Cathy Haynes, telephone (202) 485-8048.

This meeting will include reports from senior members of the VOA management and engineering staff on the progress being made on the overall VOA modernization and enhancement effort. Specific topics of discussion will include the testing of 500 kw high frequency broadcasting transmitters, the status of site negotiations and major construction projects and other technical and regulatory issues relating to VOA modernization.

This meeting will be closed to the public because issues relating to future site negotiations for VOA relay stations will be discussed throughout the meeting. This meeting will be closed because disclosure of the matters to be discussed is likely to divulge information that is: (A) Specifically authorized under criteria established by an Executive order to be kept secret in the interest of national defense or foreign policy, and (B) in fact, is properly classified pursuant to such Executive Order (5 U.S.C. 552b(c)(1)).

Dated: May 18, 1987.

Charles Z. Wick,

Director.

[FR Doc. 87-11708 Filed 5-21-87; 8:45 am]

BILLING CODE 8230-01-M

Sunshine Act Meetings

Federal Register
Vol. 52, No. 99
Friday, May 22, 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).

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 10:00 a.m., June 3, 1987.

PLACE: 2033 K St., NW., Washington, DC, 5th Floor Hearing Room.

STATUS: Open.

MATTERS TO BE CONSIDERED:

Oral arguments—Sansom Refining Company v. Drexel Burnham Lambert, Inc. and Grabarnick v. National Futures Association.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254–6314.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 87–11876 Filed 5–20–87; 3:00 pm]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 10:00 a.m., June 5, 1987.

PLACE: 2033 K St., NW., Washington, DC, 8th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

Market Surveillance Matters

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254–6314.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 87–11877 Filed 5–20–87; 3:00 pm]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11:00 a.m., June 12, 1987.

PLACE: 2033 K St., NW., Washington, DC, 8th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

Market Surveillance Matters

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254–6314.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 87–11878 Filed 5–20–87; 3:00 pm]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11:00 a.m., June 19, 1987.

PLACE: 2033 K St., NW., Washington, DC, 8th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

Market Surveillance Matters

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254–6314.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 87–11879 Filed 5–20–87; 3:00 pm]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11:00 a.m., June 26, 1987.

PLACE: 2033 K St., NW., Washington, DC, 8th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

Market Surveillance Matters

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254–6314.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 87–11880 Filed 5–20–87; 3:00 pm]

BILLING CODE 6351–01–M

FEDERAL HOME LOAN MORTGAGE CORPORATION

DATE AND TIME: Friday, May 22, 1987, 9:00 a.m.

PLACE: 1776 G Street, NW., Washington, DC, Conference Room 8C.

STATUS: Closed.

CONTACT PERSON FOR MORE INFORMATION: Alan B. Hausman, 1776 G Street, NW., P.O. Box 37248, Washington, DC 20013, (202) 789–5097.

MATTERS TO BE CONSIDERED:

Closed: President's Report
Closed: Financial Report
Closed: Corporate Dividends

Date sent to Federal Register: May 20, 1987.

Maud Mater,

Secretary.

[FR Doc. 87–11855 Filed 5–20–87; 12:06 pm]

BILLING CODE 6719–01–M

NATIONAL CREDIT UNION ADMINISTRATION

TIME AND DATE: 1:00 p.m., Wednesday, May 27, 1987.

PLACE: 1776 G Street, NW., Washington, DC 20456, 7th Floor, Filene Board Room.

STATUS: Closed.

MATTER TO BE CONSIDERED:

1. Applications under Section 201 of the Federal Credit Union Act. Closed pursuant to exemptions (8) and (9)(A)(ii).

2. Personnel actions. Closed pursuant to exemptions (2) and (6).

FOR MORE INFORMATION CONTACT: Becky Baker, Acting Secretary of the Board, Telephone (202) 357–1100.

Becky Baker,

Secretary of the Board.

[FR Doc. 87–11866 Filed 5–20–87; 2:18 pm]

BILLING CODE 7535–01–M

NATIONAL CREDIT UNION ADMINISTRATION

The National Credit Union Administration Board determined that its business required that the previously announced closed meeting (**Federal Register**, Volume 52, No. 89, page 17502, Friday, May 8, 1987) on May 18, 1987, include an additional item, which was closed to public observation:

Waivers under § 701.27(d)(6) of NCUA's Rules and Regulations. Closed pursuant to exemptions (6) and (8).

The Board unanimously voted to add this item to the closed agenda. Earlier announcement of this change was not possible.

The previously announced items were:

1. Approval of Minutes of Previous Closed Meetings.

2. Administrative Actions under section 120 of the Federal Credit Union Act. Closed pursuant to exemptions (8), (9)(A)(ii), and (9)(B).

3. Board Briefings. Closed pursuant to exemptions (2), (8), (9)(A)(ii), and (9)(B).

4. Personnel Actions. Closed pursuant to exemptions (2) and (6).

The meeting was held at 1:05 p.m., in the Filene Board Room 7th Floor, 1776 G Street, NW., Washington, DC.

FOR MORE INFORMATION CONTACT: Becky Baker, Acting Secretary of the Board, Telephone (202) 357–1100.

Becky Baker,

Secretary of the Board.

[FR Doc. 87–11867 Filed 5–20–87; 2:18 pm]

BILLING CODE 7535–01–M

UNITED STATES POSTAL SERVICE BOARD OF GOVERNORS

Notice of a Meeting

The Board of Governors of the United States Postal Service, pursuant to its Bylaws (39 CFR 7.5) and the

Government in the Sunshine Act (5 U.S.C. 552b), hereby gives notice that it intends to hold a meeting at 8:30 a.m. on Tuesday, June 2, 1987, in the Benjamin Franklin Room, U.S. Postal Service Headquarters, 475 L'Enfant Plaza, SW., Washington, DC. The meeting is open to the public. The Board expects to discuss the matters stated in the agenda which is set forth below. Requests for information about the meeting should be addressed to the Secretary of Board, David F. Harris, at (202) 268–4800.

There will also be a session of the Board on Monday, June 1, 1987, but it will consist entirely of briefings and is not open to the public.

Agenda

Tuesday Session

June 2, 1987–8:30 a.m. (Open)—

1. Minutes of the Previous Meeting, May 4–5, 1987.
2. Remarks of the Postmaster General.
3. Consideration of Code of Ethical Conduct for Postal Service Governors.
4. Briefing on the Origin-Destination Information System (ODIS).
5. Annual Report by the Chief Postal Inspector.
6. Chief Postal Inspector's Report on Consumer Protection (Pub. L. 98–186).
7. Capital Investment: Alhambra, California (General Mail Facility).
8. Tentative agenda for July 6–7, 1987, meeting in Washington, DC.

David F. Harris,

Secretary.

[FR Doc. 87–11816 Filed 5–20–87; 10:02 am]

BILLING CODE 7710–12–M

Corrections

Federal Register
Vol. 52, No. 99
Friday, May 22, 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 DEFENSE

VETERANS ADMINISTRATION

38 CFR Part 21

Veterans Education; Entitlement Charges for Overpayments Under VEAP

Correction

In proposed rule document 87-10710 beginning on page 17990 in the issue of Wednesday, May 13, 1987, make the following correction:

On page 17990, in the third column, in the **SUMMARY**, in the third line "not" should read "now".

BILLING CODE 1505-01-D

FEDERAL COMMUNICATIONS COMMISSION

[Report No. 1658]

Petitions for Reconsideration of Actions in Rulemaking Proceedings

Correction

In notice document 87-11375 appearing on page 18739 in the issue of Tuesday, May 19, 1987, make the following correction:

In the second column, in the 12th line, "May 19," should read "June 3,".

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control

Project Grants for Preventive Health Services-Immunization; Program Announcement; Program Guidelines

Correction

In notice document 87-10083 beginning on page 16451 in the issue of Tuesday, May 5, 1987, make the following corrections:

1. On page 16451, in the third column, under **National Program Goals**, in paragraph 5, in the third line, "of more" should read "or more".

2. On the same page, in the same column, under *C. Budget Information*, in the fifth and sixth lines from the bottom, "or" should read "of" in both instances.

3. On page 16453, in the second column, in paragraph 6, in the first line, insert a comma between "Supply" and "Delivery".

4. On page 16454, in the third column, in the first complete paragraph, in the eighth line, "an" should read "and".

5. On page 16455, in the first column, in paragraph D, in the eighth line, "it" should read "its".

BILLING CODE 1505-01-D

DEPARTMENT OF THE INTERIOR

National Park Service

Great Basin National Park, NV; Legal Description

Correction

In notice document 87-11153 appearing on page 18462 in the issue of Friday, May 15, 1987, make the following correction:

In the third column, in the second paragraph, in the sixth line, "May" should read "Map".

BILLING CODE 1505-01-D

federal register

Friday
May 22, 1987

Part II

Department of the Interior

Fish and Wildlife Service

50 CFR Part 23

Conference of the Parties to the Convention on International Trade in Endangered Species of Wild Fauna and Flora; Sixth Regular Meeting; Notice of Proposed Amendments to Appendices and Notice

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Conference of the Parties to the Convention on International Trade in Endangered Species of Wild Fauna and Flora; Sixth Regular Meeting

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice.

SUMMARY: This notice sets forth proposed U.S. negotiating positions for the sixth regular meeting of the Conference of the Parties to the Convention on International Trade in Endangered Species of Wild Fauna and Flora. Comments or other relevant information concerning these proposed negotiating positions are solicited.

A public meeting to discuss these proposed negotiating positions as well as proposals to amend the Appendices to the Convention also will be held.

ADDRESS: Information and comments should be communicated to the U.S. Fish and Wildlife Service, Federal Wildlife Permit Office, 1000 N. Glebe Road, Room 621, Arlington, Virginia 22201, telephone (703) 235–2418. Information and comments are available for public inspection at that office from 8:00am to 4:15pm, Monday through Friday except holidays.

DATES: The cited public meeting will be held on May 29, 1987, from 1:00-4:00pm, in the North Penthouse of the Main Interior Building, 18th and C Streets, NW., Washington, DC 20240.

The Service will consider information and comments received by close of business June 15, 1987.

FOR FURTHER INFORMATION CONTACT: Earl B. Baysinger, Federal Wildlife Permit Office, 1000 N. Glebe Road, Room 621, Arlington, Virginia 22201, telephone (703) 235–1937.

Background

The United States is a Party to the Convention on International Trade in Endangered Species of Wild Fauna and Flora (hereinafter referred to as CITES or the Convention), an international agreement designed to control international trade in certain species of animals and plants. The purpose of such control is to ensure that no species becomes extinct or threatened with extinction due to trade. CITES provides for biennial (regular) meetings of the Conference of the Parties (COP) at which its implementation is reviewed.

This notice is the second in a series intended to inform the public of preparations for the sixth regular meeting (COP6) to be held in Ottawa, Canada, on July 12 through July 24, 1987. The first notice, published on January 13, 1987 (52 FR 1387), set forth the provisional agenda for COP6 (subsequently revised) and an explanation of most of the items on that agenda. The U.S. Fish and Wildlife Service (Service) invited the public to provide information and comments on that provisional agenda and also announced a public meeting to receive information and comments. This meeting was held on January 21, 1987.

Proposed Negotiating Positions

In this notice the Service summarizes proposed negotiating positions for COP6. Numerals next to each summary correspond to the numbers used in the first notice to denote provisional agenda items. Some additional agenda items not treated in the January 13 notice are addressed herein under the heading "Additional Issues." A summary of any information and comments received at the January 21 public meeting or submitted in writing to the Service, as well as a brief rationale, follow each proposed negotiating position. In some instances, no proposed negotiating position is stated, but an explanation is given for not developing one.

If necessary, one should consult the January 13 notice cited above to gain a better understanding of the issues at which the following negotiating positions are directed.

I. Opening Ceremony by the Authorities of Canada

Proposed Negotiating Position: No position necessary.

Information and Comments: None received.

Rationale: Not an issue for negotiation.

II. Welcoming Addresses

Proposed Negotiating Position: No position necessary.

Information and Comments: None received.

Rationale: Not an issue for negotiation.

III. Adoption of the Rules of Procedure

1. Rule 5—Election of Chairman and Vice-Chairman

Proposed Negotiating Position: Do not oppose the proposed rule that would provide that candidates for these positions are to be nominated by the Bureau in consultation with the host government.

Information and Comments: No comments received opposed this provisional rule.

Rationale: Adoption of this new provisional rule should help assure the selection of a chairman and vice-chairman capable of impartially expediting the business of COP6 while continuing the role of the host government in the selection process.

2. Rule 7—Bureau

Proposed Negotiating Position: Support specifying in the rules of procedure that the Bureau (composed of the Standing Committee, the Presiding Officer, the sessional committee chairmen and the Secretariat) be given specific authority to forward certain aspects of the business of the Conference including altering the timetable or structure of the meeting and, as a last resort, limiting the time for debate.

Information and Comments: None received specific to this issue, but several comments favored expediting the conduct of COP business.

Rationale: This proposed rule change would make express that which was implied in the old rule, that is that the Bureau has the authority to take measures to expedite the business of the Conference.

3. Rule 23—Establishment of Sessional Committees and Working Groups

Proposed Negotiating Position: Do not oppose establishment of sessional Committee I as a "science committee" whose function would be the review of proposals to amend the Appendices of the Convention and to make recommendations concerning matters of a primarily biological nature. Seek assurance that effective coordination of matters considered in Committee II is provided for.

Information and Comments: Two commenters supported the view that establishment of Committee I (essentially the old "screening committee" expanded to deal with other matters of a "scientific" nature) would help further the business of the meeting.

Rationale: COP's normally have worked on the basis of 2 major committees feeding recommendations to the Plenary for decision. A point of concern about this proposed rule change is that the new Committee I would address some of the same issues that Committee II would be addressing (see item VI below), but from a scientific rather than a technical perspective. Close coordination would be required to prevent confusion and duplication of effort. It is not clear how that coordination would be provided.

4. Rule 13—Arrangements for Debates

Proposed Negotiating Position: Seek amendment of this new provisional rule

in order to make it easier to open recommendations of Committee I and Committee II for additional discussion in Plenary.

Information and Comments: Commenters favored varying degrees of relaxation of proposed procedures for permitting discussion of Committee I and Committee II recommendations by the Plenary.

Rationale: The United States is not opposed in principle to debating important or controversial issues twice, once in committee and once in Plenary. The United States does favor measures that would forward the business of the meeting if they don't result in undesirable curtailment of debate that could result in defective decisions or substantial restriction of the rights of delegates or observers to participate effectively.

5. Rule 15—Majority

Proposed Negotiating Position: Do not oppose changing the present simple majority rule to requiring a two-thirds majority for approval of most substantive proposals that do not involve amendments to the Appendices.

Information and Comments: Three commenters supported making most decisions based on a two-thirds majority.

Rationale: Since most decisions of the COP are nonbinding recommendations to the Parties, a two-thirds majority requirement might help insure wider implementation of CITES recommendations.

6. Rule 14—Methods of Voting

Proposed Negotiating Position: Support retention of the secret ballot as expressed in the rules of procedure for previous COP's. A request for a secret ballot should take precedence over a request for a roll-call vote.

Information and Comments: Most comments favored limiting use of the secret ballot to the election of Conference officials and determining the host country for the next COP. One commenter supported this view citing procedures of other international organizations and a possible lack of accountability or susceptibility to pressure under secret voting.

Rationale: The argument put forth for restricting the use of the secret ballot has been based upon the rationale that delegates who cast secret ballots may deviate from their government's instructions or may be subject to generally unspecified "undue pressure" to vote for or against specific subjects. This rationale is not clear enough to support restricting the use of an accepted voting technique. It is reasonable to expect that governments would select persons responsible enough that they could be relied upon to carry out any instructions they have received from their government. It also seems reasonable that a secret ballot would relieve a delegate from being subjected to any "undue pressure" to vote in any specific way since whoever was exerting such pressure would be unable to monitor the delegate's secret ballot whereas a non-secret ballot would be subject to such monitoring.

7. Rule 9—Seating, Quorum

Proposed Negotiating Position: Do not oppose requiring an observer to first receive an invitation from a delegate before entering the area reserved to delegations while a meeting is in session. Favor a 50 percent quorum for Plenary and Committee I and Committee II sessions.

Information and Comments: Most commenters favored some limitation on observer access to delegates when they were in session so that the sessions would be more orderly. Some suggested that "lobbying" pressures would be reduced.

Rationale: The ability of approved observers to participate (except for voting) in the COPs is provided for in Article XI. The United States historically has strongly defended this right since much of the expertise needed to make the CITES effective is to be found among the specialized organizations that attend as observers. It is the United States position that interchanges between delegates and such specialists should be encouraged and made as simple as possible. However, it is recognized that some order should be maintained and the requirement for an observer to receive an invitation before entering the area occupied by delegations, while a meeting is in session, is a reasonable compromise.

IV. Election of Chairman and Vice-Chairman of the Meeting and of Chairman of Committees I and II

Proposed Negotiating Position: Support the election of chairmen who can further the business of the meeting while allowing for a full and fair airing of the issues.

Information and Comments: Two commenters were specifically in favor of the provisional rule to give the Bureau a strong role in the selection of COP6 chairmen.

Rationale: Experience has shown that the success of COP meetings is dependent on the quality of the chairmen. The United States is a member of the Standing Committee. As such it will play a role in the selection of COP6 chairmen.

V. Adoption of the Agenda and Working Programme

Proposed Negotiating Position: Support adoption of the provisional agenda (Doc 6.1 (Rev.2)).

Information and Comments: None received.

Rationale: Usually, adoption of the Agenda and Working Programme is pro forma. The order that agenda items are addressed is contained in the Working Programme. The United States has not yet received a copy of that Programme.

VI. Establishment of the Credentials Committee and Sessional Committees I and II

Proposed Negotiating Position

—Credentials Committee: The United States should support the establishment of this committee.

—Committees I and II: The United States should not oppose establishment of these two committees provided: that all Parties participating in the COP have been able to send at least two delegates; or that the rule governing the debate of Committee Recommendations in the Plenary has been relaxed sufficiently to ensure that any delegate who was unable to participate in committee deliberations will have the opportunity to debate such recommendations exhaustively in Plenary before a decision is made.

