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Presidential Documents

Title 3—

The President

Proclamation 5677 of July 14, 1987

National Podiatric Medicine Week, 1987

By the President of the United States of America

A Proclamation

This year, as the American Podiatric Medical Association celebrates its 75th anniversary, we can be truly grateful for the foot care provided by doctors of podiatric medicine and for the continuing benefits of research into medical problems of the foot.

According to medical estimates, the average person walks 115,000 miles in a lifetime. We do this on feet that contain an intricate network of muscles, other tissues, and one fourth of all our bones. Each year, millions of Americans need professional foot care because of injury, neglect or abuse of their feet, the effects of aging or heredity, and diseases such as arthritis and diabetes.

Basic medical research offers significant promise for the prevention and relief of many foot health complaints. New approaches to diagnosis and treatment, however, are also needed to eliminate foot problems. Private, voluntary organizations and the Federal government have developed a strong and enduring partnership committed to research on foot problems and other disorders of the musculoskeletal system. We can have every confidence that concerted efforts will ultimately uncover even more effective treatments for such problems.

The Congress, by Senate Joint Resolution 75, has designated the week of August 2 through August 8, 1987, as "National Podiatric Medicine Week" and authorized and requested the President to issue a proclamation in observance of this occasion.

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, do hereby proclaim the week of August 2 through August 8, 1987, as National Podiatric Medicine Week. I urge the people of the United States and educational, philanthropic, scientific, medical, and health care organizations and professionals to observe this week with appropriate programs, ceremonies, and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this fourteenth day of July, 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 twelfth.

Ronald Reagan

[FR Doc. 87-16429
Filed 7-15-87; 4:32 pm]
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Rules and Regulations

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DEPARTMENT OF AGRICULTURE

Foreign Agricultural Service

7 CFR Part 6

Section 22 Dairy Import Quotas; Adjustment of Application Period for Import Licenses for Certain Dairy Products

AGENCY: Foreign Agricultural Service, USDA.

ACTION: Notice of adjustment of application period for certain import licenses.

SUMMARY: This notice is to advise applicants for import licenses for certain dairy products that applications mailed on August 1, 2 and 3, 1987 will be treated as being mailed on the same date.

EFFECTIVE DATE: July 17, 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.

SUPPLEMENTARY INFORMATION: Sections 6.25 (b)(4) and (c)(1) of Import Regulation 1, Revision 7 (7 CFR 6.25 (b)(4) and (c)(1)) require that applications for nonhistorical and supplementary import licenses for certain dairy products be submitted during a 90-day application period which begins on August 1 each year. Since many of the import licenses are issued on a first-come, first-served basis applicants are advised to mail their applications on August 1 each year. This year August 1, 1987, falls on Saturday, a shortened workday for may post offices. Therefore, the purpose of this notice is to advise all applicants that applications postmarked on August 1, 2 and 3, 1987 will be treated as being mailed on the same date for the purpose for determining priority in the issuance of import licenses. Thus, an application mailed on August 2nd or 3rd will receive the same priority as one mailed on August 1st.

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).

§ 6.25 [Amended]

2. Section 6.25(b)(4) is amended by adding the words "(or the next working day if August 1 falls on a weekend or Federal holiday)," between the words "August 1" and "or later".

Signed, the 14th of July 1987.

Thomas O. Kay,

Administrator, Foreign Agricultural Service.

[FR Doc. 87-16252 Filed 7-16-87; 8:45 am]
BILLING CODE 3410-10-M

Food and Nutrition Service

7 CFR Parts 272, 273 and 276

[Amendment No. 294]

Food Stamp Program; Provisions on Income and Resource Eligibility and Verification Requirements

AGENCY: Food and Nutrition Service, USDA.

ACTION: Interim rule.

SUMMARY: This action amends Food Stamp Program (FSP) regulations to implement certain provisions contained in the Food Security Act of 1985, enacted on December 23, 1985. These provisions include: (1) State agency option to exclude from income for FSP purposes Title IV-D child support payments which are collected by the State on behalf of recipients of Aid to Families with Dependent children (AFDC) benefits; (2) verification of household size; (3) exclusion as a resource of the value of real or personal property directly related to the maintenance and use of a vehicle used to produce income or necessary to transport disabled household members; (4) treatment of the cash value of a resource which has a lien placed against it as an inaccessible resource; and (5) counting as income earnings to certain individuals participating in on-the-job training programs under the Job Training Partnership Act.

DATES: This action is effective retroactively to April 1, 1987. State agencies shall implement the provisions of this action immediately. Comments must be received on or before September 15, 1987 to be assured of consideration.

ADDRESSES: Comments should be submitted to Bruce A. Clutter, Chief, Eligibility and Monitoring Branch, Program Development Division, Family Nutrition Programs, Food and Nutrition Service, USDA, 3101 Part Center Drive, Alexandria, Virginia 22302. All written comments will be open to public inspection at the office of the Food and Nutrition Service during regular business hours (8:30 a.m. to 5:00 p.m., Monday through Friday) at 3101 Part Center Drive, Alexandria Virginia, Room 708.

FOR FURTHER INFORMATION CONTACT: Judith M. Seymour at the above address or telephone (703) 756-3429.

SUPPLEMENTARY INFORMATION:

Classification

Executive Order 12291

This action has been reviewed under Executive Order 12291 and Secretary's Memorandum No. 1519-1. The Department has classified this action as nonmajor. The annual effect of this action on the economy will be less than $100 million. This action will have no effect on costs or prices. Competition, employment investment, productivity, and innovation will remain unaffected. There will be no effect on the competition of United States-based enterprises with foreign-based enterprises.

Executive Order 12372

The Food Stamp Program is listed in the catalog of Federal Domestic Assistance under No. 10.551. For the reasons set forth in the final rule and related notice to 7 CFR Part 3015,

Subpart V (48 FR 29115, June 24, 1983), this Program is exempt from the scope of Executive Order No. 12372 which requires intergovernmental consultation with State and local officials.

Regulatory Flexibility Act

S. Anna Kondratas, Acting Administrator of the Food and Nutrition Service, has certified that this action will not have a significant economic impact on a substantial number of small entities. State and local welfare agencies are affected to the extent that they administer the Food Stamp Program and must implement the provisions of this action for new Program applicants and current participants.

Paperwork Reduction Act

This action does not contain reporting or recordkeeping burden subject to approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1980.

Interim Rule

The provisions of this rulemaking, all of which implement amendments enacted as part of title 15 of the Food Security Act of 1985, are required by law to be effective not later than April 1, 1987. Specifically, section 1583 of the Food Security Act requires that "[n]ot later than April 1, 1987, the Secretary shall issue rules to carry out the amendments made by this title." Pub. L. 99–198, sec. 1583, 99 Stat. 1595, Dec. 23, 1985. Since prior notice and comment rulemaking procedures cannot be completed before this statutory effective date, S. Anna Kondratas, Acting Administrator of the Food and Nutrition Service (FNS) has determined, pursuant to 5 U.S.C. 553(b), that prior notice and public comment procedure on this rulemaking is impracticable. For the same reason, good cause is found pursuant to 5 U.S.C. 553(d) for the publication of this rulemaking less than thirty days prior to its effective date. However, because the Department believes that the rule may be improved by public comment, comments are solicited on this rule for 60 days. All comments received will be analyzed and appropriate changes in the rule will be incorporated in the subsequent publication of a final rule.