Information and Comments: Two commenters expressed the view that establishment of Committees I and Committee II would help further the business of the Conference. Others expressed concern that Parties unable to send large enough delegations to participate effectively in the concurrent sessions of Committees I and II would be deprived of their ability to participate unless the recommendations of the Committees were subject to further debate in Plenary.

Rationale:

—Credentials Committee: Establishment of this Committee simply would satisfy a perceived need and help further the business of the Conference.

—Committees I and II: It is envisioned that most of the substantive discussion of issues presented to the COP will take place in these Committees which will meet concurrently. Recommendations from the Committees are envisioned as being subject to little if any subsequent debate in Plenary. Since the Committees will meet concurrently, Parties able to field only small (sometimes a single person) delegations or those with

limited technical expertise on their delegation (such as those represented by staff of their embassy) will be prevented from effective participation unless they are provided an opportunity to open an issue for further debate in Plenary. Observers who send small delegations also would be similarly restricted.

If all participants sent at least two delegates and thereby ensured their ability at least to be present in all Committee sessions, the size and expenses associated with a COP will be increased significantly. It is U.S. policy to minimize the expenses associated with such meetings.

VII. Report of the Credentials Committee

Proposed Negotiating Position: Support adoption of the report of the Credentials Committee if it does not recommend the exclusion of legitimate representatives of countries party to CITES. Representatives whose credentials are not in order should be afforded observer status under Article XI.7(a). If credentials have been delayed, representatives should be allowed to vote on a provisional basis. A liberal interpretation of the rules of procedure on credentials should be adhered to in order to permit clearly legitimate representatives to participate.

Information and Comments: None received.

Rationale: Adoption of the report usually is *pro forma*. Exclusion of representatives whose credentials are in order could undermine cooperation among parties which is essential to the effective implementation of CITES.

VIII. Admission of Observers

Proposed Negotiating Position: The United States supports the admission as observers of all representatives of agencies or bodies who meet the technical requirements specified in the CITES and are qualified in protection, conservation or management of wild fauna and flora.

Information and Comments: One commenter expressed some concerns about limitation on the admission of observers.

Rationale: Participation by qualified nongovernmental organizations at COP's is specifically provided by Article XI. The United States historically has supported the opportunity of all technically qualified observers to participate to the maximum extent. Such participation has, on the whole, proven beneficial.

IX. Matters Related to the Standing Committee

1. Report by the Chairman

Proposed Negotiating Position: None necessary.

2. Election of New Members of the Standing Committee

Proposed Negotiating Position: Support re-election of any of the retiring Standing Committee members who are willing to be re-appointed.

Information and Comments: None received. United States will continue as North American Regional Representative through COP7. India (presently chairman of the Standing Committee), Kenya and Costa Rica will finish their terms and be either re-elected or succeeded at COP6.

Rationale: Retiring members have been effective.

X. Report of the Secretariat

Proposed Negotiating Position: None possible.

Information and Comments: None received. Report has not been received.

XI. Permanent CITES Committees

Proposed Negotiating Position: Partial support and partial opposition to the proposal as submitted. Oppose establishment of the proposed Scientific Committee. Seek establishment of a smaller "Screening Committee" comprised of representatives of the National Scientific Authorities in lieu thereof. Functions of the "Screening Committee" would be to screen proposals to modify Appendices to the CITES. Support use of existing, technically qualified organizations, on contractual basis or otherwise, to monitor data relating to the conservation status of species of interest to the CITES and to summarize those data into a form useable by the "Screening Committee." Support proposed modifications to what now is the Standing Committee provided a responsibility for the Committee's preparation of a biennial report to the Executive Director of the United Nations Environment Programme concerning the effectiveness of the Secretariat is clearly stated. Push for delay in formalizing any modifications to the existing Technical Committee until the above changes have been implemented.

Information and Comments: No comments formally received, however the paper outlining the proposal was not received in time for distribution and study prior to close of comment period.

Rationale: The existing proposal would establish a very large committee structure with a large number of associated meetings. The costs would be significant and the commensurate benefits are not apparent. It is not realistic to expect a Scientific Committee, as proposed, to be able to monitor the conservation status of the multitude of floral and faunal taxa of interest to the CITES. However, there do exist scientific organizations which do have such capability. It is realistic to expect a small group of representatives of National Scientific Authorities to review summaries of data prepared by such a technical group, measure their findings against CITES approved criteria and recommend for or against proposals to amend the Appendices.

There presently is no mechanism whereby the Parties can express to the UNEP (the organization charged by the CITES with providing Secretariat services) their view concerning the manner in which this charge is being carried out. This seems a logical function for the Standing Committee or its successor.

XII. Financing and Budgeting of the Secretariat

Proposed Negotiating Position: Oppose any substantial increase in the Secretariat's budget; recommend that the Secretariat work with the Standing Committee to impose economies. Make it clear that the newly effective financial amendment allows Parties to characterize their contributions as mandatory or voluntary. Support a direction to the Secretariat requiring a detailed report on "external funding" on an annual basis.

Information and Comments: None received.

Rationale: The Secretariat's proposed budget for 1988–89 represents a very substantial increase over 1986–87. The Secretariat has had to rely upon reserves to meet 1986 obligations and has requested similar authority for 1987. The impetus for the adoption of the Article XI financial amendment was to accommodate some Parties' domestic law to enable them to make financial contributions. External funding has become a significant part of the Secretariat's budget and no effective mechanism to provide overview of the solicitation or utilization of such funding exists.

XIII. Committee Reports and Recommendations

1. Technical Committee Report

Proposed Negotiating Position: None.

Information and Comments: None received.

2. Identification Manual Committee

Proposed Negotiating Position: Foster development of the identification manual so that it is geared for use by port and border field enforcement officials. Try to get feedback on its usefulness.

Information and Comments: One commenter wanted an evaluation of the identification manual to be done. Another reported that some developing countries find it useful.

Rationale: Enough of the identification manual has been produced and distributed to enable an assessment of its usefulness.

3. Nomenclature Committee

Proposed Negotiating Position: Support the continuation of work by the Nomenclature Committee.

Information and Comments: None received.

Rationale: The COP established the Nomenclature Committee to develop a standardized list of scientific names for species in order to improve the implementation of CITES. The United States originally called for the establishment of this committee and subsequently supported its work on checklists. Thus far the Parties have approved checklists for mammals and amphibians. The next lists to be produced will be for turtles and crocodiles.

XIV. Interpretation and Implementation of the Convention

1. Report on National Reports (for issues concerning European Community's annual reports see "Additional Issues")

Proposed Negotiating Position: Support measures to encourage and require Parties to submit their annual reports.

Information and Comments: None received.

Rationale: Currently, only approximately one half of the Parties submit their annual reports. Annual report data are necessary to gauge the impact of international trade on the species and can be a useful enforcement tool.

2. Review of Alleged Infractions

Proposed Negotiating Position: Support necessary and appropriate measures designed to obtain wider compliance with the terms of the Convention.

Information and Comments: None received.

Rationale: The Service has not received information from the Secretariat indicating which countries will be included in its report on infractions. Article XIII provides for COP review of alleged infractions. The COP may make whatever recommendations it deems appropriate.

3. Implementation of the Convention in Certain Countries

Proposed Negotiating Position: Support continuation of the ban on trade with Bolivia until such time as Bolivia demonstrates to the COP or the Standing Committee that it has adopted all necessary measures to adequately implement the Convention. Consider carefully any similar measures with regard to Paraguay.

Information and Comments: None received.

Rationale: Since around 1982, the Secretariat has held discussions with the Bolivian authorities about Bolivia's inadequate implementation of CITES. A hotly debated COP5 resolution called on Bolivia to demonstrate to the Standing Committee that it has adopted all necessary measures to adequately implement the Convention. The resolution provided that if such demonstration was not made to the Standing Committee within 90 days, the Parties should refuse to accept all shipments of CITES specimens accompanied by Bolivian documents or originating in Bolivia.

The 14th meeting of the Standing Committee (Ottawa, October 1986) agreed that Bolivia had not demonstrated that the necessary measures had been adopted. The Standing Committee recommended that any export of CITES specimens be refused. At that meeting it was alleged that persons in Paraguay were implicated in some of the wrongdoing which has plagued Bolivia for so long. The Service has not received any other information from the Secretariat indicating which other countries will be considered under this agenda item.

4. Trade in Ivory from African Elephant

Proposed Negotiating Position: Oppose amnesty for illegally acquired or traded African elephant ivory. Oppose any recommendation that diminishes the right of a Party to take stricter domestic measures regarding trade in African elephant ivory. Draw the attention of the Parties to the growing concern about the current biological and trade status of the African elephant.

Information and Comments: One commenter stated that recently 700 ivory tusks were confiscated in northern Tanzania just before they went into Burundi. Another commenter stated that we need to get as tough as possible on elephant ivory. Five commenters stated that they supported continuation of the quota system for African elephant ivory.

Rationale: The Lacey Act Amendments of 1981 make it illegal to import wildlife taken, transported or sold in violation of law or regulation of any foreign country. Article XIV of the CITES allows any Party to take stricter domestic measures regarding the conditions for trade, taking, possession or transport of CITES specimens including the complete prohibition thereof. Recent action taken by CITES Secretariat in which known illegal ivory was "amnestied" creates serious problems for the United States since that ivory still is not "legal" within the intent of the Lacey Act Amendments. Marking and tracking systems for ivory developed by Secretariat appear to be very vulnerable. Recent data on conservation status of African elephant in the wild indicates a decline to fewer than a million animals in the wild—much lower than previous estimates. The ivory trade controls should be carefully examined for effectiveness as should the current status of the elephant in the wild.

5. Trade in Rhinoceros Products

Proposed Negotiating Position: Support any proposals to further restrict trade in rhino horn and its products.

Information and Comments: None received.

Rationale: Recent U.S. Congressional hearings have highlighted the continuing problem of illegal trade in rhinoceros horn which has been seriously depleting already endangered species of rhinoceros. All species are listed as endangered under the U.S. Endangered Species Act.

Despite a domestic ban on the import of rhino horn (used primarily for ceremonial knife handles), North Yemen continues to be the world's largest consumer of rhino horn. Singapore, the largest importer of Asian rhino horn, recently became a member of CITES and has pledged to end its trade in the horn. The People's Republic of China, a CITES Party, continues to import rhino horn and reexport it as medicinal products.

6. Trade in Leopard Skins

Proposed Negotiating Position: Advocate stricter controls, if necessary, to prevent quota violations. Oppose any further increases in quotas without supporting data that includes well documented studies based on sound scientific principles.

Information and Comments: Five commenters stated that they supported

continuation of the quota system for leopard skins.

Rationale: There is some question as to whether the quota for each country includes or is in addition to exported sport hunted trophies and that quotas may have been exceeded.

7. Trade in Plant Specimens

Proposed Negotiating Position: Support a technical resolution that would assure that *future* listings of Appendix II and III plants do not include pollen (including pollinia), flasked seedling cultures and certain other parts and derivatives unless specifically included in the listing proposal. Favor some method of facilitating trade in hybrids artificially propagated for commercial purposes which have an Appendix I species in their ancestry. Support a resolution requesting the Nomenclature Committee to prepare a standardized nomenclatural reference for Cactaceae to the extent possible to the level of species, subspecies and botanical variety, with full synonymy and the countries of distribution.

Information and Comments: None received.

Rationale: COP5 decided with certain categorical exceptions, to regulate most parts and derivatives of Appendix II plants then currently listed. This proposal would apply those exceptions to future Appendix II and III plant listings. Some way needs to be found to make the mechanics of trade easier for traders of plant hybrids artificially propagated for commercial purposes that contain an Appendix I specimen somewhere in their ancestry. Current practice requires traders to obtain an export permit under Article IV which limits their permits to single shipments.

The Cactaceae family contains many species and is heavily traded. There currently is no credible nomenclatural reference for the Family. To improve controls and statistical reporting and to provide a better picture of how trade is impacting the species, the Nomenclature Committee will recommend that a standardized nomenclatural reference be produced.

8. Controls on Trade in Ranched, Captive-Bred, Lookalike and Quota Species

Proposed Negotiating Position: Support proposals that would insure that Appendix I specimens traded as Appendix II under certain exceptions will not diminish protection of those species that cannot be so traded.

Information and Comments: None received.

Rationale: A working group of the Technical Committee has produced three draft resolutions. The first would require marking procedures for registered captive breeding operations; the second would provide for Secretariat oversight of ranching operations and the third would require a tagging system for saltwater and Nile crocodiles transferred to Appendix II under an annual quota. These proposals would help ensure that specimens of similar Appendix I species are not allowed in international commerce.

9. Significant Trade in Appendix II Species

Proposed Negotiating Position: Seek to have the so-called "C2" species studies expeditiously completed.

Information and Comments: None received.

Rationale: The C2 species are being traded commercially and there is serious question whether they can stand current levels of trade. This lends urgency to the C2 studies.

10. Retrospective Issuance of CITES Documentation

Proposed Negotiating Position: Support agreement on a common policy of whether and under what circumstances Parties should issue and accept CITES documents after trade has occurred. Oppose general increase in number of situations in which retrospective issuance would be permissible.

Information and Comments: None received.

Rationale: A standardized common policy would be better understood and more easily implemented. However a general acceptance of retrospective issuance could lead to serious weakening of the Treaty and an additional threat to species on its Appendices.

11. Travelling Fur Trade Shows

Proposed Negotiating Position: Support principles in Canadian proposal that would allow use by travelling shows of export permits as reexport certificates if they are properly validated by the reexporting country. Seek simpler solution.

Information and Comments: One commenter supported this proposal.

Rationale: Reuse of the export permit for reexport would provide travelling shows with more assurance that they could observe reexport requirements and arrive at their next appointment in a timely fashion. Advance issuance of reexport certificates is another possible way of meeting a show's time requirements.

12. Interpretation of Article XIV, Paragraph i, of the CITES

Proposed Negotiating Position: Do not oppose the concept of reasonable consultation with range States before implementing stricter domestic measures. Encourage reasonable consultation, at the request of range States, concerning stricter domestic measures already promulgated. Oppose proposals to make such consultations a prerequisite to adoption of stricter domestic measures.

Information and Comments: One commenter supported the concept of consultation with regard to stricter domestic measures.

Rationale: The concept of consultation was the result of a compromise to a proposal by certain African Parties to restrict the right of a Party to take stricter domestic measures with regard to CITES-controlled species. Endangered Species Act already requires United States to consult with Range States before adding species to lists. However that Act does not require concurrence of Range States.

13. Transport of Live Species

Proposed Negotiating Position: Support the following TEC2 recommendations:

1. As a condition of issuance of an export permit, permittees should be required to prepare and ship live specimens in accordance with the International Air Transport Association (IATA) Live Animals Regulations as a minimum.

2. A crating, health and welfare checklist (now in draft form) should accompany permits and be used to check a shipment of live animals immediately prior to and after shipment.

3. Parties should be encouraged to provide animal holding facilities at designated ports of exit and entry.

4. New acclimatization periods before shipment for certain groups of species should be developed by the Working Group in conjunction with the Live Animals Board.

5. Air carriers normally should not accept for shipment wild animals that are evidently pregnant, or females with young who are not yet weaned or are otherwise incapable of feeding themselves or such young travelling alone.

6. IATA should develop for its regulations a list of airports with animal facilities and a statement that airline carriers should route live animal shipments via such airports whenever possible.

7. Containers for live animals must provide facilities for appropriate feeding and watering the animals.

Also, support efforts to obtain useful information regarding transit mortality.

Advocate that airlines allow government officials and other qualified persons to inspect animal holding areas.

Information and Comments: Three commenters urged that CITES should focus on species of animals that are vulnerable in transport. Another supported the TEC2 resolutions.

Rationale: Mortality among wild animals during transit is high. Since many individuals are killed or die for each individual that survives to the point at which it enters transit, each in-transit death represents many wild individuals and any action that reduces in-transit mortality has a favorable impact on wild populations. The TEC2 proposals, if implemented, would improve the conditions of transport for live animals in international trade and thereby reduce mortality. Inspection of airline animal holding facilities would help improve the conditions of transport by making airline personnel aware of transport norms and holding requirements and also reduce mortality.

14. Designation of Scientific Authorities

Proposed Negotiating Position: Advocate adoption of a U.S. proposal urging Parties that have not yet notified the Secretariat of their designated Scientific Authority to do so within 180 days after COP6.

Information and Comments: One commenter favored the U.S. proposal.

Two queried whether the same entity could operate as both Management and Scientific Authority.

Rationale: Listings for 28 Parties in the Secretariat's Directory do not indicate the identity or existence of a designated Scientific Authority. CITES requires the designation of a Scientific Authority, but not notification of its existence. This proposal would encourage those Parties that have not designated Scientific Authorities to do so.

XV. Consideration of Proposals for Amendment of Appendices I and II

This item is not a substantive subject of this notice. The Service is publishing elsewhere in today's **Federal Register** a notice concerning proposed positions on proposals to amend Appendices I and II.

XVI. Conclusion of the Meeting

1. Determination of the Time and Venue of the Next Regular Meeting of the Conferences of the Parties

Proposed Negotiating Position: Favor holding COP7 in the Pacific Area (provided adequate funding is available and all Parties will be admitted to the country without political difficulties).

Information and Comments: None received.

Rationale: As yet, the Pacific area has not hosted a COP. It is an important wildlife and plant area with significant trade problems. Holding the COP there would help focus attention on CITES and stimulate interest in its goals and work.

2. Closing Remarks

Proposed Negotiating Position: None necessary.

Information and Comments: None received.

Rationale: Normally, this agenda item consists of summing up statements and expressions of appreciation directed at the host government.

XVII. Additional Issues

The Service has received information from the CITES Secretariat indicating that COP6 also will consider the following issues. Where possible, the Service will indicate the proposed negotiating position.

1. Trade in Crocodilian Quota Species

Proposed Negotiating Position: Support a Secretariat proposal that would apply trade controls similar to those on the Nile crocodile trade to South American crocodilian species.

Information and Comments: None received.

Rationale: The South American caiman trade apparently is subject to enforcement related problems similar to those that were related to the African Crocodile Trade. The proposed controls appear to be acceptable, effective and have been found to be workable.

2. The Biological and Trade Status of Chelonia Mydas and Eretmochelys Imbricata

Proposed Negotiating Position: Carefully examine a biological and trade study of the green and hawksbill sea turtles to be considered at COP6 evaluate its methods and data.

Information and Comments: None received.

Rationale: This study could influence the outcome of the French (Reunion Island) sea turtle ranching proposal. (That proposal is discussed in the separate **Federal Register** publication dealing with proposals to amend the CITES Appendices.)

3. Status of Captive Bred Populations of the Chinchilla (Chinchilla spp.) Occurring Outside of South America.

Proposed Negotiating Position: Support Canadian proposal in principle providing it is changed so that part of the language (". . . Population of South America. Populations outside South America are not included in the Appendices") is placed in the "Interpretation" section of the Appendices rather than adjacent to the species entry in the Appendices themselves.

It should be stressed that the chinchilla is a very unique situation and that there is no intent that this deferential treatment of captive populations outside their normal range be considered a precedent or used with other taxa.

Information and Comments: None received.

Rationale: In February 1977, the entire species of chinchilla was placed on Appendix I. Prior to that date only the questionable sub-species *C. brevicaudata boliviana* was on that Appendix. The 1977 action specified that only South American populations were intended to be placed on Appendix I. Thus, domesticated populations of chinchilla in other countries would not be considered Appendix I species but those in the wild in South America would receive the full Appendix I protection. Persons who had established closed system, self-sustaining captive populations of chinchilla in South America could utilize the exemption provided for in Article VII (which was developed with the South American chinchilla industry in mind) and still be able to export specimens of their animals for commercial purposes under certificates as provided for in Article VII. This complex situation has not been fully understood by all Parties and the Canadian proposal is intended to clarify that situation.

Placement of the proposed Canadian language in the "Interpretation" section rather than in the Appendix itself is the standard procedure that has been followed and prevents the already complex Appendices from becoming further cluttered.

4. Implementation of the Convention with Regard to Personal and Household Effects

Proposed Negotiating Position: Oppose proposals that would encourage Parties to remove their "stricter domestic measures" with regard to the personal and household effects exemptions. Oppose proposals that

would allow the exemption of unaccompanied shipments such as occasional, non-commercial mailed items under the "personal and household effects" exemption. Oppose proposals that would extend the personal and household effects exemptions to living Appendix III specimens.

Information and Comments: None received.

Rationale: The proposal to expand the scope of the personal and household effects exemptions would be a reversal of the spirit and intent of Resolution Conf. 4.12 which encouraged elimination of the personal and household effects exemptions for heavily traded species thereby allowing the acquisition of data on the impact of trade. This proposal also would be an impingement of the rights of Parties to take stricter domestic measures—a contradiction of Article XIV. Providing personal or household exemptions for non accompanied items (eg: mailed packages etc.) would significantly increase enforcement problems and reduce effectiveness of the CITES.

5. Relationship Between CITES and the European Economic Community

Proposed Negotiating Position: United States should continue to press vigorously for country by country reporting of CITES-related trade. Alternate proposals that could provide trade statistics without requiring border checks should be carefully considered and, if the end result is the same, supported.

Information and Comments: None received.

Rationale: Article VIII para. 7 requires each Party to prepare and transmit to the Secretariat annual reports setting forth specified information concerning its implementation of the CITES. The EC has refused to permit EC members who are Party to the CITES to submit such reports arguing that to do so would be in contravention of the Treaty of Rome. Instead, EC has prepared and submitted a single, consolidated report intended to cover all trade in which EC members are involved. Whether allowing individual national reports as required by the CITES is, in fact, in conflict with the Treaty of Rome is a matter of dispute among qualified legal experts. However, the submission of a single report covering all EC members make the data in that report much less useable to those who need them and diminishes the possibility of effective enforcement of the CITES in one of the major consuming areas of the world. It is recognized that the "disappearance of the frontiers" as the EC matures will make reporting based upon within the EC, cross border commerce impossible. However, CITES specimens that move intra-EC are accompanied by so-called "blue certificates" and there should be some acceptable method of monitoring and reporting upon those specimens based upon the issuance and ultimate disposition of those certificates which would provide the needed data without being an actual or perceived violation of the Treaty of Rome.

XVIII. Requests for Additional Agenda Items

One commenter requested that item XIV.3 be expanded to include a discussion of trade in sea turtle products by Parties and non-Parties alike. Additional Issue item number 2, above, is broad enough to include a discussion of trade in sea turtle products.

XIX. Request for Information and Comments and Announcement of Public Meeting

Information and comments related to these proposed negotiating positions and/or the additional issues summarized above hereby are solicited. Such information and comments should be forwarded to: Federal Wildlife Permit Office, 1000 N. Glebe Road, Room 611, Arlington, Virginia 22201.

A public meeting will be held Monday, May 18, 1987, from 1:00 pm to 4:00 pm, in the North Penthouse, U.S. Department of the Interior (Main Building), 18th and C Streets NW., Washington, DC, for purposes of receiving information and comments on the proposed negotiating positions summarized above, as well as proposals to amend the CITES Appendices I and II. As noted above, those proposals will be published separately in the **Federal Register.**

Written statements may be submitted at or before the May 18 meeting.

Appointments to speak may be made with the Fish and Wildlife Service, Federal Wildlife Permit Office, telephone (703) 235–2418. Following speakers with appointments and to the extent time allows, participants without appointments will be given an opportunity to speak. It is planned that this meeting will be conducted in an informal manner and that participants also will be provided opportunities, to the extent that time permits, to comment as each point is raised.

XX. Observers

Article IX, Paragraph 7 of the Convention provides:

"Any body or agency technically qualified in protection, conservation or management of wild fauna and flora, in the following categories, which has informed the Secretariat of its desire to be represented at meetings of the Conference by the observers, shall be admitted unless at least one-third of the Parties object:

(a) International agencies or bodies, either government or non-governmental, and national governmental agencies and bodies; and

(b) National non-governmental agencies or bodies which have been approved for this purpose by the State in which they are located. Once admitted these observers shall have the right to participate, but not to vote."

Persons wishing to be observers representing United States national non-governmental organizations must receive prior approval of the Fish and Wildlife Service. Requests for such approval should include evidence of technical qualification in protection, conservation or management of wild fauna or flora and should be sent to the Federal Wildlife Permit Office (see **"ADDRESS"** above). Copies of letters of approval should be used by these organizations to inform the Secretariat of their wish to send observers to the meeting. In the past, the Secretariat has required such information to be received at least 1 month prior to the meeting. The Secretariat may be contacted at the following address: CITES Secretariat, 6 rue du Maupas, Case postale 78, CH–1000 LAUSANNE 9 Chauderon, Switzerland.

This notice was prepared by Earl Baysinger and Arthur Lazarowitz of the Federal Wildlife Permit Office under the authority of the Endangered Species Act of 1973, 16 U.S.C. 1531–43.

Dated: May 18, 1987.

Frank Dunkle,

Director, U.S. Fish and Wildlife Service.

[FR Doc. 87–11717 Filed 5–21–87; 8:45 am]

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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 23

Foreign Proposals To Amend Appendices to the Convention on International Trade in Endangered Species of Wild Fauna and Flora

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of proposed amendments to appendices.

SUMMARY: The Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) regulates international trade in certain animals and plants. Species for which trade is controlled are listed in Appendices I, II, and III to CITES. Any nation that is a Party to CITES may propose amendments to Appendix I or II for consideration by the other Parties.

This notice announces proposals submitted by Parties other than the United States, and invites information and comments on them in order to develop negotiating positions for the United States delegation. The proposals will be considered in July 1987 at the sixth regular meeting of the Conference of the Parties.

DATE: The U.S. Fish and Wildlife Service (Service) will consider all comments received by June 15, 1987, in developing negotiating positions. The Service plans to publish a notice of its decisions on the positions prior to the meeting of the Parties.

ADDRESS: Please send correspondence concerning this notice to the Office of Scientific Authority; Mail Stop: Room 527, Matomic Building; U.S. Fish and Wildlife Service, Department of the Interior, Washington, DC 20240. Materials received will be available for public inspection from 8:00 a.m. to 4:00 p.m., Monday through Friday, in room 537, 1717 H Street NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Dr. Charles W. Dane, Office of Scientific Authority, U.S. Fish and Wildlife Service, Washington, DC, telephone (202) 653–5948.

SUPPLEMENTARY INFORMATION:

Background

CITES regulates import, export, reexport, and introduction from the sea of certain animal and plant species. Species for which trade is controlled are included in three appendices. Appendix I includes species threatened with extinction that are or may be affected by trade. Appendix II includes species that although not necessarily threatened with extinction may become so unless trade in them is strictly controlled. It also lists species that must be subject to regulation in order that trade in other currently or potentially threatened species may be brought under effective control (e.g., because of difficulty in distinguishing specimens of currently or potentially threatend species from those of other species). Appendix III includes species that any Party nation identifies as being subject to regulation within its jurisdiction for purposes of preventing or restricting exploitation, and for which it needs the cooperation of other Parties in controlling trade.

Any Party nation may propose amendments to Appendices I and II for consideration at meetings of the Conference of the Parties. The text of any proposal must be communicated to the CITES Secretariat at least 150 days before the meeting. The Secretariat must then consult the other Parties and appropriate intergovernmental agencies, and communicate their responses and the Secretariat's own findings and recommendations to all Parties no later than 30 days before the meeting. Amendments are adopted by a two-thirds majority of the Parties present and voting.

Information Sought

This notice announces proposals submitted by Parties other than the United States for consideration at the forthcoming meeting of the Parties, and sets forth tentative negotiating positions of the United States delegation on them. The Service solicits comments on the biological status of these species, on the amount and type of trade in specimens of these species, and on the impact of trade on the populations, especially on the survival of the species. Comments that relate this information to the criteria for adding or removing species from the Appendices would be especially helpful.

It is neither practical nor in the best interests of the United States to establish inflexible negotiating positions on proposals in advance of the meeting. The Service based the present tentative positions mainly on a review of information presented by proponents in terms of criteria adopted at previous meetings of the Conference of the Parties of CITES. Some of the proposals have not yet been translated into English from Spanish or French (also official languages under CITES) and some have not been received. These proposals have been identified in the accompanying tables. The Service has been assured that all except one of the proposals will be available by May 11, 1987. The Service had also expected, at this same time, the English version of those 12 proposals originally submitted in Spanish or French, but we now understand that these will be provided by the CITES Secretariat at a later date. However, the Service will provide translations for specific proposals upon request. The Service has not yet developed a tentative negotiating position on these proposals and a few others as explained in the following table.

Because information provided in many of the proposals and otherwise currently available to the Service is too incomplete to allow clear judgments about their merits, several of the tentative negotiating positions presented are likely to be revised as further biological and trade data are obtained. Final guidance for the delegation is to be based on the best available biological and trade information, including comments received in response to this notice.

Proposals

In accordance with the provisions of Article XV, paragraph 1(a), of the Convention, Argentina, Australia, Botswana, Brazil, United Republic of Cameroon, Chile, Congo, Ecuador, France, India, Indonesia, Italy, Kenya, Madagascar, Malawi, Malaysia, Mozambique, Netherlands, Pakistan, Papua New Guinea, Paraguay, Peru, Spain, Sudan, Suriname, Switzerland, United Republic of Tanzania, United Kingdom of Great Britain and Northern Ireland, Uruguay, and Zambia, all Parties to the Convention, have communicated to the Secretariat the following proposals for amendment of Appendices I and II of the Convention. These proposals will be considered at the sixth meeting of the Conference of the Parties to the Convention, to be held in Ottawa, Canada, from July 12–24, 1987.

About half the proposals listed were submitted by Switzerland, usually alone, but in two instances with a supporting proposal from Australia. All except three of these entries are recommendations based on a 10-year review of the listings that was promulgated at the 1981 Conference of the Parties in New Delhi. Most (61 of 67) of the proposals by Switzerland and recommendations to remove those species from Appendix II that have never been reported in trade and which the chairman of the 10-year review committee believed should be considered for deletion from the Appendices, unless the species have or should be included in Appendix II

because they are very similar in appearance to related taxa that do appear in trade.

We point out, however, that the lack of reported trade for some species proposed for removal from appendix II may be due to (1) their rarity, (2) the possibility that their listing in this appendix has inhibited trade, or (3) the lack of proper documentation or reporting of trade. Consequently, the Service does not believe lack of appearance in trade in itself is sufficient to warrant the removal of a taxon from Appendix II. In establishing the tentative negotiating position of these 10-year review, delisting proposals, the Service considered the degree of vulnerability of the species and the possibility of its being in trade.

Proposals by Parties other than the United States are listed in the following table. Tentative negotiating positions of stipulations and the basis for them also are indicated. These positions were taken largely on the basis of the information contained in the proposal. If inadequate population and/or trade information was provided, the Service's position was usually opposed to the proposal. However, the Service was slightly more accepting of limited data and of data from other sources when considering uplisting proposals. The complete text of each proposal will be available for public inspection at the Service's Office of Scientific Authority (see address above).

Species	Proposed amendment	Proponent	Tentative U.S. position [1]
MARSUPIALIA			
Burramys parvus (Mountain pygmy possum).	Remove from II	Switzerland	Support (3).
Myrmecobius fasciatus (Marsupial anteater).	Add to I	Australia	(2).
Phalanger lullulae (Woodlark Island cuscus).	...do	Papua New Guinea	(2).
Insectivora:			
Erinaceus frontalis (African hedgehog)	Remove from II	Switzerland	Support (3).
Lagomorpha:			
Nesolagus netscheri (Sumatran short-eared rabbit).	...do	...do	Oppose (1).
Rodentia:			
Dipodomys phillipsii phillipsii (Phillips' kangaroo rat).	...do	...do	Do.
Lariscus hosei (Four-striped or Bornean black-striped ground squirrel).	...do	...do	Do.
Notomys spp. (Hopping mouse)	...do	Australia	Oppose (4,5).
Pseudomys fumeus (Smokey mouse)	Remove from I	...do	Oppose (4,6)
Pseudomys shortridgei (Heath rat, Shortridge's native mouse).	Remove from II	...do	Oppose (4).
Carnivora:			
Cynogale bennettii (Otter civet)	...do	Switzerland	Oppose (1).
Dusicyon gymnocercus (Pampas fox)	Add to II	Uruguay	(7).
Eupleres goudotii (Malagasy mongoose).	Remove from II	Switzerland	Support (8).
Felis yagouaroundi (Jaguarundi)	Inclusion in I (inclusion of the populations of Central and North America in I in lieu of *Felis, yagouaroundi cacomitli, F. y. fossata, F. y. panamensis,* and *F. y. Tolteca*).	...do	Support (9).
Panthera tigris altaica (Siberian tiger	Transfer from II to I	...do	Support (3).
Pinnipedia:			
Odobenus rosmarus (Walrus)	Add to II	Netherlands	Oppose (10)
Sirenia:			
Trichechus senegalensis (West African manatee).	Remove from II or transfer from II to I	Switzerland	Oppose (8, 16) Oppose (11).
Artiodactyla:			
Catagonus wagneri (Chacoan or giant peccary).	Add to I	Paraguay	Support (3).
Pudu mephistophiles (Northern Pudu)	Remove from II	Switzerland	Oppose (1)
Tayassu spp. (Peccary)	Add to II (Similarity of appearance)	Peru	Support (3,16).
Vicugna vicugna (Vicuna)	Transfer of part of the population of Paranicota Province, Ia. Region of Tarapaca from I to II (under special conditions—export of cloth only?).	Chile	(7).
Vicugna vicugna (Vicuna)	Transfer of the populations of Pampa Galeras National Reserve and Nuclear Zone, Pedregal, Oscconta y Sawacocha (Province of Lucanas), Sais Picotani (Province of Azangaro), Sais Tupac Amaru (Province of Junin), and of Salinas Aguada Blanca National Reserve (provinces of Arequipa and Cailloma) from I to II (under specific conditions—export of cloth only?).	Peru	Support (7, 18).

Species	Proposed amendment	Proponent	Tentative U.S. position [1]
BIRDS			
Order Ciconiiformes:			
Balaeniceps rex (Whale-headed stork)	Add to I	Netherlands	Oppose (4, 12).
Eudocimus ruber (Scarlet ibis)	Add to II	France, Suriname	Oppose (4, 11).
Mycteria cinerea (Milky wood stork)	Add to I	Malaysia	Oppose (11, 12).
Order Anseriformes:			
Anas bernieri (Madagascan teal)	Remove from II	Switzerland	Oppose (1).
Order Galliformes:			
Francolinus ochropectus (Djibouti francolin).	...do	...do	Do.
Francolinus swierstrai (Swierstra's francolin).	...do	...do	Do.
Megapodius freycinet abbotti (Abbott's megapode).	...do	...do	Do.
Megapodius freycinet nicobariensis (Nicobar megapode).	...do	...do	Do.
Tetrao mlokosiewiczi (Caucasian black grouse).	...do	...do	Do.
Rheinartia ocellata (Crested argus pheasant).	Add to I	Malaysia	Oppose (4, 12).
Order Gruiformes:			
Otididae spp. (Bustards)	Add to II (all species not already on appendices).	United Kingdom	Support (3).
Pedionomus torquatus (Plains wanderer).	Remove from II	Switzerland	Do.
Order Charadriformes:			
Larus brunnicephalus (Brown-headed gull).	...do	Switzerland	Support (8).
Numenius minutus (Little whimbrel)	...do	...do	Do.
Order Psittaciformes:			
Anodorhynchus hyacinthinus (Hyacinth macaw).	Transfer from II to I	Brazil	(7, 13).
Ara militaris (Military macaw)	...do	Argentina	Oppose (4, 14).
Probosciger aterrimus (Palm cockatoo)	...do	Papua New Guinea	Support (3).
Order Apodiformes:			
Trochilidae spp. (Hummingbirds)	Add to II	Ecuador	(2).
Order Piciformes:			
Picus squamatus flavirostris (Common scaly-bellied woodpecker).	Remove from II	Switzerland	Support (8).
Order Passeriformes:			
Meliphaga (Lichenostomus melanops) cassidix (Helmeted honeyeater).	Remove from I	Australia	Oppose (4).
Psophodes nigrogularis (Western whipbird).	Remove from II	Australia, Switzerland	Support (3).
Pitta brachyura nympha (Fairy pitta)	...do	Switzerland	Oppose (1).
Pseudochelidon sirintarae (White-eyed river martin).	...do	...do	Support (8).
Niltava ruecki (Rueck's blue flycatcher)	...do	...do	Oppose (1).
Carduelis yarrelli (Varrell's siskin)	...do	...do	Do.
Emblema oculata (Red-eared firetail finch).	...do	...do	Do.
Gubernatrix cristata (Yellow cardenal)	Add to I	Argentina	(7).
Paroaria capitata (Yellow-billed cardenal).	Add to II	...do	(7).
Paroaria coronata (Red-crested cardenal).	...do	...do	(7).
REPTILIA			
Order Crocodylia:			
Crocodylus cataphractus (African slender-snouted or African dwarf crocodile).	Transfer of the Congolese population from I to II, subject to an annual Export quota of 600 specimens.	Republic of Congo	Oppose (4).
Order Crocodylia:			
Crocodylus niloticus (Nile crocodile)	Maintenance of the population of Botswana in II, subject to an annual export quota of 2,000 specimens.	Botswana	(2).
	Maintenance of the Comeroonian population in II, subject to an annual export quota of 100 specimens.	Cameroon	(7).
	Maintenance of the Congolese population in II, subject to an annual export quota of 1,000 specimens.	Republic of Congo	Oppose (4).