Background

Child Support Payments—§ 273.9(c)(12), § 276.2 (a) and (e)

For the purpose of the Aid to Families with Dependent Children (AFDC) Program, the Deficit Reduction Act of 1984 (Pub. L. 98–369) required States to disregard the first $50 in child support payments collected by the States on behalf of AFDC families when computing AFDC benefits. Current rules at 7 CFR 273.9(c) count the entire value of such payments as income when computing Food Stamp Program (FSP) eligibility and benefit levels, when they are received by the household from the support agency responsible for collecting the payment.

Some States have contended that the different treatment of child support payments between the two programs is difficult to administer and may result in errors in determining FSP benefits. In response to this situation, section 5 of the Food Stamp Act, as amended by section 1510(1) and (2) of Pub. L. 99–198, permits States the option to exclude up to the first $50 of Title IV–D child support payments collected by the State on behalf of the AFDC family when computing FSP eligibility and benefit levels. This change means that some households will receive higher food stamp benefits than they currently receive. Also, there is the potential for some households that were previously ineligible for Program benefits to become eligible as a direct result of the child support income inclusion. The statute provides that the State agency must reimburse the Federal Government for any additional food stamp benefit costs resulting from such an income exclusion. Legislative history accompanying Pub. L. 99–198 explains Congress' view that the incentive for collecting child support payments lies exclusively with the AFDC program as States get reduced State costs for the AFDC program by participating in the collection effort. *See* Senate Report 99–145, pages 236–237; reprinted at 1985 U.S. Code Cong. and Admin. News 1902–1903. Congress intends to protect against increased Federal costs associated with extending the exclusion, at State option, to the FSP.

Accordingly, this action amends 7 CFR 273.9(c) to provide that State agencies may allow an exclusion for such child support payments. The rule further states that the State agencies must apply the provisions uniformly to all affected households in the caseload.

Legislative history accompanying Pub. L. 99–198 further provides that the amount and method of collecting such reimbursements is left to the discretion of the Department. This action amends 7 CFR 276.2 to require State agencies which opt to exclude the child support payments to reimburse FNS; (1) the actual amount of increased household benefits resulting from granting the income exclusion or (2) an average cost increased amount.

Actual Reimbursement Method

State agencies which opt to use the actual reimbursement formula would be required to compute allotments each month for all affected households twice—with and without the child support exclusion. The difference between the two allotment levels would be the actual Federal cost increase.

Average Reimbursement Method

Each $50 decrease in household net income generally results in a $15 increase in Program benefits (30 percent of $50 equal $15; based on the benefit reduction rate of 30 percent of net income set forth in the Food Stamp Act). The Department intends to utilize this concept for determining an estimated amount of increased cost to be reimbursed to FNS as a result of the child support income exclusion. State agencies which opt to use the average reimbursement formula would be required to total the monthly income exclusion amount granted to all affected households and reimburse FNS 30 percent of that total. Thus, if the total amount of the child support exclusion granted to applicable households for January was $300, the State agency would reimburse FNS $90.

This procedure produces an estimate only. It is not a precise procedure for determining the amount owed to the Federal Government and certain household curcumstances would result in variations of as much as $10 in either direction for an individual household. For example, since household net income would be less as a result of the income exclusion, the amount of income that could enable a household to qualify for a particular shelter deduction (50 percent of income after all other deductions have been applied) would be less and the household's shelter deduction could increase by $25. This could result in an additional $8 in benefits over and above the $15 increase due directly to the disregard of the first $50 of child support. On the other hand, if a household is receiving the minimum $10 food stamp benefit, a $50 decrease in income might not result in an increase in the household's allotment. The Department believes that the formula for computing an average cost increase resulting from the exclusion represents a fair and equitable reimbursement policy without creating undue administrative burden and cost on State agencies as well as the Department.

The rule further provides that State agencies which opt to grant the child support income exclusion must apply the provision to all affected households

in the caseload. Also, the Department intends that this income exclusion provision be treated the same as all other income exclusion provisions for quality control purposes.

In computing the amount of reimbursement due FNS for increased Federal cost resulting from granting the exclusion, the rule provides that the State agencies can only implement one of the two reimbursement methods offered and apply that method for all affected cases in determining the reimbursement amount. However, the Department believes that State agencies should be allowed to evaluate the feasibility of the reimbursement method implemented and be provided an opportunity to utilize the other available method. The Department believes that an annual evaluation timeframe is sufficient for this purpose. Accordingly, this action amends 7 CFR 276.2 to provide that State agencies can switch from one reimbursement method to the other on an annual basis.

Because the reimbursement is based on a State agency option, the Department intends to handle the reporting and submission of the reimbursement payment through an existing report system rather than create a distinct separate system. Accordingly, this action amends 7 CFR 277.2 to provide that State agencies report the value of the reimbursement on the FNS–209 report form; a quarterly report. The reimbursement would be applied as an adjustment to the Letter of Credit (LOC) by offsetting it against LOC credit adjustments currently being reported on the FNS–209. State agencies would be required to maintain monthly records which provide a clear audit trail for determining the accuracy of such reimbursement amounts reported on the FNS–209.

Job Training Partnership Act (JTPA) Programs—§ 273.9(b)(1)(v)

Section 5 of the Food Stamp Act, as amended by section 1509(c)(1) of Pub. L. 99–198, requires that earnings of individuals participating in on-the-job training programs under the Job Training Partnership Act shall be considered earned income for Food Stamp Program purposes, except with respect to such earnings of dependents less than 19 years of age.

Legislative history explains that current regulations at 7 CFR 273.9(c)(7) already exclude earned income received by children under 18 years of age and that the effect of the new statutory provision would be to raise the age limitation to include older children "living at home" who receive earnings while participating in JTPA programs. *See* H. Rept. No. 99–271, 99th Cong., 1st Session, pgs. 455–456; reprinted at 1985 U.S. Code Cong. & Ad. News 1559–1560. The term "children" under the current provision at 7 CFR 273.9(c)(7) means individuals "under the parental control of another household member." The current provision also provides that such children must be a student at least half-time.

Based on the legislative history, it is assumed that the term "dependent" used in the new statutory provision is intended to be interpreted to also mean household members "under the parental control of another household member", but limits the exemption to children under age 19. However, there is no legislative clarification as to whether or not the student limitation under the current provision was intended to be applicable for the new statutory provision. Accordingly, this action amends 7 CFR 273.9 to add a separate regulatory provision which provides that the earnings of individuals participating in on-the-job training programs under the JTP Act shall be considered income. The rule further provides that the provision is not applicable to household members under 19 years of age who are under the parental control of another household member.

Resources—§ 273.8(e)(15), § 273.8(h)(1)(iv)

Currently, 7 CFR 273.8 provides that the value of nonexcluded resources be determined based on the equity value. Those regulations further provide that the cash value of resources which are inaccessible to the household are an excludable resource. The language of the Food Stamp Act prior to Pub. L. 99–198, prohibited the Secretary from changing food stamp resource rules that were in effect on June 1, 1982, except for those relating to vehicles. Based on the previous statutory June 1, 1982 limitation, such inaccessible resources are limited to irrevocable trust funds, security deposits on property or utilities, property in probate, and real property which the household was making a reasonable effort to sell. Section 5(g) of the Food Stamp Act, as amended by section 1514 of Pub. L. 99–198, now provides discretionary authority for the Secretary to consider other types of resources as inaccessible and thus excludable.

Legislative history provides that the intent of the provision is to *allow* the Secretary to include as "inaccessible" resources those assets on which a lien has been placed. The legislative history explains that Congress was particularly concerned about the effect of the current "inaccessible" resource rules on farm families. The House Report stated, "It is often the case with farmers that liens are placed against many or all of their business and nonbusiness assets when they take out loans for business purposes. In effect, these liens make the assets' equity value inaccessible to the household." *See* House Report 99–271, 99th Cong., 1st Sess., p. 151; reprinted at 1985 U.S. Code Cong. & Ad. News 1255. It is Congress' judgment that "in these instances, the equity value should not be counted as a resource for food stamp eligibility determination purposes." *Id., also see* House Conf. Report 99–447, December 17, 1985, pages 528–529.

The Department believes Congress' concern focuses on farmers who borrow money and secure the loan by giving the creditor a security interest (lien) on property which was not purchased by the loan proceeds. Even though the "collateral" property may have been fully paid for previously, the farmer would use it to secure new business loans. In these situations the farmer often has to agree not to sell the property until the note is paid to insure that the creditor's "collateral" interest is protected. Thus, the value of the "collateral" property could be inaccessible to the household.

The Department was also concerned as to whether or not a lien placed against an asset would render the asset or the value of the asset truly inaccessible, i.e., the household could not sell the asset because of the lien or otherwise convert the asset or the value of the asset to a cash resource. The Department researched this matter with National, Federal and State financial institutions. Our discussions with the financial institutions clarified that a lien does not necessarily preclude the household from selling the asset, although such limitations do exist. The Department believes that it is the intent of Congress to exclude an asset with a lien against it only if such asset is truly inaccessible.

It is the Department's view that liquid assets (such as those defined at 7 CFR 273.8) can always be cashed or withdrawn to pay off the lien and, thus, are never truly inaccessible. Therefore, the Department intends to limit this new resource exclusion to non-liquid assets, such as land, crops, buildings, timber, farm equipment or machinery.

Accordingly, based on the discretionary authority of the language of the statute, this action expands the resource exclusion provisions at 7 CFR 273.8 to specifically exclude as "inaccessible" a non-liquid resource which has a lien against it and which the household is prohibited by the

security or lien agreement from selling. The regulatory language also clarifies that the new provision applies only to cases where the household has taken out a business loan which resulted in a lien being placed against non-liquid assets. While the legislative history makes reference to business and nonbusiness assets, it is clear that the House Report focuses on loans obtained for "business" purposes.

The Department would like to emphasize that other current resource exclusion regulations, separate from the inaccessible property rule, already fully exclude most of the real or personal property of self-employed farmers. These current resource exclusions not only assist farm families in obtaining Program benefits but they also assist other operators of small businesses who may be suffering temporary setbacks. Most significant is the exclusion for "property such as farm land . . . or work related equipment, such as the tools of a tradesman or the machinery of a farmer", used for employment or self-employment. Also there is a general exclusion for all property which produces income consistent with its fair market value, even if only used on a seasonal basis, and an exclusion from the resource equity test for the value of vehicles used primarily for income producing purposes. See 7 CFR 273.8(e) and (h). In addition, there are several income exclusions and deductions which apply to self-employed households, such as the exclusion of the cost of producing self-employment income, the proceeds from business and personal loans, and the 20 percent deduction for earned self-employment income. Furthermore, current regulations now allow farmers to offset net losses from farm self-employment against other household income. For these reasons, the Department believes that this provision fully addresses Congressional concerns and is fair to farmers and other self-employed persons.

In addition, section 5(g) of the Food Stamp Act provides a specific statutory resource exclusion for vehicles annually producing income or for vehicles necessary to transport a physically disabled household member. That section, as amended by section 1514 of Pub. L. 99–198, also provides that property, real or personal, is excludable to the extent that it is directly related to the maintenance or use of such vehicles. There have been differing views as to whether current regulations at 7 CFR 273.8 provide for such an exclusion. The amendment clarifies this issue by providing a specific exclusion for the value of such property. The House Report accompanying the statute clarifies that it is not the intent of Congress to exclude as a resource the full value of a one-acre field if only one-quarter of that acre is used for parking and maintenance purposes; only the value of the one-quarter acre would be excluded under the provision of the statute. (House Report 99–271, September 13, 1985, p. 150–151.) Accordingly, this action amends 7 CFR 273.8(h) to provide a specific exclusion for personal property as well as that portion of real property necessary for the "maintenance and use" of an income producing vehicle or a vehicle necessary to transport a physically disabled household member. Current regulations at 7 CFR 273.8 already provide for exclusion of certain personal property from consideration as a resource regardless of the use of such property.

It is important to note that this resource exclusion is not affected by State or local zoning laws or the household's ability to convert the property to a cash resource. In other words, under this provision a household cannot claim that it is entitled to an exclusion for the full value of the one-acre field because State and local laws prohibit subdividing of property, or the household is somehow prohibited from converting the property to a cash resource. The provision is intended to give households a monetary credit based on the use of a portion of the property only. It is possible that the entire acre may be excludable under the other resource exclusion provisions at 7 CFR 273.8, but not as a direct result of this particular provision. This provision provides an exclusion only for the "value" of that portion of property related to maintenance or use of an income producing vehicle or a vehicle necessary to transport a disabled household member.

The Department is not establishing a regulatory formula for determining the exact portion of related property to be applied under this provision. The Department believes that it is necessary for State agencies to have the flexibility to make this determination on a case-by-case basis.

Verification—§ 273.2(f)

Prior to Pub. L. 99–198, the Food Stamp Act required verification only of nonexcluded gross income and any other factors as determined by the Secretary to be necessary. Based on this discretionary authority, current regulations at 7 CFR 273.2(f) require State agencies to verify income, alien status, social security numbers, utility and medical expenses. State agencies are also required to verify any factor which they determine to be questionable, such as household size. The Act, prior to Pub. L. 99–198, also provided an option for State agencies to verify, whether questionable or not, the size of an applicant household or any other factor affecting household eligibility for households which fall within error-prone household profiles developed by the State agency. Consequently, current rules provide that the State agency may elect to verify any nonmandatory factors which affect household eligibility and allotment levels as long as the requirement to verify these factors is based on error-prone household profile indicators.