Species	Proposed amendment	Proponent	Tentative U.S. position [1]
	Maintenance of the Kenyan population in II, subject to an annual export quota of 5,000 specimes.	Kenya	Do.
	Maintenance of the Malagasy population in II, subject to an annual export quota of 5,500 specimens.	Madagascar	(7).
	Maintenance of the Malawian population in II, subject to an annual export quota of 800 specimens.	Malawi	(2).
	Maintenance of the population of Mozambique in II, subject to an annual export quota of 1,000 specimens.	Mozambique	Oppose (4).
	Maintenance of the Sudanese population in II, subject to an annual export quota of 5,000 specimens.	Sudan	(2).
	Maintenance of the Tanzanian population in II, subject to an annual export quota of 1,000 specimens.	Tanzania	Support (3).
	Maintenance of the Zambian population in II, subject to an annual export quota of 2,000 wild specimens and an unspecified quota to be set annually by the Zambian Management Authority of ranched specimens.	Zambia	Oppose (4).
Crocodylus niloticus (Nile crocodile)	Transfer of the populations of Botswana, Cameroon, Congo, Kenya, Madagascar, Malawi, Mozambique, Sudan, United Republic of Tanzania and Zambia from II to I.	Switzerland	Support (17).
Crocodylus porosus (Saltwater crocodile).	Retention of the Indonesian population in II, without being subject to an annual export quota.	Indonesia	Oppose (4).
	Transfer of the population of Indonesia from II to I.	Switzerland	Support (17).
Osteolaemus tetraspis (*Dwarf crocodile*).	Transfer of the Congolese population from I to II, subject to an annual export quota of 1,000 specimens.	Republic of Congo	Oppose (4).
Order Testudinata:			
Chelonia mydas (*Green sea turtle*)	Transfer of the populations of Europa and Tromelin Islands from I to II (ranching proposal).	France	Oppose (11).
	Transfer of the Indonesian population from I to II.	Indonesia	Oppose (4).
Eretmochelys imbricata (Hawksbill sea turtle).	Transfer of the Indonesian population from I to II.	.....do	Do.
Clemmys muhlenbergii (Bog turtle)	Remove from II	Switzerland	Oppose (1).
Order Squamata:			
Boa constrictor occidentalis (Argentine boa constrictor).	Transfer from II to I	Uruguay	(7).
Gallotia aff. simonyi (Hierro giant lizard)	Add to I	Spain	Support (3).
Paradelma orientalis (Flap-footed legless lizard).	Remove from II	Australia, Switzerland	Do.
Phrynosoma coronatum blainvillei (San Diego horned lizard).	.....do	Switzerland	Oppose (1).
Podarcis lilfordi (Lilford's wall lizard)	Add to II	Spain	Support (3).
Podarcis pityusensis (Ibiza wall lizard)	.....do	.....do	Support (3,5).
Thamnophis couchi hammondi (Two-striped garter snake).	Remove from II	Switzerland	Oppose (1)
Vipera ursinii (Orsini's viper)	Add to I	France, Italy	Oppose (4,8,12).
AMPHIBIANS			
Order Caudata:			
Ambystoma lermaense (Lake Lerma salamander).	Remove from II	Switzerland	Oppose (1).
Order Anura:			
Dendrobates altobueyensis (Golden poison-arrow frog).	Add to I	Netherlands	Oppose (4,12).
Dendrobates spp. (Posion-dart frogs)	Add to II	Suriname	Support (3).
Dyscophus antongili (Tomato frog)	Add to I	Netherlands	Do.
Mentella aurantiaca (Golden frog)	.....do	.....do	Oppose (4,12).
Phyllobates spp. (Poison arrow frogs)	Add to II	.....do	Support (3).

Species	Proposed amendment	Proponent	Tentative U.S. position [1]
FISH			
Order Osteoglossiformes:			
Scleropages formosus (Asian bonytongue).	Transfer of the Indonesian population from I to II.	Indonesia	Oppose (4,11).
Order Coelacanthiformes:			
Latimeria chalumnae (Coelacanth)	Remove from II	Switzerland	Support (8).
Order Salmoniformes:			
Salmo chrysogaster (Mexican golden trout).	...do	...do	Do.
Stenodus leucichthys leucichthys (White salmon).	...do	...do	Do.
Order Cypriniformes:			
Caecobarbus geertsi (African blind barb fish).	...do	...do	Oppose (1).
Plagopterus argentissimus (Woundfin)	...do	...do	Support (8).
Ptychocheilus lucius (Colorado River Squawfish).	...do	...do	Do.
Order Atheriniformes:			
Cynolebias constanciae (Pearl fishes)	...do	...do	Do.
Cynolebias marmoratus (Pearl fishes)	...do	...do	Do.
Cynolebias minimus (Pearl fishes)	...do	...do	Do.
Cynolebias opalescens (Pearl fishes)	...do	...do	Do.
Cynolebias splendens (Pearl fishes)	...do	...do	Do.
Xiphophorus couchianus (Monterre platyfish).	...do	...do	Oppose (1).
MOLLUSCS			
Class Pelecypoda (=Bivalvia):			
Choromytilus (=Mytilus) *chorus* (Choro).	...do	...do	Support (8).
Cyprogenia aberti (Pearly mussels)	...do	...do	Oppose (1).
Epioblasma torulosa rangiana (Pearly mussels).	...do	...do	Do.
Fusconaia subrotunda (Pearly mussels)	...do	...do	Do.
Lampsilis brevicula (Pearly mussels)	...do	...do	Do.
Lexingtonia dolabelloides (Pearly mussels).	...do	...do	Do.
Pleurobema clava (Pearly mussels)	...do	...do	Do.
Class Gastropoda:			
Achatinella spp. (Oahu tree snails)	Add to I	Netherlands	Support (3).
Paryphanta spp.	Remove from II	Switzerland	Support (8).
Coahuilix milleri (Cuatro Cienega snails).	...do	...do	Oppose (1).
Cochiliopina milleri (Cuatro Cienega snails).	...do	...do	Do.
Durangonella coahuilae (Cuatro Cienega snails).	...do	...do	Do.
Mexipyrgus carranzae (Cuatro Cienega snails).	...do	...do	Do.
Mexipyrgus churinceanus (Cuartro Cienega snails).	...do	...do	Do.
Mexipyrgus escobedae (Creatro Cienega snails).	...do	...do	Do.
Mexipyrgus lugoi (Creatro Cienega snails).	...do	...do	Do.
Mexipyrgus mojarralis (Creatro Cienega snails).	...do	...do	Do.
Mexipyrgus multilineatus (Creatro Cienega snails).	...do	...do	Do.
Mexithauma quadripaludium (Creatro Cienega snails)	...do	...do	Do.
Nymphophilus minckeli (Creatro Cienega snails).	...do	...do	Do.
Paludiscala caramba (Creatro Cienega snails).	...do	...do	Do.
INSECTS			
Class Insecta:			
Bhutanitis spp. (Bhutan Glory swallowtails).	Add to II	United Kingdom	Support (3).
Ornithoptera alexandrae (Queen Alexandra's birdwing butterfly).	Transfer from II to I	...do	Do.
Papilio chikae (Luzon peacock swallowtail).	Add to I	...do	Oppose (4, 12).
Papilio homerus (Homerus swallowtail)	...do	...do	Support (3).
Papilio hospiton (Corsican swallowtail)	...do	...do	Oppose (4, 12).

Species	Proposed amendment	Proponent	Tentative U.S. position [1]
Teinopalpus supp. (Kaiser-I-Hind butterflies).	Add to II	do	Support (3).
FLAT WORMS			
Order Hirudinea: *Hirundo medicinalis* (Medicinal leech)	do	do	Oppose (4).
CORALS			
Class Anthrozoa: *Corallium rubrum* (Precious red coral)	do	Spain	(7).
PLANTS			
Family Cactaceae: *Astrophytum asterias* (Sea urchin or star cactus).	Transfer from II to I	United Kingdom	Support (3).
Family Compositae (=Asteraceae): *Saussurea lappa* (Costus or Kuth root)	Transfer from I to II	Pakistan	Oppose (4, 11).
Family Cupressaceae: *Fitz-Roya cupressoides* (Alerce or Fitz-roya).	Transfer of the coastal population of Chile from II to I.	Argentina	Support (3).
Family Cycadaceae: *Cycas beddomei* (Beddome cycad)	Transfer from II to I	India	Oppose (8).
Family Liliaceae: *Iphigenia stellata* (Starry iphigenia)	Add to II	do	Oppose (8).
Family Nepenthaceae: *Nepenthes khasiana* (Indian tropical pitcher plant).	Add to I	do	Support (3).
Nepenthes spp. (Tropical pitcher plants).	Add to II (all species not already on an appendix).	Malaysia	Support (3,5,16).
Family Orchidaceae: *Dendrobium pauciflorum* (Few-flowered dendrobium).	Transfer from II to I	India	Support (3).
Paphiopedilum druryi (Drury tropical lady's slipper).	do	do	Do.
Family Palmae (=Arecaceae): *Chrysalidocarpus lutescens* (Areca palm).	Remove from II	Netherlands	Do.

[1] The basis for the tentative U.S. position on each proposal or the reason for no position being taken is indicated by number in the table:

(1) The proposal for delisting appears based on lack of appearance in trade, but it appears that there is a sufficient threat of trade relative to the status of the species and other threats to warrant retention on Appendix II.

(2) This proposal has not been received, but we anticipate that it will be available for comment by May 11. However, the information to support the export quota for the Nile Crocodile population in Sudan will not be available until later.

(3) Listing or delisting of the taxon, as proposed, appears to be justified by information currently available to the Service.

(4) The population status (i.e., degree of threat of extinction) of the entire species or geographically separate population addressed by the proposal does not appear to warrant listing or delisting as proposed.

(5) Listing of this species, or one or more of a species group, appears justified because of the similarity of appearance of this species or one or more of the species group to others that are subject to trade.

(6) The Service would support downlisting to Appendix II.

(7) The original proposal is in Spanish or French. The Service will provide an English translation upon request.

(8) Available evidence suggests there is little likelihood that there has been or will be any significant international trade in this species.

(9) This is a technical change so that the appendices will better conform to the original intent of the listing.

(10) The Service does not believe that the Pacific walrus (*Odobenus rosmarus divergens*) warrants listing under Article II 2(a) of the convention and is awaiting further information on the status of the Atlantic walrus (*O. r. rosmarus*) from Canada.

(11) The trade status (i.e., the degree to which the species is subject to and threatened by international trade) does not warrant supporting the proposed listing.

(12) The Service does not have sufficient reason to believe that the species is in imminent danger of extinction but would support listing this species on Appendix II.

(13) The report of the group working on significant trade in endangered species on Appendix II leads us to believe that the Service eventually will support this proposal.

(14) The data presented in the proposal do not indicate that this species is currently threatened with extinction; the Service would entertain listing specific populations of the species on Appendix I.

(15) Not used.

(16) If the Parties accept that one rationale for listing a species in Appendix II for reasons of similarity of appearance, is to protect species in Appendix I, then we support the proposals for retention in or addition to Appendix II. Although, the Convention does not specifically provide for this basis of listing, resolutions from Conferences of the Parties, as well as, CITES and Service documents appear to support this rationale for listing in Appendix II.

(17) The intention of this proposal is to transfer to Appendix I those populations of crocodiles for which information is not provided to support the desired export quota.

(18) Based upon the statements about the recovery of some populations, and the intention to roundup vicuna herds for shearing, to release the animals back to the wild, and to allow only the export of vicuna cloth (as presented at the second Technical Committee Meeting of CITES in June 1986), the United States tentatively supports the proposal.

List of Subjects in 50 CFR Part 23

Endangered and threatened plants, Endangered and threatened wildlife, Exports, Fish, Imports, Marine mammals, Plants (agriculture), Treaties.

This notice is issued under authority of the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.; 87 Stat. 884, as amended). It was prepared by Dr. Charles W. Dane, Office of Scientific Authority.

Dated: May 18, 1987.

Frank Dunkle

Director, U.S. Fish and Wildlife Service.

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federal register

Friday
May 22, 1987

Part III

Department of Agriculture

Foreign Agricultural Service

7 CFR Part 6

Section 22 Dairy Import Quotas for the European Economic Community and Portugal; Interim Rule

Cheese Import License Special Application Period; Notice

DEPARTMENT OF AGRICULTURE

Foreign Agricultural Service

7 CFR Part 6

Section 22 Dairy Import Quotas for the European Economic Community and Portugal

AGENCY: Foreign Agricultural Service, USDA.

ACTION: Interim rule.

SUMMARY: This interim rule amends the regulations governing the importation under license of certain dairy products which are subject to quantitative limitations in order to implement Presidential Proclamation No. 5618 of March 16, 1987, which modified such quantitative limitations by transferring to the European Economic Community quotas previously allocated to Portugal and by providing for the importation of an additional 1,572 metric tons of Italian-type cow's milk cheese in original loaves from the European Economic Community. A special application period for the 1987 quota year is being established for importers who desire to receive import licenses for the importation of that quantity of Italian-type cow's milk cheese in original loaves from the European Economic Community.

DATES: This interim rule is effective May 22, 1987. Comments on this interim rule must be received on or before June 22, 1987 in order to be assured of consideration.

ADDRESSES: Mail comments to: Head, Import Licensing Group, Dairy, Livestock and Poultry Division, Foreign Agricultural Service, Room 6616 South Building, Department of Agriculture, Washington, DC 20250. Copies of all written comments received will be available for examination by interested persons in Room 6622 of the South Building, Department of Agriculture (14th and Independence Avenue, SW.), Washington, DC during regular business hours (8:15AM–4:45PM weekdays).

FOR FURTHER INFORMATION CONTACT: Phillip J. Christie, Head, Import Licensing Group, Dairy, Livestock and Poultry Division, Foreign Agricultural Service, Room 6616 South Building, Department of Agriculture, Washington, DC 20250 or telephone at (202) 447–5270.

SUPPLEMENTARY INFORMATION: Presidential Proclamation No. 4708 of December 11, 1979, established quantitative limitations on imports of certain dairy articles in accordance with section 701 of the Trade Agreements Act of 1979 (Pub. L. 96–39) and section 22 of the Agricultural Adjustment Act of 1933, as amended (7 U.S.C. 624). These quantitative limitations were amended by Presidential Proclamations No. 4811 of December 30, 1980, and No. 5425 of January 6, 1986. Pursuant to those proclamations, the Department of Agriculture issued regulations providing that the dairy articles subject to such quantitative restrictions could be entered into the United States only by or for the account of a person or firm to which a license has been issued by or under the authority of the Secretary of Agriculture and only in accordance with the terms of such license.

Presidential Proclamation No. 5618 of March 16, 1987, modified such quantitative limitations by providing for additional imports of up to 1,572 metric tons of Italian-type cow's milk cheese in original loaves from the European Economic Community and by transferring quota allocations totaling 581 metric tons of cheese from Portugal to the European Economic Community. However, 353 metric tons of this 581 metric ton allocation are reserved for Portugal.

The purpose of this interim rule is to amend the regulations governing the importation of dairy articles subject to quotas in order to implement Presidential Proclamation No. 5618. This interim rule amends 7 CFR Part 6, Subpart—Section 22 Import Quotas by:

(1) Revising Appendix 1, "Articles subjects to the historical and nonhistorical licensing provisions of Import Regulation 1, Revision 7 and respective annual import quotas for each quota year" to transfer quota allocations totaling 228 metric tons of cheese from Portugal to the European Economic Community;

(2) Revising Appendix 2, "Articles subject to the historical and supplementary licensing provisions of Import Regulation 1, Revision 7, and respective annual import quotas for each quota year" (i) to provide for additional imports of 1,572 metric tons of Italian-type cow's milk cheese in original loaves from the European Economic Community and (ii) to transfer the quota allocations totaling 353 metric tons of cheese from Portugal to the European Economic Community;

Redefining "EC" to include Portugal and Spain which have acceded to the European Economic Community;

(4) Amending section 6.26(c) to permit an appropriate official of the Government of Portugal to endorse applications for Other Cheese Not Specially Provided For (Tariff Schedules of the United States Appendix Number 950.10D), thereby permitting the Government of Portugal to name preferred importers for this item only; and

(5) Adding section 6.34 to include Office of Management and Budget control number 0551–0001 for the application forms for import licenses.

Licenses for the importation of the additional quota quantity of 1,572 metric tons of Italian-type cow's milk cheese in original loaves from the European Economic Community will be issued on the following basis:

(1) 786 metric tons will be divided on a prorated basis among persons currently holding historical import licenses authorizing them to import Italian-type cow's milk cheese from the European Economic Community. In addition to the basic annual allocation in Appendix 1, this will constitute a new basic annual allocation under Appendix 2; and

(2) 786 metric tons will be divided in accordance with 7 CFR 6.26(c) among applicants who qualify for supplementary licenses to import such cheese.

The application period for import licenses for the 1987 quota year was from August 1, 1986 through November 1, 1986. However, since there has been no opportunity for applicants to qualify for supplementary import licenses for the additional 786 metric tons of cheese that may be imported from the European Economic Community, it has been determined that a special application period for such licenses shall be initiated.