In order to strengthen Federal and State efforts to prevent fraud and abuse and detect and prosecute that which has already occurred, the regulations provide an explicit mandate to verify household size, when questionable, in addition to verifying nonexcluded gross income. Section 11(e) of the Food Stamp Act, as amended by section 1527 of Pub. L. 99–198, provides greater authority for State agencies to elect verification of factors which affect household eligibility or benefit level, by no longer requiring error-prone profile indicators. State agencies may still use error-prone profile indicators in exercising their option to verify, but are no longer required to do so. Accordingly, this action amends 7 CFR 273.2(f) to make clear that verification of household size, when questionable, is mandated. This action also amends 7 CFR 273.2(f) to remove references which require State agencies to utilize error-prone household profile indicators in establishing other State mandatory verification requirements.

Implementation—§ 272.1(g)

Implementation of the Title IV–D income exclusion provision at § 276.2 is a State agency option. State agencies which opt to implement this provision shall have procedures in place at the time of implementation for: 1) applying the provision to all affected households and for calculating and submitting funds due FNS as required under this provision. The remaining provisions of this rule are effective retroactively to April 1, 1987 as required by Pub. L. 99–198. Accordingly, this action requires State agencies to implement the rule changes immediately upon publication in order to promptly come into compliance with the law. If, for any reason, a State agency fails to implement these provisions on that date, affected households shall be provided restored benefits which they would have received if the State agency had

implemented the provisions as required. We recognize that this immediate implementation schedule will cause some difficulties with Quality Control (QC) reviews. Therefore, for QC purposes only, we are allowing State agencies additional time to come into compliance with the provisions of this rule. Accordingly, this action provides that QC shall not identify variances resulting solely from implementation or nonimplementation of this rule in cases with review dates between April 1, 1987 and August 31, 1987.

List of Subjects

7 CFR 272

Alaska, Civil rights, Food stamps, Grant programs-social programs, Reporting and recordkeeping requirements.

7 CFR Part 273

Administrative practice and procedure, Aliens, Claims, Food stamps, Fraud, Grant programs-social programs, Penalties, Reporting and recordkeeping requirements, Social security, Students.

7 CFR Part 276

Administrative practice and procedure, Food stamps, Fraud, Grant programs-social programs, Penalties.

Accordingly, Parts 272, 273, and 276 are amended as follows:

1. The authority citation for Parts 272, 273, and 276 continues to read as follows:

Authority: 7 U.S.C. 2011–2029

PART 272—REQUIREMENTS FOR PARTICIPATING STATE AGENCIES

2. In § 272.1, a new paragraph (g)(90) is added in numerical order to read as follows:

§ 272.1 General terms and condition.

* * * * *

(g) *Implementation.* * * *

(90) *Amendment No. 294.* State agencies shall implement the Title IV–D child support income exclusion provision of Amendment No. 294 at its own option, provided it has procedures in place, at the time of implementation, for applying the provisions to all affected households and for calculating and reimbursing FNS as required under the provision. State agencies shall implement the remaining provisions of Amendment No. 294 retroactively to April 1, 1987. If, for any reason, a State agency fails to implement the provisions, affected households shall be entitled to restored benefits but not prior to April 1, 1987. For QC purposes only, QC reviewers shall not identify variances resulting solely from implementation or nonimplementation of this rule in cases with review dates between April 1, 1987 and August 31, 1987.

PART 273—CERTIFICATION OF PARTICIPATING HOUSEHOLDS

3. In § 273.2:

a. Paragraph (f)(2)(i) is redesignated as paragraph (f)(1)(ix).

b. Introductory paragraph (f)(2) is redesignated as paragraph (f)(2)(i) and amended by removing the last sentence of the paragraph.

c. Paragraph (f)(3)(ii) is removed.

d. Paragraphs (f)(3)(i), (f)(3)(i)(A) and (f)(3)(i)(B) are redesignated as introductory paragraph (f)(3), and paragraphs (f)(3)(i) and (f)(3)(ii), respectively.

e. The first sentence of newly designated introductory paragraph (f)(3) is revised.

f. The third sentence of newly designated paragraph (f)(3)(i) is amended by removing the phrase", including verification resulting from a State's error-prone profile,"

The revision reads as follows:

§ 273.2 Application processing.

* * * * *

(f) *Verification.* * * *

(3) *State agency options.* In addition to the verification required in paragraphs (f)(1) and (f)(2) of this section, the State agency may elect to mandate verification of any other factor which affects household eligibility or allotment level, including household size where not questionable. * * *

* * * * *

4. In § 273.8, new paragraphs (e)(15) and (h)(1)(vi) are added to read as follows:

§ 273.8 Resource eligibility standards.

* * * * *

(e) *Exclusions from resources.* * * *

(15) Non-liquid asset(s) against which a lien has been placed as a result of taking out a business loan and the household is prohibited by the security or lien agreement with the lien holder (creditor) from selling the asset(s).

* * * * *

(h) *Handling of licensed vehicles.*

* * *

(1) * * *

(vi) Property, real or personal, to the extent that it is directly related to the maintenance or use of a vehicle excluded under paragraphs (h)(1)(i), (h)(1)(ii) or (h)(1)(vi) of this section. Only that portion of real property determined necessary for maintenance or use is excludable under this provision. For example, a household which owns a produce truck to earn its livelihood may be prohibited from parking the truck in a residential area. The household may own a 100-acre field and use a quarter-acre of the field to park and/or service the truck. Only the value of the quarter-acre would be excludable under this provision, not the entire 100-acre field.

* * * * *

5. In § 273.9, new paragraphs (b)(1)(v) and (c)(12) are added to read as follows:

§ 273.9 Income and deductions.

* * * * *

(b) *Definition of income.* * * *

(1) * * *

(v) Earnings to individuals who are participating in on-the-job training programs under the Job Training Partnership Act. This provision does not apply to household members under 19 years of age who are under the parental control of another adult member.

* * * * *

(c) *Income exclusions.* * * *

(12) At State agency option, the State agency may exclude from unearned income, up to $50 monthly of Title IV–D child support payments in cases where such payments are received by households from the Title IV–D support agency responsible for collecting such child support payments on behalf of AFDC recipients. The exclusion must be uniformly applied to all affected households.

* * * * *

PART 276—STATE AGENCY LIABILITIES AND FEDERAL SANCTIONS

6. In § 276.2:

a. Two new sentences are added to the end of paragraph (a),

b. Paragraph (d) is amended by adding the words "paragraphs (b) and (c) of" before the words "this section" appearing in the first sentence.

c. A new paragraph (e) is added.

The additions read as follows:

§ 276.2 State agency liabilities.