Persons who desire to receive supplementary import licenses for the importation of Italian-type cow's milk cheese in original loaves from the European Economic Community during the 1987 quota year must submit their application in writing to: Head, Import Licensing Group, Dairy, Livestock and Poultry Division, Room 6616-South Building, Foreign Agricultural Service, Department of Agriculture, Washington, DC 20250, during the 19-day application period which begins on June 1, 1987 and ends on June 19, 1987.

Eligibility to receive such licenses and the allocation of such licenses will be determined in accordance with established rules and procedures in 7 CFR 6.20–6.34. The application period for supplementary import licenses to import these items during the 1988 quota year and subsequent quota years will be governed by 7 CFR 6.25(b)(4).

See the notice for this special application period in today's issue of the **Federal Register**.

Since the 1987 quota year has begun, it is important that licenses to import the specified quantity of cheeses be issued

as quickly as possible so that importers will have sufficient time to import such cheeses during the 1987 quota year. Accordingly, it has been determined that this interim rule shall become effective on May 22, 1987. However, comments from interested persons are requested. Comments must be received by June 22, 1987, in order to be assured of consideration. After comments have been received and reviewed, a final rule will be published setting forth any changes which may be necessary in these regulations.

This interim rule has been reviewed under USDA procedures required by Executive Order 12291 and Departmental Regulation 1512-1 and had been classified as "not major" since this interim rule will not have any of the significant effects specified in those documents.

Furthermore, to the extent, if any, that the provisions of the Regulatory Flexibility Act (5 U.S.C. 601) apply to this rule, the Administrator, Foreign Agricultural Service (FAS), hereby certifies that this rule will not have a significant economic impact on a substantial number of small entities since the import licensing system allows equal access to the system for all applicants regardless of the size of the applying firms. This interim rule will enhance the capability of both large and small firms to import certain cheeses from the European Economic Community. The public is invited to comment on the impact of this interim rule on small entities, and the Administrator, FAS, will review this determination in light of those comments.

List of Subjects in 7 CFR Part 6

Section 22, Import quotas, Dairy products.

PART 6—[AMENDED]

Accordingly, 7 CFR Part 6, Subpart—Section 22 Import Quotas, is amended as follows:

1. The authority citation for 7 CFR Part 6, Subpart—Section 22 Import Quotas, continues to read as follows:

Authority: Section 3, Pub. L. 80-897, Stat. 1248, as amended (7 U.S.C. 624); Secs. 701, 702, Pub. L. 96-39, 93 Stat. 268, 272 (19 U.S.C. 1202 note); Part 3 of the Appendix to the Tariff Schedules of the United States (19 U.S.C. 1202); Sec. 501, Pub. L. 82-137, 65 Stat. 290, as amended (31 U.S.C. 9701).

§ 6.21 [Amended]

2. Paragraph (m) of § 6.21 is amended by deleting the word "ten" and inserting the word "twelve" in its place and inserting the words "Portugal, Spain" between the words "the Netherlands," and "and the United Kingdom."

3. Section 6.26 is amended by revising the introductory text of paragraphs (c)(2) and (3) to read as follows:

§ 6.26 Allocation of annual quota and issuance of licenses.

* * * * *

(c) * * *

(2) A supplementary quota share for an article in Appendix 2 from the EC, other than a share for the quantity reserved for Portugal in Group V(c), will be determined on the following basis:

* * * * *

(3) A supplementary quota share for an article in Appendix 2 from a particular country of origin, other than those provided for in paragraph (2), will be determined on the following basis:

* * * * *

4. By adding a new § 6.34 to read as follows and removing the OMB control number following § 6.28:

§ 6.34 Paperwork Reduction Act assigned number.

The Office of Management and Budget has approved the information collection requirements contained in these regulations in accordance with 44 U.S.C. Chapter 25 and has assigned OMB number 0551-0001 expiring November 30, 1988.

Appendix 1—[Amended]

5. Group V (b) of Appendix 1—Articles subject to the historical and nonhistorical licensing provisions of Import Regulation 1, Revision 7, and respective annual import quotas for each quota year, is amended by removing the line beginning with "Portugal" and revising the line beginning with "EC" to read as follows:

"EC	2,603,000	5,738,573"

6. Group V (c) of Appendix 1—Articles subject to the historical and nonhistorical licensing provision of Import Regulation 1, Revision 7, and respective annual import quotas for each quota year, is amended by deleting the line beginning with "Portugal" and changing the line beginning with "EC" to read as follows:

"EC	10,724,000	23,642,129"

Appendix 2—[Amended]

7. Group IV (a) of Appendix 2—Articles subject to the historical and supplementary licesning provisions of Import Regulation 1, Revision 7, and respective annual import quotas for each quota year, is amended by adding the following new line immediately after the line beginning with "Argentina":

"EC	1,572,000	3,465,631"

8. Group V (c) of Appendix 2—Articles subject to the historical and supplementary licensing provisions of Import Regulation 1, Revision 7, and respective annual import quotas for each quota year, is amended by deleting the line beginning with "Portugal" and changing the line beginning with "EC" to read as follows:

"EC	9,732,000 (of which 353,000 are reserved for Portugal).	21,455,166 (of which 778,223 are reserved for Portugal)"

Signed this 14th day of May, 1987.

Thomas O. Kay,

Administrator, Foreign Agriculture Service.

[FR Doc. 87-11799 Filed 5-21-87; 8:45 am]

BILLING CODE 3410-10-M

DEPARTMENT OF AGRICULTURE

Foreign Agricultural Service

Cheese Import License Special Application Period

AGENCY: Foreign Agricultural Service, USDA.

ACTION: Notice.

SUMMARY: This notice is to advise applicants for supplementary import licenses for Italian-type cow's milk cheese in original loaves from the European Economic Community of the special 19-day application period which begins on June 1, 1987 and ends on June 19, 1987.

DATES: License applications must be postmarked June 1, 1987 through June 19, 1987.

FOR FURTHER INFORMATION CONTACT: Phillip J. Christie, Head, Import Licensing Group, Dairy, Livestock and Poultry Division, Foreign Agricultural Service, Room 6616-South Building, Department of Agriculture, Washington, DC 20250, Telephone (202) 447–5270.

Presidential Proclamation No. 5618 of March 16, 1987 modified the quantitative limitations on cheese which may be imported into the United States in part by providing for the importation of an additional 1,572 metric tons of Italian-type cow's milk cheese in original loaves from the European Economic Community. In accordance with 7 CFR 6.26(a)(3), one-half to this amount has been allocated on a historical basis. The remaining one-half, 786 metric tons, will be allocated to applicants for supplementary licenses. A special application period for the 1987 quota year is being established for importers who desire to receive supplementary import licenses for one-half of the quantity of cheese specified in Group IV (a) of Appendix 2 to 7 CFR 6.20–6.34, as amended by interim rule published elsewhere in today's issue of the Federal Register. Therefore the purpose of this notice is to advise all applicants that applications for supplementary licenses will only be accepted if postmarked during the 19-day application period which will begin on June 1, 1987 and end on June 19, 1987. Licenses will be awarded as set forth in 7 CFR 6.26(c)(2).

Signed this 14th day of May, 1987.

Thomas O. Kay,

Administrator, Foreign Agricultural Service.

[FR Doc. 87-11800 Filed 5-21-87; 8:45 am]

BILLING CODE 3410-13 M

federal register

Friday
May 22, 1987

Part IV

Department of Health and Human Services

Food and Drug Administration

21 CFR Part 312

Investigational New Drug, Antibiotic, and Biological Drug Product Regulations; Treatment Use and Sale; Final Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 312

[Docket No. 82N-0394]

Investigational New Drug, Antibiotic, and Biological Drug Product Regulations; Treatment Use and Sale

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing final procedures under which promising investigational new drugs may be made available to desperately ill patients before general marketing begins. These new procedures are intended to facilitate the availability of promising new drugs to patients as early in the drug development process as possible, and to obtain additional data on the drug's safety and effectiveness. The new procedures apply to patients with serious and immediately life-threatening diseases for which no comparable or satisfactory alternative drug or other therapies exist. FDA has clarified the final rule to strengthen the policy objectives of the reproposal while safeguarding against the proliferation of fraudulent products and ensuring the integrity and vitality of controlled clinical trials. FDA is also defining the conditions under which drug manufacturers may charge for investigational new drug products. These procedures are intended to provide sufficient incentives for drug manufacturers to make investigational new drugs available to patients before general marketing begins, but under sufficient safeguards so as to prevent commercialization of the product as well as to ensure the integrity of clinical trials. These actions are based on comments received on the March 19, 1987, reproposal.

DATE: The regulation will become effective on June 22, 1987.

FOR FURTHER INFORMATION CONTACT: Steven H. Unger, Center for Drugs and Biologics (HFN-362), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-295-8049.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of March 19, 1987 (52 FR 8850), FDA published reproposed regulations governing the conditions under which patients could obtain investigational drugs primarily for treatment use, and the conditions under which investigational drugs could be sold. FDA provided 30 days for public comment, and, upon request, extended the comment period for an additional 15 days until May 5, 1987. In addition to the many written comments received, the FDA Commissioner held a number of meetings during the comment period with health care professionals, consumer group leaders, representatives from orphan drug organizations, clinicians and clinical investigators from academia, and representatives from the pharmaceutical industry, including those specializing in biotechnology. FDA has benefitted immensely from this full and forthright public discussion of these issues, and the agency has revised portions of the final regulation to reflect the many comments received on the reproposal.

Highlights of the final rule are summarized below, followed by a more detailed response to comments and discussion of the final rule.

I. Highlights of the Final Rule

A. Introduction

FDA received over 300 comments on the reproposal, representing virtually every affected constituency. These included consumers, consumer group leaders, health professionals and health care providers, representatives of specific disease and orphan drug organizations, State and local health departments, clinical investigators and research institutions, institutional review boards, pharmaceutical manufacturers, and former FDA officials. These comments reflect a broad public acceptance and earnest support for the goal of providing promising new drugs to desperately ill patients as early in the drug development process as possible, and of obtaining additional data on the drug's safety and effectiveness. For this reason, FDA has inserted a statement of this purpose directly into the regulation itself (§ 312.34(a)) to ensure that the regulation is interpreted and applied in a manner consistent with its intended purpose.

These were also a number of specific questions or concerns raised. These fall under four main categories: (1) Protecting against health fraud or premature exposure of patients to untested drugs; (2) ensuring the integrity of clinical trials; (3) ensuring the ethical underpinnings of the drug development process; and (4) providing a clearer description of which costs can be considered in setting the price that could be charged for investigational drugs. Most of these comments were directed towards preventing possible abuses that some believed might have occurred under the reproposal. However, a number of these comments also suggested the addition of specific safeguards which, if adopted, could serve both to support and strengthen the principal policy goals of the reproposal while minimizing the likelihood of possible abuse. As described below, FDA has made the necessary refinements to the final rule to accomplish these dual objectives.

B. Treatment Use of Investigational Drugs.

Like the reproposal, the final rule regarding treatment use provides general criterial for allowing an investigational new drug to be made available to desperately ill patients primarily for treatment use. Minor modifications have been made to these criteria to read as follows: (1) The drug is intended to treat a serious or immediately life-threatening disease; (2) there is no comparable or satisfactory alternative drug or other therapy available to treat that stage of the disease in the intended patient population; (3) the drug is under investigation in a controlled clinical trial under an IND in effect for the trial, or all clinical trials have been completed; and (4) the sponsor of the controlled clinical trial is actively pursuing marketing approval of the investigational drug with due diligence (§ 312.34(b)(1)).

Also like the reproposal, in the case of a drug intended to treat a "serious" disease, the final rule provides that the Commissioner may deny a request for treatment use if there is insufficient evidence of safety and effectiveness to support such use (§ 312.34(b)(2)).

In response to comments, FDA has revised the criteria for the granting of a treatment IND for drugs intended to treat immediately life-threatening diseases. In this situation, under the final rule, the Commissioner may deny a request for treatment use if the available scientific evidence, taken as a whole, fails to provide reasonable basis for concluding that the drug: (1) May be effective for its intended use in its intended patient population: or (2) would not expose the patients to whom the drug is to be administered to an unreasonable and significant additional risk of illness or injury (§ 312.34(b)(3)(i)(A) and (B)).

FDA has also added into the regulation a definition of "immediately life-threatening" to mean a stage of a disease in which there is a reasonable likelihood that death will occur within a matter of months or in which premature death is likely without early treatment (§ 312.34(b)(3)(ii)).

The final rule also clarifies that treatment use of an investigational drug is conditioned on the sponsor and investigator complying with the safeguards of the IND process, including the regulations governing informed consent (21 CFR Part 50) and institutional review boards (21 CFR Part 56) and the applicable provisions of Part 312, including distribution of the drug through qualified experts, maintenance of adequate manufacturing facilities, and submission of IND safety reports (§ 312.34(c)).

Finally, like the reproposal, the final rule contains provisions for placing a proposed or ongoing treatment protocol or treatment IND on clinical hold (§§ 312.34(d) and 312.42).

C. Charging for Investigational Drugs.

Under the final rule, FDA would continue to presume that supplying investigational drugs to subjects participating in clinical trials without charge is part of the normal cost of doing business, and that FDA approval for charging would only be granted upon a showing of why charging is needed for the sponsor to undertake or continue the clinical trial (§ 312.7(d)(1)).

With respect to drugs provided under treatment IND's, the final rule has been revised to authorize sponsors to charge for investigational drugs provided there is adequate enrollment in the ongoing clinical investigations under the authorized IND. This provision is in addition to the three other conditions contained in the reproposal, namely, that the sale does not constitute commercial marketing of a new drug for which a marketing application has not been approved; the drug is not being commercially promoted or advertised; and the sponsor of the drug is actively pursuing marketing approval with due diligence (§ 312.7(d)(2)).

In all cases, the final rule provides that the sponsor may not commercialize an investigational drug by charging a price larger than that necessary to recover costs of manufacture, research, development, and handling of the investigational drug (§ 312.7(d)(3)). This is the same standard currently applied to charging for investigational medical devices.

Finally, like the reproposal, the new rules would allow FDA to withdraw authorization for charging if the conditions underlying the initial authorization were no longer satisfied (§ 312.7(d)(4)).

D. Effective Date.

This regulation will become effective for treatment IND/protocols submitted after June 22, 1987.

II. Responses to Comments

A. Treatment Use of Investigational Drugs

1. Scope and Criteria

1. *Definitions.* Many comments requested clarification of the term immediately life-threatening disease. Some were concerned that the term "immediately" might literally mean within several days, while other comments were concerned that, as defined, any disease that ultimately could end in death, no matter how many years into the future, could be classified under this category. Comments also requested clarification of the term "serious."

In response to the comments, FDA has defined an immediately life-threatening disease in the regulation as being a stage of a disease in which there is a reasonable likelihood that death will occur within a matter of months or in which premature death is likely without early treatment. This does not mean that a clinician would have to make a prognosis with exact precision, but only to provide a general yardstick for decision-making purposes (for example, a reasonable expectation of death within 6 months). FDA will apply a common sense interpretation of the term so that death within more than a year would not normally be considered immediately life-threatening, but also that death within several days or even several weeks would be overly restrictive.

The phrase "or in which premature death is likely without early treatment" is intended to describe those fatal illnesses where death itself may not be imminent but where immediate treatment is necessary to prevent premature death. For example, an anti-retroviral drug might be found on the basis of Phase 2 studies, when used early after infection, to delay progression from the asymptomatic state to AIDS-Related Complex (ARC) and then Acquired Immune Deficiency Syndrome (AIDS). Although this progression would ordinarily take more than 12 months to occur in most patients, this circumstance would be interpreted as fitting the definition of immediately life-threatening.

In the reproposal, FDA identified two disease categories as being immediately life-threatening (advanced cases of AIDS and certain uncontrollable cardiac arrhythmias) and two diseases as being serious (Alzheimer's and multiple sclerosis). FDA received comments that some diseases, particularly multiple sclerosis, become serious only in later stages of the disease and should not be considered serious, for these purposes, during its earlier stages. Clarification on this point was requested.

FDA agrees that the stage of a disease is important in determining whether it is immediately life-threatening, serious, or not serious within the context of this treatment IND regulation. For diseases such as multiple sclerosis, where some stage of the disease would not be considered serious, the regulation would not be applicable to those stages. In approving an investigational drug for a treatment IND, FDA will seek to define the intended partient population and, in medically appropriate cases, will limit treatment use to particular stages of a disease or to patients with a particular set of symptoms.

To illustrate these categories further, the following diseases or stages of diseases would normally be considered to be immediately life-threatening:

a. Advanced cases of AIDS;
b. Advanced congestive heart failure (New York Heart Association Class IV);
c. Recurrent sustained ventricular tachycardia or ventricular fibrillation;
d. Herpes simplex encephalitis;
e. Most advanced metastatic refractory cancers;
f. Far advanced emphysema;
g. Severe combined immunodeficiency syndrome;
h. Bacterial endocarditis; and
i. Subarachnoid hemorrhage;

In addition, the following would normally be considered serious diseases or stages of diseases:

a. Alzheimer's disease;
b. Advanced multiple sclerosis;
c. Advanced Parkinson's disease;
d. Transient ischemic attacks;
e. Progressive ankylosing spondylitis;
f. Active advanced lupus erythematosus;
g. Certain forms of epilepsy;
h. Nonacidotic or hyperosmolar diabetes; and
i. Paroxysomal supraventricular tachycardia.

FDA recognizes these are illustrative and not complete lists.

2. *No alternative therapy.* A number of comments addressed the proposed criterion that there be no satisfactory alternative drug or other therapy available to treat the disease. Many comments supported this criterion as a necessary prerequisite to allowing treatment use of an investigational drug. Several comments, however, requested clarification of this criteria. Specifically, these comments were concerned that FDA should not interpret this criterion in an overly restrictive way so as, for example, to preclude granting of a

treatment IND where there is any approved drug or therapy available to treat the disease in question.

FDA continues to believe that the absence of alternative therapy should be prerequisite to granting a treatment IND, because one of the major principles underlying the treatment IND policy is that these drugs would be necessary to fill an existing gap in the medical therapies available. However, FDA agrees that there should be flexibility in applying this concept so as best to serve desperately ill patients. For example, the mere fact that the disease in question has existing approved therapy does not mean that the approved treatments are satisfactory for all patients.

Accordingly, FDA has clarified this criterion in the final rule by stating that there is no comparable or satisfactory alternative drug or other therapy available to treat that stage of the disease in the intended patient population (§ 312.34(b)(1)(i)). The word "comparable" has been included in the criterion of no alternative therapy, as have the phrases "that stage of" the disease and "in the intended patient population" to emphasize that FDA will not be unduly restrictive in interpreting this criterion. FDA would therefore view the criterion of no comparable or satisfactory alternative therapy as being met when there are patients who are not adquately treated by available therapies, even if the particular disease does respond in some cases to available therapy. This criterion would be met, for example, if the intended population is for patients who have failed on an existing therapy (i.e., the existing therapy did not provide its intended therapeutic benefit or did not fully treat the condition); for patients who could not tolerate the existing therapy (i.e., it caused unacceptable adverse effects); or for patients who had other complicating diseases that made the existing therapy unacceptable (e.g., concommitant disease making available therapy contraindicated) for the patient population.

3. *Criteria for immediately life-threatening disease.* Virtually all the comments supported the criteria for drugs intended to treat serious diseases. Many comments, however, objected to the proposed criteria for drugs intended to treat immediately life-threatening diseases, especially as those criteria related to evidence of therapeutic benefit. Although many of these comments agreed with having separate criteria for immediately life-threatening (versus serious) diseases, many interpreted the wording of the reproposal as requiring the Commissioner to prove a negative, i.e., the lack of effectiveness, a burden that the Commissioner, according to these comments, would unlikely be able to meet. Other comments stressed the need to emphasize that the Commissioner needs to have sufficient information to make the specified determinations, as had been stated in the preamble to the reproposal. Most of the comments addressing this issue recommended that the criterion be changed to require that there be some evidence of possible effectiveness (e.g., a reasonable scientific basis for believing that the drug may be effective) before allowing treatment use of an investigational drug for an immediately life-threatening disease. Otherwise, these comments argued, the regulation could have the unintended effect of allowing worthless, dangerous, or fraudulent drugs to be marketed to victims of life-threatening illnesses. Finally, some comments questioned the need to provide separate criteria for immediately life-threatening diseases and proposed, instead, adoption of the criteria proposed for serious diseases (e.g., sufficient evidence of safety and effectiveness) for both disease categories.

Because of the different risk-benefit considerations involved in treating such diseases, FDA continues to believe there needs to be a separate standard for drugs intended to treat immediately life-threatening diseases. However, FDA also is persuaded that, to ensure that the intended policy of providing only truly "promising" drugs to desperately ill patients is met, it is necessary to clarify the language in the final rule to require evidence that provides a reasonable basis for believing that the investigational drug may be effective. FDA emphasizes that this standard needs to be interpreted in the context of a treatment IND to treat patients suffering from immediately life-threatening illnesses so that the level of evidence needed is well short of that needed for new drug approval—and may be less than what would be needed to support treatment use in diseases that are serious but not immediately life-threatening. What the final rule does provide for is a standard of medical and scientific rationality—a requirement for sufficient scientific evidence on the basis of which experts could reasonably conclude that the drug may be effective in the intended patient population.

Such scientific evidence coud arise from a variety of sources. As stated in the preamble to the reproposal, FDA expects that data from controlled clinical trials will ordinarily be available at the time a treatment IND is requested. However, FDA is committed to reviewing and considering all available evidence, including results of domestic and foreign clinical trials, animal data, and, where pertinent, *in vitro* data. FDA will also consider clinical experience from outside a controlled trial, where the circumstances surrounding an experience provide sufficient indicia of scientific value.

As stated in the preamble to the reproposal, in making such a determination, the Commissioner obviously must have sufficient information, and must make use of all available information. It follows that, under the final rule, it is expected that the Commissioner will be provided with sufficient data to make the specified determination.

Accordingly, the final rule has been revised to provide that the Commissioner may deny a request for treatment use of an IND for an immediately life-threatening illness if the available scientific evidence, taken as a whole, fails to provide a reasonable basis for concluding that the drug (1) may be effective for its intended use in its intended patient population; or (2) would not expose the patients to whom the drug is to be administered to an unreasonable and significant additional risk of illness or injury (§§ 312.34(b)(3)(i) (A) and (B)).

2. Safeguards

4. *Overview.* FDA's objectives in regulating the clinical testing of new drugs are to protect the rights and safety of human subjects of such testing while, at the same time, facilitating the development and marketing of beneficial drug therapies. In reproposing rules on treatment uses for investigational drugs, FDA was aware of the need to safeguard these objectives even while promoting the availability for treatment use of promising new therapies. Some of these safeguards—particularly those designed to protect the rights and safety of human subjects—were already in place as part of the general IND and related regulations; other safeguards were specifically designed to complement the reproposed treatment IND rules.

The most significant of these safeguards, all of which are retained in this final rule, include the following:

a. *Informed consent.* Authorization to use an investigational drug for treatment is conditioned on the licensed practitioner obtaining the legally effective informed consent of the patient. Informed consent is critical to the protection of the rights and safety of

the human subjects. There are clearly significant risks in taking all experimental drugs, including drugs intended for treatment use. Patients must be informed about the potential benefits and risks of drug use to help them decide whether the risks are appropriate and acceptable in their particular situation. Of course, this decision must be made under appropriate medical supervision. The regulations governing informed consent, 21 CFR Part 50, apply to the administration of drugs under an authorized treatment IND/protocol.

b. *The IND system.* It is important to emphasize that the treatment IND process takes place within the larger IND system. This means, for example, that the obligations and responsibilities of the sponsor of a clinical trial also apply to a sponsor of a treatment protocol or treatment IND. This would include, for example, the obligation to submit important adverse reactions to FDA in IND safety reports. Of equal importance, the responsibilities of the licensed medical practitioner using an investigational drug for treatment use are the same as those imposed on an investigator conducting a clinical trial. In addition, as for all investigational drugs, an investigational drug for treatment use must be manufactured in adequate manufacturing facilities to ensure good quality control.

c. *Protection of the integrity of the clinical testing process.* The final rule incorporates a number of safeguards that are intended to ensure that the premarketing availability of drugs for treatment use does not create incentives for delay in the timely testing, development, and submission for marketing approval of promising therapies. FDA is keenly aware that it can not let the treatment IND process become either a substitute for the research necessary to bring a drug to commercial marketing or a substitute for marketing itself.

FDA received a number of the comments on the adequacy of the safeguards discussed in the reproposal. These comments and agency responses are discussed below.

5. *License medical practitioner.* Under the reproposal, drugs for treatment use are provided to "licensed medical practitioners" or "treating physicians." Some comments suggested that the obligations of the "licensed medical practitioner" or "treating physician" were not adequately delineated in the reproposal and therefore requested such clarification.

The "licensed medical practitioner" or "treating physician" is the "investigator" for purposes of the treatment protocol regulations and may, under some circumstances, be the "sponsor-investigator" for purposes of treatment IND's. As an investigator, the licensed medical practitioner must comply with all investigator responsibilities described in the IND regulations (Part 312) and in Parts 50 and 56. This means that under a treatment protocol the practitioner must, among other responsibilities, assure that the investigational drug is used in compliance with the treatment protocol, promptly report to the sponsor (or, if the practitioner is also the sponsor of the IND, to FDA) all reportable adverse drug experiences, and take all other necessary steps to safeguard the handling and distribution of the investigational drug. For treatment IND's the licensed medical practitioner is the sponsor-investigator. As sponsor-investigator, the licensed practitioner is responsible for meeting all applicable sponsor and investigator responsibilities under Parts 50, 56, and 312.

6. *Qualifications of practitioners.* Several comments questioned whether the proposed regulation provided adequate assurances of the qualifications of the licensed medical practitioners. One comment observed that section 505(i) of the Federal Food, Drug, and Cosmetic Act (the Act) (21 U.S.C. 355(i)) limits distribution of investigational drugs to experts qualified by scientific training and experience to investigate the safety and efficacy of drugs. The comment contended that "licensed medical practitioners" are not necessarily experts qualified within the meaning of the statutory language.

FDA believes that the regulatory scheme adopted in this final rule adequately ensures that practitioners who obtain drugs for treatment use are well qualified. A sponsor who wants to provide an investigational drug to a practitioner for treatment use under a treatment protocol is obliged to select only those practitioners who are qualified by training and experience to use the investigational drug (21 CFR 312.53(a)). A sponsor must obtain a signed investigator statement from the licensed practitioner containing a full statement of the practitioner's training and experience to qualify the practitioner to use the investigational drug. FDA expects sponsors to exercise care in selecting practitioners to take part in a treatment protocol. When a licensed practitioner is the sponsor-investigator of a treatment IND (i.e., when there is no commercial sponsor to evaluate the qualifications of the practitioners), FDA will conduct its own assessment of the practitioner's qualifications.

7. *Informed consent.* Several comments expressed uncertainty about the applicability of the informed consent requirements to treatment IND's and treatments protocols. In addition, comments asked whether, when granting a waiver of Institutional Review Board (IRB) review requirements, FDA was also waiving informed consent requirements.

Under FDA regulations, 21 CFR Part 50, informed consent of the patient or the patient's legally authorized representative is required prior to the administration of an investigational drug. In obtaining the patient's informed consent, the physician must provide the patient with information in lay language that truthfully explains the possible benefits and potential risks involved in receiving the investigational drug. (The other items of information that must be provided the patient are enumerated in the informed consent regulations in Part 50 (see 21 CFR 50.25).) FDA regards the informed consent of the patient receiving a drug for treatment use as a crucially important safeguard of the patient's rights, safety, and welfare.

To emphasize the importance of informed consent, the final rule has been revised to make clear that authorization to use an investigational drug for treatment is conditioned on the sponsor and all licensed practitioners meeting the requirements of the agency's informed consent regulations.

Finally, with respect to the concern expressed about informed consent in the context of an IRB waiver, it is worth repeating that FDA requires assurances that adequate informed consent is obtained, whether or not IRB review is waived. The requirement for informed consent is independent of the requirement for IRB review and is not subject to waiver.

8. *IRB Review.* A number of comments expressed concern about the agency's stated willingness to waive IRB review for treatment protocols and treatment IND's. In both the original June 1983 proposal and the March 1987 reproposal, FDA asserted that IRB waiver would frequently be appropriate in the treatment use context because there would be adequate guarantees of subject protection through the informed consent process. Many comments disputed this assertion. These comments contended that, even if some of the functions of the local IRB could be performed by FDA (or by a central or "national" IRB), many important responsibilities within the province of

the IRB could only adequately be exercised by a local IRB.

FDA has reconsidered its previous decision to encourage requests for waiver of IRB review for treatment IND's and treatment protocols. The agency agrees with those comments that contended that there is much to be gained in having a local IRB conduct an initial and continuing review of the treatment of an investigational drug. IRB's are well placed to determine the adequacy of informed consent. Knowledgeable about the reputation and competence of local practitioners whose work they oversee, these IRB's may also be better able to provide greater insight into the potential benefits of treatment than can be gained by review by a distant IRB or by FDA. Also the need for review may be greater when practitioners are permitted to charge for investigational drugs. For these reasons, FDA has removed the presumption of IRB review waiver from the final rule.

It should be emphasized, however, that although the treatment IND provisions do not solicit waiver requests, waivers in appropriate cases are still available from FDA under the IRB regulations (21 CFR 56.105). As noted above, the waiver provisions do not apply to the informed consent requirement.

FDA anticipates using the waiver provision only where it would be in the best interest of subjects and where alternative mechanisms for assuring the protection of subjects are adequate. In the past, waivers have not ordinarily been granted for IND's when local IRB's are available to review the research. Most waiver requests have been for research conducted outside the United States, and, in those cases, the waiver requests have usually been to waive part, but not all, of the IRB requirements.

In the past, FDA has considered a waiver request to be in the best interest of subjects when preliminary results of clinical studies demonstrate strong initial support for the effectiveness of the drug; when patients must have immediate access to the drug; and when requiring local IRB review is not feasible. Any such waiver would require a finding of adequate alternative mechanisms to protect human subjects. These adequate alternative mechanisms might entail the initial and continuing review and approval of the IND by a committee that does not meet all of the IRB requirements, but that assumes those responsibilities normally held by local IRB's. Finally, any such waiver would require FDA's review and acceptance of the protocol and the model informed consent form.

Finally, FDA has always stated that its grant of a waiver request does not preclude a local IRB from exercising its prerogative to initiate its own review.

9. *Drug quality control.* Several comments asked whether the current good manufacturing practice (GMP) regulations applied to investigational drugs intended for treatment use.

FDA is committed to ensuring that drugs distributed under a treatment IND or treatment protocol are manufactured under adequate manufacturing facilities to ensure good quality control. In this regard, it should be emphasized that investigational drugs, like drugs approved for marketing, have always been subject to the agency's GMP inspection requirements (21 CFR Parts 210, 211, 606 et seq.). This is so even though investigational drugs are often produced in small batches in laboratories or pilot plant settings.

In the past, FDA has not routinely inspected clinical production runs in small laboratory settings or in pilot plants, although it has occasionally conducted inspections of large-scale operations that manufacture batches of drug for the larger Phase 3 studies and treatment IND's. In expanding the availability of investigational drugs for treatment uses, FDA believes that it is appropriate as an additional safeguard of the quality of such drugs to increase its monitoring of clinical batch production. Under this new policy, FDA will conduct an assessment of current good manufacturing practices at the plant where the investigational drug is produced whenever there is good cause to believe that the existing facilities may not be sufficient to ensure the quality and consistency of the investigational drug. The assessment will focus on the nature of the process to be employed in the manufacture of the treatment drug. In cases "for cause," FDA may delay authorization to distribute a drug for treatment use until a GMP plant inspection has been satisfactorily concluded. Where such an inspection is necessary, FDA will conduct it expeditiously.

10. *Active pursuit of marketing approval.* The reproposal conditioned the authorization to distribute a drug for treatment use on the investigational drug being subject to a controlled clinical trail and on the sponsor's active pursuit of marketing approval of that drug with due diligence. A number of comments asked FDA to clarify these provisions. One comment noted that the pursuit of marketing approval with due diligence would be difficult to enforce, observing that marketing approval is a necessarily complex procedure with many opportunities for delay.

In making treatment IND/protocol authorization contingent on the existence of an ongoing control clinical trail and on the sponsor's active pursuit marketing approval, FDA intended to assure that the treatment IND process would not create disincentives to the expeditious development and marketing of promising therapies. In the words of the reproposal, these provisions were designed to ensure that the drug developer make a good faith effort to seek timely and expeditious marketing approval through actions meant to advance the progress of the IND and subsequent marketing approval.

In interpreting this provision further, it is not only important that the drug developer's efforts be taken in good faith; it is also important that the sponsor's efforts stand a chance of being successful. In particular, FDA expects that the sponsor's clinical studies will be the kind of adequate and well-controlled studies that can reasonably be expected to provide data acceptable to FDA in determining the safety and efficacy of the investigational drug. The agency will, therefore, interpret the final rule to mean that the controlled trials that serve as the underpinning for the treatment IND must meet FDA's regulatory standards for adequate and well-controlled studies (21 CFR 314.126). This means that the controlled clinical trial should be designed in such a way as to reflect those attributes of an adequate and well-controlled study that are enumerated in § 314.126.

For purposes of this rule, the phrase "activity pursuing marketing approval with due diligence" is intended to encompass a drug developer's good faith effort to pursue drug development and marketing approval in a timely manner. In determining whether a sponsor is actively pursuing marketing approval, FDA will take into consideration all relevant factors. For example, in FDA's view, a necessary component of marketing approval with due diligence is the sponsor's compliance with all IND obligations, especially adverse reactions and annual reporting obligations. In addition, "actively pursuing marketing approval with due diligence" will be measured by the sponsor's success in meeting whatever developmental goals are part of the sponsor's own drug development plan. Particular attention will be paid to the speed with which subjects are enrolled in ongoing clinical trials. The agency will also focus on the sponsor's success in reaching the other major milestones of drug development. These milestones would ordinarily include timeliness in the completion of animal studies, establishment of a full-

scale manufacturing facility, and preparation and submission of a complete marketing application.

FDA is aware that "active pursuit" of marketing approval and "due diligence" are terms found in other regulatory schemes under FDA's jurisdiction. Specifically, "active pursuit" of marketing approval is a condition of approval to export unapproved new drugs and biologics under the Drug Export Amendments of 1986, and a "due diligence" standard is applied to applicants for patent term restoration under the Drug Price Competition and Patent Term Restoration Act of 1984. FDA advises that the meaning of "actively pursuing marketing approval with due diligence" under this final rule, though related to the drug export and patent term restoration contexts, is fully governed by the discussion of this concept in this preamble. This discussion is not intended to affect the interpretation of these related phrases under the other regulatory provisions noted above.

Finally, FDA notes that under the reproposal, both the sale and the treatment IND provisions contained a due diligence requirement, but expressed in slightly different words. In this final rule, in the interest of uniformity, both provisions require that the sponsor be "actively pursuing marketing approval with due diligence."

11. *Completed studies.* Several comments suggested that the reproposal might be read as prohibiting FDA from authorizing a treatment use after completion of all controlled clinical studies.

Clearly, drugs that have completed the clincial trial process, but have not yet been approved for marketing, should be eligible for consideration for a treatment IND/protocol. FDA, therefore, agrees with these comments and has revised § 314.34(b)(1)(iii) accordingly.

3. Legal Authority

12. In response to the reproposal, several comments asserted that FDA does not have authority under the act to permit the use of investigational drugs for treatment purposes. These comments asserted that such use is inconsistent with the grant of authority in section 505(i) of the act allowing FDA to exempt from otherwise applicable provisions of the law new drugs intended "solely for investigational use by experts qualified by scientific training and experience to investigate the safety and effectiveness of drugs." Several comments stated also that treatment IND/protocols are inconsistent with the holding of the Supreme Court in *United States* v. *Rutherford*, 442 U.S. 554 (1979) that the new drug approval requirements of the act encompass drugs intended for treating terminal diseases.