(a) *General provisions.* * * * State agencies shall be responsible for the monthly increased Federal benefit costs involved in granting households an income exclusion for child support payments as described in § 273.9(c)(12). State agencies shall reimburse FNS the amount of such increased cost in accordance with paragraph (e) of this section.

* * * * *

(e) *Title IV reimbursements.*

(1) State agencies shall be liable to FNS for the increased dollar value of coupon allotments resulting from

providing households with an income exclusion for child support payments as described in § 273.9(c)(12) based on one of the following methods:

(i) For each month the State agency grants the income exclusion to a household, the State agency shall reimburse FNS for the monthly difference between the household's benefit level which includes the exclusion and the benefit level the household would have received without the exclusion.

(ii) On a monthly basis, State agencies shall total the actual amount of income exclusion granted to affected households and shall reimburse FNS 30 percent of such total.

(2) The State agency shall utilize only one reimbursement method and that method shall be applied for determining a reimbursement amount for all affected cases in the caseload. State agencies may switch from one method to the other on an annual basis, but not on a case-by-case basis.

(3) The State agency shall reimburse FNS through an adjustment to the Letter of Credit (LOC). The reimbursement amount shall be reported quarterly on the FNS–209, Status of Claims Against Households, to be offset against LOC credit adjustments reported on that form. The State agency shall maintain monthly records which detail the computation of reimbursement amounts reported on the FNS–209 for audit purposes.

Dated: July 13, 1987.

Anna Kondratas,

Administrator, Food and Nutrition Service.

[FR Doc. 87–16280 Filed 7–16–87; 8:45 am]

BILLING CODE 3410–30–M

Animal and Plant Health Inspection Service

7 CFR Part 301

[Docket No. 87–039]

Pink Bollworm Quarantine

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are amending the list of regulated articles under the pink bollworm quarantine and regulations by removing restrictions on the interstate movement of:

1. Cottonseed hulls.

2. Cotton lint, linters, and lint cleaner waste from upland cotton (short staple) varieties.

3. Cotton waste produced at cotton textile mills.

We are also combining a section on "quarantine restrictions" with a section on "exemptions and interpretation," in order to simplify and clarify regulations related to the interstate movement of regulated articles. In addition, we are making nonsubstantive editorial changes to the proposed rule.

EFFECTIVE DATE: August 17, 1987.

FOR FURTHER INFORMATION CONTACT: Mike Shannon, Field Operations Support Staff, PPQ, APHIS, USDA, Room 663, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301–436–8295.

SUPPLEMENTARY INFORMATION:

Background

The regulations contained in 7 CFR 301.52 *et. seq.* (referred to below as the regulations) quarantine States of the United States infested with pink bollworm and restrict the interstate movement of certain articles in order to prevent spread of pink bollworm.

On January 5, 1987, we published in the **Federal Register** (52 FR 291–292, Docket No. 85–361), a document proposing to relieve unnecessary restrictions on the interstate movement of certain articles by removing them from the list of regulated articles contained in the regulations. (Articles listed as "regulated" are those whose interstate movement might spread the pink bollworm because they are hosts or carriers of the pink bollworm.) We also proposed to consolidate sections of the regulations covering the interstate movement of regulated articles for the purposes of simplification and clarification.

We solicited comments on the proposal for 60 days, ending on March 6, 1987. We received one comment. The commenter, writing on behalf of a cotton industry organization, stated that the organization would support the removal of these articles if: (1) An agreement between the United States Department of Agriculture and State cooperators has been reached on the removal of the articles in question from the list of regulated articles; and (2) research shows that the risk in using these articles is acceptable.

Concerning the first condition, the commenter stated that while the organization believed that some State cooperators were in agreement, it did not know whether all were. With regard to the second condition, the commenter stated that because of a possible, but unknown, risk associated with used bagging and other used wrappers for cotton, a study should be conducted to assess the risk before removing them as regulated articles.

Agreement Between the Department and State Cooperators

When the proposal to remove the articles in question from the list of regulated articles in § 301.52 was originally being contemplated, we contacted all State cooperators and asked them for suggestions. After the recommendations were compiled, State cooperators were asked to comment prior to the January 5, 1987, publication of the proposed rule. We did not receive any negative comments from the State cooperators regarding the amendments that we proposed in January and are finalizing in this document.

Used Bagging and Other Used Wrappers

After raw cotton is processed, the resulting compressed bales are bagged or wrapped for shipment. Since Department research shows that any pink bollworms in the raw cotton would not survive the ginning process, bagging and wrapping materials seem to be safe from infestation. However, we agree with the commenter that the risks associated with used bagging and wrapping have not been researched. Since we do not have enough information to remove used bagging and wrappers from the list of regulated articles, we are not changing their current "regulated articles" status.

Introductory Language in § 301.52(b)

The proposal published in the Federal Register, January 5, 1987, (52 FR 291–292) would, if adopted, delete the introductory language in § 301.52(b), which provides that "[n]o common carrier or other person shall move interstate from any quarantined State any of the following articles (defined in § 301.52–1(m) as regulated articles), except in accordance with the conditions prescribed in this subpart." This proposed deletion was in error; it was not intended to delete the prohibition on the movement of regulated articles.

Therefore, we are retaining the introductory language in § 301.52(b) with a minor nonsubstantive change.

Executive Order 12291 and Regulatory Flexibility Act

We are issuing this rule in conformance with Executive Order 12291, and we have determined that it is not a "major rule." Based on information compiled by the Department, we have determined that this rule will have an effect on the economy of less than $100 million; will not cause a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or

geographic regions; and will not cause a signficant 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.

The articles we removed from the pink bollworm regulated articles list have been routinely subjected to milling processes that kill any infesting pink bollworms, thereby meeting the requirements of § 301.52–4(a)(4) for interstate movement certification. The effect of this final rule is internal, because it relieves inspectors of the requirement to perform inspections and certifications, which are not necessary.

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

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025, and is subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with the State and local officials. (See 7 CFR Part 3015, Subpart V.)

List of Subjects in 7 CFR Part 301

Agricultural commodities, Plant pests, Plants (agriculture), Quarantine, Pink bollworm, Transportation.

PART 301—DOMESTIC QUARANTINE NOTICES

Accordingly, 7 CFR Part 301 is amended to read as follows:

1. The authority citation for Part 301 continues to read as follows:

Authority: 7 U.S.C. 150bb, 150dd, 150ee, 150ff, 161, 162 and 164–167; 7 CFR 2.17, 2.51 and 371.2(c).

2. Section 301.52(b) is revised and a new footnote 1 is added to read as follows:

§ 301.52 Quarantine; restriction on interstate movement of specified regulated articles.

* * * * *

(b) *Regulated articles.* No common carrier or other person shall move interstate from any quarantined State any regulated article, except in accordance with this subpart. The following are regulated articles:

(1) Cotton and wild cotton, including all parts of these plants.

(2) Seed cotton.

(3) Cottonseed.