Most of the comments questioning the legality of the treatment IND/protocol provisions did so in the context of challenging the standard for obtaining approval of a treatment IND/protocol for an immediately life-threatening disease. These comments stated that, as drafted, the proposal appeared to require approval of a treatment IND/protocol when there was no evidence of the drug's safety or effectiveness. As described above, however, the final rule has been revised to make clear that a request for a treatment IND/protocol may be denied if the available scientific evidence, taken as a whole, fails to provide a reasonable basis for concluding that the drug (1) may be effective for its intended use in its intended patient population; or (2) would not expose the patients to whom the drug is to be administered to an unreasonable and significant additional risk of illness or injury.

In response to those comments asserting that, regardless of the criteria for approval, FDA in general lacks authority to permit treatment INDs/protocols, the agency continues to adhere to the position expressed in the preamble to the reproposal (52 FR 8851), that there is adequate authority under the act to provide for a treatment IND/protocol. Section 505(i) of the act confers broad authority upon the Secretary (by delegation to FDA) to promulgate regulations governing the clinical investigation of new drugs to protect the rights, safety, and welfare of human subjects and otherwise to promote the public health. The language of section 505(i) of the act authorizing regulations for drugs intended solely for investigational use is intended to ensure that unapproved drugs are not commercialized before marketing approval, and not to prohibit some use of an investigational drug in a treatment-investigational setting. The treatment IND/protocol serves an investigational purpose by generating information on matters concerning the drug's safety and efficacy. For example, information about less common side effects may be revealed during study under a treatment IND/protocol and can be used to write more informative labeling for the product at the time of its approval. The requirements for a treatment IND/protocol include submission of information in advance of treatment, the submission of safety reports and other information following drug administration, informed consent, IRB review and adherence to other applicable provisions of Part 312, including distribution of drugs through qualified experts and maintenance of adequate manufacturing facilities. Thus, FDA continues to believe that there are sufficient investigational aspects to these treatment IND/protocols to justify agency authorization of such uses.

The treatment IND/protocol provisions of the final rule, including the provisions for immediately life-threatening diseases, do not violate the Supreme Court's holding in *Rutherford*. The provisions of the final rule governing treatment IND/protocol clearly continue to extend to patients suffering from terminal diseases the protections inherent in the new drug provisions of the act. The court in *Rutherford* noted that the act explicitly provides for the carefully regulated use of drugs not yet proven safe and effective. The treatment IND/protocol provisions of this final rule provide for such carefully regulated use in an investigational/treatment setting. Thus, the treatment IND final rule is not inconsistent with but rather supported by the holding in *Rutherford*.

One comment noted that under the Supreme Court's opinion in *Hynson, Westcott & Dunning*, all evidence other than evidence from adequate and well-controlled clinical investigations is anecdotal and as such may not be relied on to support new drug approval. *Weinberger* v. *Hynson, Westcott & Dunning, Inc.*, 412 U.S. 609 (1973). The comment contended, therefore, that such evidence should not be relied upon to permit treatment use. *Hynson* describes the standard of evidence necessary to support new drug approval—that is, approval for commercial marketing. *Hynson* does not establish an evidentiary standard for approval of an IND or a treatment IND. Further, an important goal of the treatment IND/protocol provisions is to facilitate the availability of promising new drugs to patients with serious and immediately life-threatening disease conditions for whom there are no comparable or satisfactory alternative drug or other therapies. Adoption of criteria for approval of a treatment IND/protocol that would restrict the evidence that the agency could consider solely to evidence from adequate and well-controlled clinical trials, which may be available only at the end of the development process, would not serve the purpose of allowing treatment use at an earlier stage than that provided by commercially approved drugs. Therefore, for this reason and for the reasons stated in the preamble to the reproposal (52 FR 8851), the agency disagrees with this comment.

4. Other Issues

13. *Indications for Treatment Use.* A comment asked whether treatment IND/protocols would be available for indications other than those being studied under clinical trials.

FDA expects that drugs for treatment use will only be offered for indications that are the same as, or very similar to, those under study in a controlled clinical trial. As noted previously, the decision to permit an investigational drug for treatment use is based, in large part, on the data that emerge from these clinical trials. In determining whether a treatment IND/protocol should be authorized, the available data most be relevant to the proposed treatment use. Although FDA is not establishing a requirement that the treatment use be for an indication that is identical to that in the controlled study, the need for relevant data will mean that treatment uses will only be available for indications the same as or very similar to those that are under study in the clinical trial. The intended use of the drug is one of the items that needs to be identified in the treatment protocol or treatment IND application.

14. *FDA's review.* Under the reproposal, a treatment use under a treatment IND or treatment protocol may begin 30 days after the submission is received from the sponsor. No affirmative FDA approval of the sponsor's request is required. Several comments suggested that no treatment use should be allowed until FDA has had the opportunity to complete its review and affirmatively "approve" the sponsor's request.

The 30-day review period has been part of the IND review process since the adoption of the IND regulations in 1963. FDA believes that the 30-day period available for review under the final rule will be adequate time to complete a review of a submission.

15. *Other IND's.* Several comments identified a number of categories of drugs that the agency has previously authorized for distribution to treat patients that, according to the comments, would not satisfy some or all of the technical criteria required for a treatment IND or treatment protocol. Drugs that have been so distributed include orphan drugs for non-serious diseases, "compassionate" IND's, and IND's for drugs where marketing is not likely to be pursued, such as for drugs intended to treat certain tropical diseases. The comments asked that the final rule be revised expressly to authorize the continued distribution of these drugs under an IND.

FDA believes that these concerns raise issues that are beyond the scope of this rulemaking. This final rule is not intended to restrict the premarketing availability of the categories of investigational drugs that are identified in the comments. FDA will conduct a review of this issue as necessary.

16. *Status of an investigational drug for treatment under the Controlled Substances Act.* A comment from the Administrator of the Drug Enforcement Administration (DEA) asked FDA to reaffirm that investigational drugs, including investigational drugs authorized for distribution for treatment uses, are not drugs in "currently accepted medical use in treatment in the United States" within the meaning of the Controlled Substances Act.

In scheduling a substance for control under the Controlled Substances Act, the Administrator of the DEA must make a finding as to whether that substance has a "currently accepted medical use in treatment in the United States" (21 U.S.C. 812(b)). DEA has relied upon the recommendations of the Assistant Secretary for Health in making such determinations. In making its recommendation to the Assistant Secretary, FDA has consistently interpreted " currently accepted medical use in treatment in the United States" to mean lawfully marketed in the United States under the Federal Food, Drug, and Cosmetic Act. Nothing in this final rule alters FDA's position, nor does FDA interpret "currently accepted medical use in treatment in the United States" to include use of investigational drugs as provided for in this final rule. FDA has stated repeatedly that drug availability under a treatment IND serves an investigational as well as a treatment purpose (§ 312.34(a)). Moreover, FDA's insistence on adequate informed consent in all cases underscores the significant difference between drugs approved for marketing and those available only under a treatment IND.

B. Charging for Investigational Drugs

17. *Overview.* FDA received a large number of comments on the sale provision in § 312.7(d) of the reproposal. Some of these comments, primarily from newer, smaller pharmaceutical firms, supported the sale provisions as reproposed. However, the majority of comments expressed varying degrees of concern as to how the sale provision would be implemented and its potential effect on patients, their families, and on the practical and ethical aspects of drug research. These concerns focused, for example, on whether allowing for sale of investigational drugs would help promote health fraud; whether sale would make it more difficult to enroll patients in clinical trials; whether the price charged should be reduced or eliminated; whether the analysis of "manifestly unfair" would lead to price setting by FDA; and whether charging for investigational drugs would present ethical difficulties for local institutional review boards. Some comments also questioned FDA's legal authority in this area. Comments expressing such concerns came from a wide variety of groups, including pharmaceutical firms, clinical research institutions, associations representing patients with serious and life-threatening diseases, consumer groups, and institutional review boards.

FDA's policy on sale of investigational drugs was discussed in the March 19, 1987, reproposal. That reproposal sought to define the circumstances under which it would be appropriate for drug sponsors to charge patients for investigational drugs, both during clinical trials and under a treatment IND. FDA continues to believe that appropriate circumstances can be so defined, and that these criteria should be less restrictive for investigational drugs being made available under a treatment IND than for those utilized in a clinical trial. In response to comments, however, FDA has revised the final rule so that charging for an investigation under a treatment IND would be conditioned upon adequate enrollment of ongoing clinical investigations, and to provide that the sponsor, under either a clinical trial or treatment IND, may not commercialize the drug by charging a price larger than that necessary to recover the costs associated with the manufacture, research, development, and handling of the investigational drug. FDA believes these refinements should remove the major concerns expressed by the various comments. These refinements are discussed below.

18. *Legal Authority.* In response to the reproposal, several comments asserted that FDA lacks authority to permit or regulate the sale of investigational drugs. These comments asserted that sale of an investigational drug is contrary to the statutory scheme in section 505 of the act prohibiting the commercial marketing of unapproved new drugs. A number of comments stated that the combination of the provisions in the reproposal expanding treatment use and allowing sale of investigational drugs is contrary to the intent of Congress in enacting the 1962 Drug Amendments to require prior approval of the safety and effectiveness of a drug before marketing. One comment noted that, although not

explicitly prohibiting the sale of an investigational drug, in enacting the 1962 Drug Amendments Congress plainly contemplated continuation of the pre-1962 practice of disallowing such sale.

The agency believes that it has authority under the act to permit charging for an investigational new drug as set forth in this final rule. Charging for investigational new drugs is not prohibited by the act, and there is authority to permit charging for an investigational drug in appropriate circumstances. As stated in the preamble to the reproposal, there are compelling public health reasons that justify permitting sponsors to charge for investigational drugs distributed under an approved treatment IND/protocol. As explained further below, the reproposal, which allowed sale at a price not manifestly unfair, has been changed so that a sponsor may only recover costs. Therefore, unless indicia of commercialization are present, such as, for example, promotion or advertising, the agency concludes that it is consistent with the statutory scheme and the language of section 505 to permit sponsors to charge for the costs of investigational drugs distributed under a treatment IND/protocol, under the provisions of the final rule.

With respect to congressional intent in enacting the 1962 Drug Amendments, the legislative history of the amendments reveals, among other things, an intent to avoid repetition of another tragedy similar to thalidomide. The focus of congressional debate and inquiry was not on sale per se of investigational drugs, but rather on ways to ensure adequate animal testing of drugs prior to human administration and to ensure that new drugs are adequately tested and approved for safety and effectiveness prior to commercial distribution. The final treatment IND/protocol regulation, as revised, contains adequate safeguards against such premature release of drugs.

In addition, during passage of the 1962 Amendments, Congress was aware of FDA's then proposed IND regulations. 108 Cong. Rec. 17378 (1962) (statement of Sen. Hruska). Those proposed regulations included a sale provision stating the presumption that sale is commercialization. However, the proposed regulations also offered sponsors the opportunity to demonstrate why sale of a particular investigational drug should not be regarded as commercialization. Thus, Congress was aware that there were circumstances under which sale would not be considered commercialization and, nevertheless, refrained from amending the act to explicitly prohibit sale.

One comment contended that any sale of an investigational biological product is expressly prohibited by section 351 of the Public Health Service Act (42 U.S.C. 262), which states that no person may "sell, barter, exchange, or offer for sale" any unlicensed biological products. However, biological products undergoing development, but not yet ready for a product license, are regulated under section 505(i) of the act (21 CFR 601.21). As described above, there is authority in section 505(i) to permit sale of an investigational drug, when such sale does not constitute commercialization. Thus, the prohibition against sale of an unlicensed biological product does not preclude the sale of an investigational biological product for which an IND has been submitted when such sale is in conformance with the regulations governing investigational new drugs at 21 CFR Part 312.

Several comments stated that the interplay of the provisions in the reproposal permitting sale of an investigational drug prior to final new drug approval with the provisions for approval of treatment IND's for life-threatening diseases with less than the substantial evidence of safety and effectiveness necessary for new drug approval create an opportunity for the marketing of governmentally sanctioned quack remedies which is inconsistent with the Supreme Court's opinion in *United States* v. *Rutherford*, 442 U.S. 544 (1979). In *Rutherford*, the Court held that the new drug approval requirements of the act applied to drugs intended to treat persons with terminal diseases and upheld FDA's determination that Laetrile was an unapproved new drug that could not be shipped in interstate commerce. *Rutherford* at 2475. However, the treatment IND/protocol and sale provisions of the final rule are not inconsistent with *Rutherford*. The Court in *Rutherford* noted that application of the new drug approval provisions to therapies for terminal diseases did not foreclose resort to experimental drugs by patients for whom conventional therapy was unavailable. *ID.* at 2478. The Court noted that the act makes explicit provision for carefully regulated use of certain drugs not yet demonstrated safe and effective. *Id.* at 2479. The final rule, while permitting cost recovery for certain investigational drugs, maintains the prohibition against commercialization; distribution of a drug under an approved treatment IND/protocol, therefore, continues to be a carefully regulated distribution. Treatment use of an investigational drug is conditioned on the sponsor complying with all the safeguards inherent in the IND process including informed consent, IRB review and the applicable provisions of Part 312, such as distribution of the drug through qualified experts, maintenance of adequate manufacturing facilities, and submission of IND safety reports. The treatment IND/protocol provisions and the provisions for cost recovery, operating together, are consistent with the Court's opinion in *Rutherford*.

One comment stated that under section 704 of the act (21 U.S.C. 374), FDA lacks authority to inspect the financial records of companies. The agency disagrees that it lacks authority to inspect data and information relevant to the cost recovery provisions of the final rule. In any event, however, the agency will consider a sponsor's request for or notification of the sale of an investigational drug as a consent by the sponsor to inspection and copying of information and data relevant to a verification that the charge for the investigational drug is restricted to the cost of the drug's manufacture, research, development, and handling.

19. *Protection against health fraud.* A number of comments were concerned that sale of investigational drugs would provide an unintended opportunity for the proliferation of health fraud. These comments were based largely on the interplay of the proposed criteria for treatment IND's for immediately life-threatening illnesses (discussed above) and the proposed provision on sale.

As noted above, because FDA has revised the criteria for permitting a treatment IND for immediately life-threatening illnesses, the agency believes concerns over potential health fraud have been fully addressed. As revised, § 312.34(b)(3)(1) now provides that the Commissioner may deny a request for treatment use of an investigational drug for an immediately life-threatening illness under a treatment protocol or treatment IND if the available scientific evidence, taken as a whole, fails to provide a reasonable basis for concluding that the drug (1) may be effective for its intended use in its intended patient population; or (2) would not expose the patients to whom the drug is to be administered to an unreasonable and significant additional risk of illness or injury.

20. *Recoverable costs.* A number of comments addressed to what extent, if any, FDA should restrict the price charged for investigational drugs. Some comments argued that any degree of price control by FDA was a matter for concern as the agency lacked the

necessary expertise to exercise such authority properly and that it would be misuse of the agency's resources to seek to develop such expertise. Other comments favored an FDA mechanism for limiting the cost of investigational drugs, adding that the costs of investigational drugs should be reasonable and must be effectively controlled or eliminated. Many of the comments expressed concern that the "manifestly unfair" standard of the reproposal was too vague to enforce and would likely result, however unintentionally, in patients being charged excessive prices for investigational drugs.

FDA agrees that any charges for investigational drugs should not be excessive. The agency also agrees, however, that it should not be put in a position of being a price regulator and has, therefore, drafted the final rule to minimize the degree to which it will have to act in this area. Accordingly, the agency has added to § 312.7(d)(3) to the final rule, which states that a sponsor may not commercialize an investigational drug by charging a price larger than that necessary to recover the costs associated with the manufacture, research, development and handling of the investigational drug. This provision is the same as that applicable to investigational medical device area since 1980 (21 CFR 812.7(b)) and provides a preferable standard to "manifestly unfair" which has been deleted from the regulation. The standard in the final rule would apply to charges under both a clinical trial and under a treatment IND. FDA would limit its expenditure of resources by requesting sponsors to include in their requests for prior approval (clinical trials) or prior notifications (treatment IND) a certified statement that, consistent with generally accepted accounting principles, the requested price is not greater than that necessary to recover the costs associated with the manufacture, research, development, and handling of the investigational drug.

21. *Incentives to pursue marketing approval.* Some comments questioned whether a sponsor or investigator, if allowed to sell drugs for treatment use, would have less incentive to pursue marketing approval.

FDA believes there are three provisions in the final rule that greatly reduce or eliminate this possibility. First, the requirement for "active pursuit" (discussed earlier) requires that the sponsor make timely progress towards submission of a marketing application. Second, the provision in § 312.7(d)(2) specifies that sponsors can charge for investigational drugs under a treatment IND provided there is adequate enrollment of the ongoing clinical trials. Finally, as noted above, the final rule limits sponsors to recovery of specified costs. Accordingly, FDA believes that drug sponsors, for many reasons, will have the incentive to pursue marketing approval as quickly as possible.

22. *Procedures.* Several comments argued that the procedures for requesting authorization to sell an investigational drug should be the same for a treatment IND as for a clinical trial. Other comments stated that the final regulation should specify a period of time, preferably within 30 days, for FDA to respond to request to sell drugs in clinical trials.

FDA believes that because of the different considerations underlying charges for an investigational drug in a clinical trial and a treatment IND, different procedures are warranted. Under the final rule, charging for investigational drugs during a clincial trial would normally not be allowed, and, to do so, the sponsor must obtain prior FDA approval upon a showing of why such charges are necessary to undertake or continue the clinical trial. As stated in the reproposal, obtaining such prior approval requires the sponsor to overcome the presumption that providing investigational drugs during clinical trials is normally considered part of the cost of doing business. In contrast, providing an investigational drug to patients under a treatment IND is in addition to the normal clinical trial process necessary to gain marketing approval. In these circumstances, FDA believes that charging should be allowed provided adequate enrollment of ongoing clinical trials has occurred. Because the presumption under a treatment IND is in favor of charging, FDA believes that only prior notification to the agency, not prior approval, is warranted.

As for specifying in the regulations that FDA should respond within a specified period of time to requests to charge for drugs used in clinical trials, FDA does not agree that such an approach is warranted. As explained above, such requests must show why cost recovery is necessary to assure development of the drug. The agency expects this documentation will be prepared differently in different instances and will vary in content and amount. Therefore, setting a time limit might not allow for adequate review. In any event, if the drug is intended to treat a serious or life-threatening illness, FDA will give high priority to responding promptly to a request to charge for the drug in a clinical trial.

23. *Sale during clinical trials.* Some comments suggested that the provision for sale of investigational drugs in clinical trials, as described in the preamble to the reproposal, discriminated in favor of smaller and newer pharmaceutical firms.

FDA did not intend to discriminate in favor of smaller and newer firms with respect to charging for investigational drugs in clinical trials. As stated previously, FDA believes that cost recovery is justified in clinical trials only when necessary to further the study and development of promising drugs that might otherwise be lost to the medical armamentarium. The agency believes that this situation is most likely to arise in the context of new products derived through biotechnology which are produced by small, medium, and large firms alike.

24. *Equitable Distribution of Investigational New Drugs and Equitable Selection of Test Subjects.* A number of comments raised concerns that charging for investigational drugs used in either clinical trials or in a treatment IND would be unfair for patients who could not afford the drugs.

FDA recognizes that in some instances, when a drug is particularly expensive to manufacture and a sponsor either demonstrates the necessity to charge for the drug in clinical trials or decides to charge for the drug under a treatment IND, certain members of the patient population may not be able to afford the drug. FDA notes that the opportunity to charge for investigational drugs has existed in FDA's regulations since 1963. These concerns are not new. No significant problems have arisen in the past, however. FDA would also point out that sponsors are not required to charge, and several pharmaceutical manufacturers have indicated that they probably will not charge, regardless of the sale provision. Lastly, the concern that some patients would not have earlier access to promising new drugs fails to recognize that in some instances, without the authority to recover costs, no one would have access to these new drugs and no one would benefit from the additional information gained in a treatment IND. For all of these reasons, FDA believes it is appropriate to authorize sale, with the safeguards provided in the final rule.

Several comments suggested that permitting sale of investigational new drugs raises a question of the equitable selection of subjects. Specifically, this comment questioned whether the Institutional Review Board (IRB) would

be able to determine whether selection of subjects was equitable if only those who could afford to pay were included in research involving promising experimental drugs or, conversely, if only those who could not afford to pay for the drug under treatment IND were included in the research.

With regard to concerns if charges are imposed for clinical trial participants, FDA notes that under the final rule, charging for an investigational drug in a clinical trial will only be permitted if the sponsor can demonstrate that such charges are necessary to undertake or continue the clinical trial.

With regard to concerns if there are charges for treatment use drugs, FDA believes they are addressed adequately by the new proposed Federal Policy for Protection of Human Subjects (51 FR 20204). Under this policy, an IRB is advised to be "particularly cognizant of the special problems of research involving vulnerable populations, such as children, prisoners, pregnant women, mentally disturbed persons, or economically or educationally disadvantaged persons." Thus, a major role in ensuring equitable selection will be played by the local IRB (21 CFR 56.111(a)(3)).

These concerns are also addressed by the final rule's provisions that sale authorization under a treatment IND is contingent on adequate enrollment in clinical trials, and that treatment IND's are contingent on the sponsor's active pursuit of marketing approval with due diligence.

25. *Safeguards against promotion.* Several comments requested clarification of certain language in § 312.7(d)(2), which outlines conditions under which a sponsor or investigator may charge for an investigational drug for a treatment use under a treatment protocol or treatment IND—specifically, the terms "commercial marketing," "commercially promoted or advertised," and "due diligence." The comments believed that clarification of these terms was necessary to prevent misinterpretation or abuse. A comment suggested that FDA provide publicly available guidelines to define the term "commercially promoted or advertised." One comment argued that prohibitions against commercial marketing and advertising would be meaningless in context of the publicity surrounding treatments developed for AIDS, for example.

Informal guidance with respect to what would constitute commercial promotion and advertising for investigational drugs has been issued in the past by the Division of Drug Advertising and Labeling in FDA's Office of Drug Standards—most recently in August 1986. FDA believes that updated guidance in this area may be needed with the publication of this regulation and will take action to develop such guidance as may be appropriate.

FDA's understanding of commercial promotion does not place limits on the free exchange of scientific information (e.g., publishing results of scientific studies, letters to the editor in defense of public challenges, investigator conferences). However, responses by sponsors or investigators to unsolicited media inquiries or statements made in the exchange of scientific information should (1) make clear that the drug is investigational; (2) make no claims that the drug has been proven to be safe or effective; and (3) be truthful and nonmisleading when measured against available information on the drug—and fairly represent available information—as set forth in materials such as investigators' brochures and patients' informed consent sheets.

FDA emphasizes its willingness to discuss with sponsors and investigators any questions they may have as to whether contemplated activities may amount to commercial promotion.

Finally, the term "due diligence" in the regulations at §§312.7 and 312.34 is discussed earlier in this preamble.

26. *Third-party reimbursement.* Comments were divided on the issue of whether patients should absorb the cost of investigational drugs. Some comments felt that it would be fair to charge patients for experimental therapies. The majority, however, noting that third party payors do not normally reimburse for experimental therapies, expressed concern as to the effect charging would have on patients and on their families. A number of comments stressed the precarious financial positions—and consequent inability to pay for investigational drugs—of many patients with life-threatening illnesses such as AIDS. Others were concerned that families of desperately ill patients could be bankrupted by the cost of experimental therapies. Several comments stated that the Federal Government should reimburse these costs. Two comments requested that FDA defer final action until the Health Care Financing Administration (HCFA) has addressed the issue of Medicare and Medicaid reimbursement for experimental therapies.

FDA is mindful of the straitened financial circumstances of many desperately ill patients; however, the subject of third party reimbursement is outside the agency's jurisdiction and expertise. The agency notes that one pharmaceutical firm commented on its willingness as a sponsor to assist patients in finding possible third party reimbursement through such sources as health insurance carriers, government grants, and philanthropic foundations.

27. *Withdrawal of authorization for sale.* Finally, several comments argued that FDA should establish procedures for withdrawing authorization for sale of an investigational drug. Some of the comments argued that withdrawal of permission to sell is analogous to termination of an IND and should be subject to similar procedures, i.e., provide notice to the sponsor with an opportunity for the sponsor to supply an explanation in response justifying the pricing, either in writing or during an informal conference; and provide an opportunity for a regulatory hearing if FDA does not accept the sponsor's explanation.

FDA does not agree that withdrawal of authorization for sale of an investigational drug is analogous to the withdrawal of an IND. In the context of a treatment IND, the sponsor would still be able to provide the investigational drugs to patients, so that authorization for sale is independent of the authorization for the treatment IND itself. The ability of a sponsor to be able to continue distributing the drug without charging is at least plausible since the criteria for charging in this situation do not include economic need. FDA is not persuaded of the need to include formal procedures for withdrawal of sale authorization in the regulations. In instances where the agency finds compelling reason to withdraw sale authorization, FDA will take such action in a manner appropriate to the particular instance, taking into consideration the condition or conditions underlying the authorization that are no longer being met, and giving prior notice to the sponsor. Moreover, FDA will proceed with the utmost caution in situations where withdrawing authorization for sale might have a direct adverse effect on the patients themselves.

III. Economic Impact

In accordance with Executive Order 12291, FDA has previously considered the potential economic effects of this final rule. As announced in the reproposal, the agency has determined that the rule is not a major rule as determined by the Order. Similarly, under the Regulatory Flexibility Act, the agency previously considered the potential effects that this rule would have on small entities, including small businesses. In accordance with section

605(b) of the Regulatory Flexibility Act, the agency has determined that no significant impact on a substantial number of small entities would derive from this action. FDA has not received any new information or comments that would alter its previous determinations.

IV. Environmental Impact

The agency has determined under 21 CFR 25.24(a)(8) 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.

V. Paperwork Reduction Act of 1980

Sections 312.7(d) and 312.35 contain collection of information requirements that were submitted for review and approval to the Director of the Office of Management and Budget (OMB), as required by section 3504(h) of the Paperwork Reduction Act of 1980. The requirements were approved and assigned OMB control number 0910–0014.

List of Subjects in 21 CFR Part 312

Drugs, Medical research.

Therefore, under the Federal Food, Drug, and Cosmetic Act and the Public Health Service Act, Part 312 is amended as follows:

PART 312—INVESTIGATIONAL NEW DRUG APPLICATION

1. The authority citation for 21 CFR Part 312 continues to read as follows:

Authority: Secs. 501, 502, 503, 505, 506, 507, 701, 52 Stat. 1049–1053 as amended, 1055–1056 as amended, 55 Stat. 851, 59 Stat. 463 as amended (21 U.S.C. 351, 352, 353, 355, 356, 357, 371); sec. 351, 58 Stat. 702 as amended (42 U.S.C. 262); 21 CFR 5.10, 5.11.

2. In § 312.7 by revising the section title, by revising paragraph (d) and by adding a parenthetical statement at the end of the section to read as follows:

§ 312.7 Promotion and charging for investigational drugs.

* * * * *

(d) *Charging for and commercialization of investigational drugs*—(1) *Clinical trials under an IND.* Charging for an investigational drug in a clinical trial under an IND is not permitted without the prior written approval of FDA. In requesting such approval, the sponsor shall provide a full written explanation of why charging is necessary in order for the sponsor to undertake or continue the clinical trial, e.g., why distribution of the drug to test subjects should not be considered part of the normal cost of doing business.

(2) *Treatment protocol or treatment IND.* A sponsor or investigator may charge for an investigational drug for a treatment use under a treatment protocol or treatment IND provided: (i) There is adequate enrollment in the ongoing clinical investigations under the authorized IND; (ii) charging does not constitute commercial marketing of a new drug for which a marketing application has not been approved; (iii) the drug is not being commercially promoted or advertised; and (iv) the sponsor of the drug is actively pursuing marketing approval with due diligence. FDA must be notified in writing in advance of commencing any such charges, in an information amendment submitted under § 312.31. Authorization for charging goes into effect automatically 30 days after receipt by FDA of the information amendment, unless the sponsor is notified to the contrary.

(3) *Noncommercialization of investigational drug.* Under this section, the sponsor may not commercialize an investigational drug by charging a price larger than that necessary to recover costs of manufacture, research, development, and handling of the investigational drug.

(4) *Withdrawal of authorization.* Authorization to charge for an investigational drug under this section may be withdrawn by FDA if the agency finds that the conditions underlying the authorization are no longer satisfied.

(Collection of information requirements approved by the Office of Management and Budget under number 0910–0014)

3. By adding regulatory text to § 312.34 to read as follows:

§ 312.34 Treatment use of an investigational new drug.

(a) *General.* A drug that is not approved for marketing may be under clinical investigation for a serious or immediately life-threatening disease condition in patients for whom no comparable or satisfactory alternative drug or other therapy is available. During the clinical investigation of the drug, it may be appropriate to use the drug in the treatment of patients not in the clinical trials, in accordance with a treatment protocol or treatment IND. The purpose of this section is to facilitate the availability of promising new drugs to desperately ill patients as early in the drug development process as possible, before general marketing begins, and to obtain additional data on the drug's safety and effectiveness. In the case of a serious disease, a drug ordinarily may be made available for treatment use under this section during Phase 3 investigations or after all clinical trials have been completed; however, in appropriate circumstances, a drug may be made available for treatment use during Phase 2. In the case of an immediately life-threatening disease, a drug may be made available for treatment use under this section earlier than Phase 3, but ordinarily not earlier than Phase 2. For purposes of this section, the "treatment use" of a drug includes the use of a drug for diagnostic purposes.

(b) *Criteria.* (1) FDA shall permit an investigational drug to be used for a treatment use under a treatment protocol or treatment IND if:

(i) The drug is intended to treat a serious or immediately life-threatening disease;

(ii) There is no comparable or satisfactory alternative drug or other therapy available to treat that stage of the disease in the intended patient population;

(iii) The drug is under investigation in a controlled clinical trial under an IND in effect for the trial, or all clinical trials have been completed; and

(iv) The sponsor of the controlled clinical trial is actively pursuing marketing approval of the investigational drug with due diligence.

(2) *Serious disease.* For a drug intended to treat a serious disease, the Commissioner may deny a request for treatment use under a treatment protocol or treatment IND if there is insufficient evidence of safety and effectiveness to support such use.

(3) *Immediately life-threatening disease.* (i) For a drug intended to treat an immediately life-threatening disease, the Commissioner may deny a request for treatment use of an investigational drug under a treatment protocol or treatment IND if the available scientific evidence, taken as a whole, fails to provide a reasonable basis for concluding that the drug:

(A) May be effective for its intended use in its intended patient population; or

(B) Would not expose the patients to whom the drug is to be administered to an unreasonable and significant additional risk of illness or injury.

(ii) For the purpose of this section, an "immediately life-threatening" disease means a stage of a disease in which there is a reasonable likelihood that death will occur within a matter of months or in which premature death is likely without early treatment.

(c) *Safeguards.* Treatment use of an investigational drug is conditioned on the sponsor and investigators complying with the safeguards of the IND process, including the regulations governing

informed consent (21 CFR Part 50) and institutional review boards (21 CFR Part 56) and the applicable provisions of Part 312, including distribution of the drug through qualified experts, maintenance of adequate manufacturing facilities, and submission of IND safety reports.

(d) *Clinical hold.* FDA may place on clinical hold a proposed or ongoing treatment protocol or treatment IND in accordance with § 312.42.

4. By adding § 312.35 to Subpart B to read as follows:

§ 312.35 Submissions for treatment use.

(a) *Treatment protocol submitted by IND sponsor.* A sponsor of a clinical investigation of a drug who intends to sponsor a treatment use for the drug under § 312.34 shall submit to FDA a treatment protocol. A treatment use under a treatment protocol may begin 30 days after FDA receives the protocol or on earlier notification by FDA that the treatment use described in the protocol may begin.

(1) A treatment protocol is required to contain the following:

(i) The intended use of the drug.

(ii) An explanation of the rationale for use of the drug, including, as appropriate, either a list of what available regimens ordinarily should be tried before using the investigational drug or an explanation of why the use of the investigational drug is preferable to the use of available marketed treatments.

(iii) A brief description of the criteria for patient selection.

(iv) The method of administration of the drug and the dosages.

(v) A description of clinical procedures, laboratory tests, or other measures to monitor the effects of the drug and to minimize risk.

(2) A treatment protocol is to be supported by the following:

(i) Informational brochure for supplying to each treating physician.

(ii) The technical information that is relevant to safety and effectiveness of the drug for the intended treatment purpose. Information contained in the sponsor's IND may be incorporated by reference.

(iii) A commitment by the sponsor to assure compliance of all participating investigators with the informed consent requirements of 21 CFR Part 50.

(3) A licensed practioner who receives an investigational drug for treatment use under a treatment protocol is an "investigator" under the protocol and is responsible for meeting all applicable investigator responsibilities under this part and 21 CFR Parts 50 and 56.

(b) *Treatment IND submitted by licensed practitioner.* (1) If a licensed medical practitioner wants to obtain an investigational drug subject to a controlled clinical trial for a treatment use, the practitioner should first attempt to obtain the drug from the sponsor of the controlled trial under a treatment protocol. If the sponsor of the controlled clinical investigation of the drug will not establish a treatment protocol for the drug under paragraph (a) of this section, the licensed medical practitioner may seek to obtain the drug from the sponsor and submit a treatment IND to FDA requesting authorization to use the investigational drug for treatment use. A treatment use under a treatment IND may begin 30 days after FDA receives the IND or on earlier notification by FDA that the treatment use under the IND may begin. A treatment IND is required to contain the following:

(i) A cover sheet (Form FDA 1571) meeting § 312.23(g)(1).

(ii) Information (when not provided by the sponsor) on the drug's chemistry, manufacturing, and controls, and prior clinical and nonclinical experience with the drug submitted in accordance with § 312.23. A sponsor of a clinical investigation subject to an IND who supplies an investigational drug to a licensed medical practitioner for purposes of a separate treatment clinical investigation shall be deemed to authorize the incorporation-by-reference of the technical information contained in the sponsor's IND into the medical practitioner's treatment IND.

(iii) A statement of the steps taken by the practitioner to obtain the drug under a treatment protocol from the drug sponsor.

(iv) A treatment protocol containing the same information listed in paragraph (a)(1) of this section.

(v) A statement of the practitioner's qualifications to use the investigational drug for the intended treatment use.

(vi) The practitioner's statement of familiarity with information on the drug's safety and effectiveness derived from previous clinical and nonclinical experience with the drug.

(vii) Agreement to report to FDA safety information in accordance with § 312.32.

(2) A licensed practitioner who submits a treatment IND under this section is the sponsor-investigator for such IND and is responsible for meeting all applicable sponsor and investigator responsibilities under this part and 21 CFR Parts 50 and 56.

(Collection of information requirements approved by the Office of Management and Budget under number 0910-0014)

5. In § 312.42 by adding paragraph (b)(3) to read as follows:

§ 312.42 Clinical holds and requests for modification.

* * * * *

(b) * * *

(3) Clinical hold of a treatment IND or treatment protocol.

(i) *Proposed use.* FDA may place a proposed treatment IND or treatment protocol on clinical hold if it is determined that:

(A) The pertinent criteria in § 312.34(b) for permitting the treatment use to begin are not satisfied; or

(B) The treatment protocol or treatment IND does not contain the information required under § 312.35 (a) or (b) to make the specified determination under § 312.34(b).

(ii) *Ongoing use.* FDA may place an ongoing treatment protocol or treatment IND on clinical hold if it is determined that:

(A) There becomes available a comparable or satisfactory alternative drug or other therapy to treat that stage of the disease in the intended patient population for which the investigational drug is being used;

(B) The investigational drug is not under investigation in a controlled clinical trial under an IND in effect for the trial and not all controlled clinical trials necessary to support a marketing application have been completed, or a clinical study under the IND has been placed on clinical hold:

(C) The sponsor of the controlled clinical trial is not pursuing marketing approval with due diligence;

(D) If the treatment IND or treatment protocol is intended for a serious disease, there is insufficient evidence of safety and effectiveness to support such use; or

(E) If the treatment protocol or treatment IND was based on an immediately life-threatening disease, the available scientific evidence, taken as a whole, fails to provide a reasonable basis for concluding that the drug:

(*1*) May be effective for its intended use in its intended population; or

(*2*) Would not expose the patients to whom the drug is to be administered to an unreasonable and significant additional risk of illness or injury.

* * * * *

Frank E. Young,

Commissioner of Food and Drugs.

Dated: May 20, 1987.

Don M. Newman,

Acting Secretary of Health and Human Services.

[FR Doc. 87-11932 Filed 5-21-87; 9:17 am]

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