(4) American-Egyptian (long-staple) varieties of cotton lint, linters, and lint cleaner waste; except:[1]

(i) American-Egyptian cotton lint, linters, and lint cleaner waste compressed to a density of at least 22 pounds per cubic foot.

(ii) Trade samples of American-Egyptian cotton lint and linters.

(5) Cotton waste produced at cotton gins and cottonseed oil mills.

(6) Cotton gin trash.

(7) Used bagging and other used wrappers for cotton.

(8) Used cotton harvesting equipment and used cotton ginning and used cotton oil mill equipment.

(9) Kenaf, including all parts of the plants.

(10) Okra, including all parts of these plants, except:

(i) Canned or frozen okra; and

(ii) Fresh, edible fruits of okra if moved interstate during March 16 through December 31, to California, or during May 16 through November 30, to:

(A) Any portion of Illinois, Kentucky, Missouri, or Virginia that is south of the 38th parallel; or

(B) Alabama, Arizona, Arkansas, Florida, Georgia, Louisiana, Mississippi, Nevada, New Mexico, North Carolina, Oklahoma, South Carolina, Tennessee, or Texas.

(11) Any other product, article, or means of conveyance not covered by paragraphs (b)(1) through (10) of this section, when an inspector determines that it presents a risk of spread of the pink bollworm and the person in possession of the product, article, or means of conveyance has actual notice that it is subject to the restrictions of this subpart.

§ 301.52–1 [Amended]

3. In § 301.52–1, footnote 1 and the reference to it in paragraph (q) are redesignated as footnote 2.

4. Paragraph (q) of § 301.52–1 is amended by removing " 'Manual of Administratively Authorized Procedures To Be Used Under the Pink Bollworm Quarantine' and the 'Fumigation Procedure Manual' " and inserting "Plant Protection and Quarantine Treatment Manual".

§ 301.52–2 [Amended]

5. In the heading for § 301.52–2, the phrase "and articles which are exempt from certification and permit requirements" is removed.

[1] The articles hereby exempted remain subject to applicable restrictions under other quarantines and must have not been exposed to pink bollworm infestation after ginning or compression as prescribed.

6. Paragraph (b) of § 301.52–2 is removed.

§ 301.52–2b [Removed]

7. Section 301.52–2b and footnote 2 in § 301.52–2b are both removed.

§ 301.52–3 [Amended]

8. In § 301.52–3, paragraph (b)(1) is removed and paragraphs (b)(2) through (b)(5) are redesignated (b)(1) through (b)(4), respectively.

9. In paragraph (c) of § 301.52–3, the phrase "if the regulated articles are exempted under the provisions of § 301.52–2b or" is removed.

Done at Washington, DC, this 14th day of July, 1987.

W.F. Helms,

Deputy Administrator, Plant Protection and Quarantine, Animal and Plant Health Inspection Service.

[FR Doc. 87–16291 Filed 7–16–87; 8:45 am]

BILLING CODE 3410–34–M

Agricultural Marketing Service

7 CFR Part 910

[Lemon Regulation 570)

Lemons Grown in California and Arizona; Limitation of Handling

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: Regulation 570 establishes the quantity of fresh California-Arizona lemons that may be shipped to market at 400,000 cartons during the period July 19 through July 25, 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 570 (§ 910.870) is effective for the period July 19 through July 25, 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 July 14, 1987, in Los Angeles, California, to consider the current and prospective conditions of supply and demand and unanimously recommended (with one abstention) a quantity of lemons deemed advisable to be handled during the specified week. The committee reports that the market is good.

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

List of subjects in 7 CFR Part 910

Marketing Agreements and Orders, California, Arizona, and Lemons.

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

PART 910—LEMONS GROWN IN CALIFORNIA AND ARIZONA

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

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

2. Section 910.870 is added to read as follows:

§ 910.870 Lemon Regulation 570.

The quantity of lemons grown in California and Arizona which may be handled during the period July 19, 1987, through July 25, 1987, is established at 400,000 cartons.

Dated: July 15, 1987.

Ronald L. Cioffi,

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

[FR Doc. 87–16431 Filed 7–16–87; 8:45 am]

BILLING CODE 3410–02–M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Part 238

[INS Number: 1027–87]

Contracts With Transportation Lines; Addition of Continental Airlines

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Final rule.

SUMMARY: This rule amends the listing of transportation lines which have entered into agreements with the Service for the preinspection of their passengers and crew at locations outside the United States by adding the name of Continental Airlines.

EFFECTIVE DATE: January 27, 1987.

FOR FURTHER INFORMATION CONTACT: Janet M. Charney, Assistant Chief Inspector, Immigration and Naturalization Service, 425 I Street, NW., Washington, DC 20536, Telephone: (202) 633–2694.

SUPPLEMENTARY INFORMATION: The Commissioner of Immigration and Naturalization entered into an agreement with Continental Airlines to provide for the preinspection of their passengers and crew as provided by section 238(b) of the Immigration and Nationality Act, as amended (8 U.S.C. 1228(b)). Preinspection outside the United States facilitates processing passengers and crew upon arrival at a U.S. port of entry and is a convenience to the traveling public.

Compliance with 5 U.S.C. 553 as to notice of proposed rulemaking and delayed effective date is unnecessary because the amendment merely adds transportation lines' names to the present listing and is editorial in nature.

This order constitutes a notice to the public under 5 U.S.C. 552 and is not a rule within the definition of section 1(a) of E.O. 12291.

List of Subjects in 8 CFR Part 238

Aliens, Common carriers, Government contracts, Inspections, Transportation lines.

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

PART 238—CONTRACTS WITH TRANSPORTATION LINES

1. The authority citation for Part 238 is amended to read as follows:

Authority: 8 U.S.C. 1103 and 1228.

§ 238.4 [Amended]

2. In § 238.4 Preinspection outside the United States, the listing of transportation lines is amended by adding the name Continental Airlines under "at Montreal."

Dated: July 13, 1987.

Richard E. Norton,

Associate Commissioner, Examinations, Immigration and Naturalization Service.

[FR Doc. 87–16143 Filed 7–16–87; 8:45 am]

BILLING CODE 4410–10–M

8 CFR Part 238

[INS Number 1039-87]

Contracts With Transportation Lines; Sylvester Marine, Inc. and Antone Sylvester Tug Service, Inc.

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Final rule.

SUMMARY: This rule removes Sylvester Marine, Inc., and adds Antone Sylvester Tug Service, Inc. to the list of carriers which have entered into agreements with the Service to guarantee the passage through the United States in immediate and continous transit of aliens destined to foreign countries. This action is necessary to publish and record approved transportation line contracts to make this information available to the public. This action will allow the line to begin the services agreed to in the contract.

EFFECTIVE DATE: June 2, 1987.

FOR FURTHER INFORMATION CONTACT: Janet M. Charney, Assistant Chief Inspector, Immigration and Naturalization Service 425 I Street, NW., Washington, DC 20536, Telephone: (202) 633-2694.

SUPPLEMENTARY INFORMATION: The Commissioner of Immigration and Naturalization canceled an agreement with Sylvester Marine, Inc. on June 2, 1987 to guarantee passage through the United States in immediate and continuous transit of aliens destined to foreign countries.

The agreement provides for the waiver of certain documentary requirements and facilitates the air travel of passengers on international flights while passing through the United States.

Compliance with 5 U.S.C. 553 as to notice of proposed rulemaking and delayed effective date is unnecessary because the amendment merely makes an editorial change to the listing of transportation lines.

In accordance with 5 U.S.C. 605(b), the Commissioner of Immigration and Naturalization certifies that the rule will not have a significant impact on a substantial number of small entities.

This order constitutes a notice to the public under 5 U.S.C. 552 and is not a rule within the definition of section 1(a) of E.O. 12291.

List of Subjects in 8 CFR Part 238

Airlines, Aliens, Government contracts, Travel, Travel restriction.

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

PART 238—CONTRACTS WITH TRANSPORTATION LINES

1. The authority citation for Part 238 is amended to read as follows:

Authority: 8 U.S.C. 1103 and 1228.

§ 238.3 [Amended]

2. Paragraph (b) *Signatory lines* of § 238.3 is amended by removing the name of Sylvester Marine, Inc. and by adding in alphabetical sequence Antone Sylvester Tug Services, Inc.

Dated: July 13, 1987.

Richard E. Norton,

Associate Commissioner, Examinations, Immigration and Naturalization Service.

[FR Doc. 87-16144 Filed 7-16-87; 8:45 am]

BILLING CODE 4410-10-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 87-ANE-19; Amendment 39-5645]

Airworthiness Directives; Hoffmann Aircraft Ges.m.b.H. Model H-36 "DIMONA" Powered Gliders

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action publishes in the Federal Register and makes effective as to all persons an amendment adopting a new airworthiness directive (AD) which was previously made effective as to all known U.S. owners and operators of certain Hoffman Aircraft Ges.m.b.H. Model H-36 "DIMONA" powered gliders by individual emergency priority letters. The AD requires installation of an additional wing/fuselage attachment. The AD is needed to prevent failure of the wing/fuselage attachment which could result in an in-flight separation of the wing.

DATES: Effective July 16, 1987, as to all persons except those to whom it was made immediately effective by individual priority letters issued March 5, 1987, which contained this amendment.

Compliance—As required in the body of the AD.

Incorporation by Reference—Approved by the Director of the Federal Register on July 16, 1987.

ADDRESSES: The applicable service bulletin may be obtained from Hoffmann Aircraft Ges.m.b.H., Richard Neutra Gasse 5, A-1210 Wien, Austria.

A copy of the service bulletin is contained in the Rules Docket, Docket Number 87-ANE-17, Office of the Regional Counsel, Federal Aviation Administration, New England Region, 12 New England Executive Park, Burlington, Massachusetts 01803, and may be examined between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except federal holidays.

FOR FURTHER INFORMATION CONTACT: Mr. Heinz Hillebrand, Brussels Aircraft Certification Office, Europe, Africa, and Middle East Office, Federal Aviation Administration, c/o American Embassy, 15 Rue de la Loi B-1040, Brussels, Belgium; telephone 513.38.30 ext. 2710, or Mr. Vito A. Pulera, ANE-172, New York Aircraft Certification Office, Aircraft Certification Division, Federal Aviation Administration, New England Region, 181 S. Franklin Avenue, Room 202, Valley Stream, New York 11581; telephone (516) 791-6220.

SUPPLEMENTARY INFORMATION: On March 5, 1987, a priority letter was issued and made effective immediately as to all known U.S. owners and operators of certain Hoffman Aircraft Ges.m.b.H. Model H-36 "DIMONA" powered gliders. The AD requires installation of an additional wing/fuselage attachment in accordance with Hoffmann Aircraft Ges.m.b.H. Service Bulletin No. 19, dated November 10, 1986. On July 29, 1986, an incident occurred wherein the right wing of a Hoffmann Aircraft H-36 "DIMONA" powered glider separated from the fuselage in flight. Subsequent investigation by the Austrian Bundesamt fur Zivilluftfarht (BAZ) and Hoffmann Aircraft indicated insufficient strength in the wing/fuselage attachment.

An Emergency Order of Suspension was issued on September 23, 1986, against the type certificate (TC) for the H-36 "DIMONA", TC No. G51EU, as a result of FAA investigations which indicated the wing attachment components did not meet the load provisions of the Joint Airworthiness Requirements (JAR). The Emergency Order of Suspension was withdrawn on March 5, 1987, in view of the issuance of priority letter AD No. 87-05-04, which corrects the unsafe conditions referred to in the Order of Suspension. AD action was necessary to prevent possible in-flight separation of the wing.

Since it was found that immediate corrective action was required, notice and public procedure thereon were impracticable and contrary to public interest, and good cause existed to make the AD effective immediately by individual priority letters, issued March 5, 1987, as to all known U.S. owners and

operators of certain Hoffmann Aircraft Ges.m.b.H. Model H-36 "DIMONA" powered gliders. These conditions still exist, and the AD is hereby published in the Federal Register as an amendment to § 39.13 of Part 39 of the Federal Aviation Regulations to make it effective as to all persons.

Conclusion

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

List of Subjects in 14 CFR Part 39

Air Transportation, Aircraft, Aviation safety, Incorporation by Reference.

Adoption of the Amendment

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

PART 39—[AMENDED]

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

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

§ 39.13 [Amended]

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

Hoffmann Aircraft GES.M.B.H.: Applies to Model H-36 "DIMONA" powered gliders.

Compliance is required as indicated, unless already accomplished.

To prevent possible in-flight separation of the wing, accomplish the following:

Prior to further flight after the effective date of this AD, install an additional wing/fuselage attachment (latching hooks) Part Number 820.1.58 in accordance with Work Instruction No. 6 referenced in Hoffmann Aircraft Ges.m.b.H. Service Bulletin No. 19, dated November 10, 1986.

Upon request, an equivalent means of compliance with the requirements of this AD may be approved by the Manager, Brussels Aircraft Certification Office, or the Manager, New York Aircraft Certification Office.

Hoffmann Aircraft Ges.m.b.H. Service Bulletin No. 19, dated November 10, 1986, and work instruction No. 6 identified and described in this document, are incorporated herein and made a part hereof pursuant to 5 U.S.C. 552(a)(1). All persons affected by this directive who have not already received this document from the manufacturer may obtain copies upon request to Hoffmann Aircraft Ges.m.b.H., Richard Neutra Gasse 5, A-1210 Wien, Austria. This document also may be examined at the Office of the Regional Counsel, Federal Aviation Administration, New England Region, 12 New England Executive Park, Burlington, Massachusetts 01803, Room 311, Docket 87-ANE-17, between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except federal holidays.

This amendment becomes effective July 16, 1987, as to all persons except to those persons to whom it was made immediately effective by individual priority letters issued March 5, 1987, which contained this amendment.

Issued in Burlington, Massachusetts, on June 10, 1987.

Robert E. Whittington,

Director, New England Region.

[FR Doc. 87-16200 Filed 7-16-87; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket Number 87-ANE-12; Amendment 39-5660]

Airworthiness Directives; Avco Lycoming Textron ALF502R and ALF502L Series Turbofan Engines.

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts new airworthiness directive (AD) which requires removal from service at reduced low cycle fatigue life limits and inspection of certain gas producer turbine (GPT) spacers on Avco Lycoming Textron ALF502R and ALF502L series turbofan engines. The AD also requires removal, prior to further flight, of the first and second stage turbine disks and the sealing plate in engines found to have spacers cracked radially from the inside diameter to the rim. This AD is needed to prevent GPT spacer failure which can result in loss of engine power.

DATES: Effective: July 24, 1987.

Compliance Schedule: As prescribed in the body of the AD.

Comments for inclusion in the docket must be received on or before September 11, 1987.

Incorporation by Reference approved by the Director of the Federal Register on July 24, 1987.

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

or delivered in duplicate to Room 311 at the above address.

Comments delivered must be marked: "Docket Number 87-ANE-12".

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

The applicable service bulletins (SB's) may be obtained from Avco Lycoming Textron, 550 South Main Street, Stratford, Connecticut 06497.

A copy of the SB's is contained in Rules Docket Number 87-ANE-12, in the Office of the Regional Counsel, Federal Aviation Administration, New England Region, 12 New England Executive Park, Burlington, Massachusetts 01803.

FOR FURTHER INFORMATION CONTACT: Diane Kirk, Engine Certification Branch, ANE-142, Engine Certification Office, Aircraft Certification Division, Federal Aviation Administration, New England Region, 12 New England Executive Park, Burlington, Massachusetts 01803; telephone (617) 273-7082.

SUPPLEMENTARY INFORMATION: The FAA has determined that the published low cycle fatigue (LCF) life limit for certain GPT spacers must be reduced from 16,000 cycles to 3,500 cycles, based on field experience and analysis. Fatigue cracks can originate in the bolt hole or air hole of the GPT spacer and may propagate in LCF to fracture which could result in a contained failure and loss of engine power on ALF502R and ALF502L series turbofan engines. Spacers cracked through radially from the inside diameter to the rim transfer stress loads to the first and second stage GPT disks resulting in undetectable fatigue damage to the first and second stage disk. Three inflight shutdowns have occurred due to spacer fracture and engine vibration. In all three cases, the spacer was cracked through radially from the inside diameter to the rim. A total of 61 spacers (18 percent of the

fleet) have been inspected by either visual, fluorescent penetrant, or eddy current procedures. These inspections have shown 43 uncracked spacers, 3 spacers cracked through radially from the inside diameter to the rim, and 15 spacers with various crack lengths initiating in the bolt hole or air hole and propagating towards the spacer rim. Although the investigation to determine the cause of spacer cracking continues, field experience and analysis indicate that a spacer, cracked radially from the inside diameter to the rim, initially remains intact. A vibratory response is introduced which is sensed by the aircraft vibration monitoring system; this may be followed by flight crew engine shutdown. However, additional operation with a cracked spacer may result in a contained spacer failure.

Since this condition is likely to exist or develop in other engines of the same type design, an AD is being issued which reduces the LCF life limit of certain GPT spacers to 3,500 cycles. This AD requires the removal and replacement of GPT turbine spacers, Part Number (P/N) 3-121-071-28, 2-121-071-30, 2-121-071-20, or 2-121-071-24 at or before 3,500 cycles on ALF502R and ALF502L series turbofan engines. Spacers with greater than 2,100 cycles on the effective date of this AD may follow a removal schedule defined in the compliance section of this AD. The AD also requires removal, prior to further flight, of the first and second stage turbine disks and the sealing plate in engines found to have spacers cracked radially from the inside diameter to the rim.

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and public procedure hereon are impracticable.

Although this action is in the form of a final rule which involves requirements affecting flight safety and, thus, was not preceded by notice and public procedure, comments are invited on the rule.

Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire.

Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above.

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 87-ANE-12". The postcard will be date/time stamped and returned to the commenter.

Conclusion

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—[AMENDED]

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

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

§ 39.13 [Amended]

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

Avco Lycoming Textron: Applies to Avco Lycoming Textron ALF502R and ALF502L series turbofan engines.

Compliance is required as indicated, unless already accomplished.

To prevent failure of the gas producer turbine (GPT) spacer which can result in loss of engine power, accomplish the following:

(a) Remove from service GPT spacer, Part Number (P/N) 2-121-071-28, 2-121-071-30, 2-121-071-20, or 2-121-071-24 in accordance with Avco Lycoming Textron Service Bulletin (SB) Number ALF502R-72-0163 or ALF502L-72-0163, dated June 8, 1987, as follows:

(1) Prior to accumulating 1,000 cycles in service after the effective date of this AD, spacers with 6,000 cycles since new (CSN) or greater on the effective date of this AD.

(2) Prior to accumulating 7,000 CSN, spacers with 5,000 CSN or greater and less than 6,000 CSN on the effective date of this AD.

(3) Prior to accumulating 6,000 CSN, spacers with 4,000 CSN or greater and less than 5,000 CSN on the effective date of this AD.

(4) Prior to accumulating 5,000 CSN, spacers with 3,000 CSN or greater and less than 4,000 CSN on the effective date of this AD.

(5) Prior to accumulating 4,400 CSN, spacers with 2,100 cycles or greater and less than 3,000 CSN on the effective date of this AD.

(6) Prior to accumulating 3,500 CSN, spacers with less than 2,100 CSN on the effective date of this AD.

(b) Prior to engine reassembly, inspect GPT spacers which were removed from service to comply with paragraph (a) above in accordance with Avco Lycoming Textron SB ALF502R-72-0163 or ALF502L-72-0163, dated June 8, 1987. For disk assemblies with a GPT spacer cracked through radially from the inside diameter to the rim, remove from service, prior to further flight, the first and second stage turbine disks, the sealing plate, and the cracked spacer.

Note: Avco Lycoming Textron SB's ALF502R-72-0002, Revision 16, and ALF502L-72-0004, Revision 16, revised April 3, 1987, added GPT spacer P/N's 2-121-071-31 and 2-121-071-35, respectively, and decreased the cyclic life of all gas producer turbine spacers from 16,600 cycles to 3,500 cycles.

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

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

Upon submission of substantiating data by an owner or operator through an FAA

maintenance inspector, the Manager, Engine Certification Office, New England Region, may adjust the compliance times specified in this AD.

Avco Lycoming Textron SB's ALF502R–72–0163, dated June 8, 1987, and ALF502L–72–0163, dated June 8, 1987, identified and described in this document, are incorporated herein and made a part hereof pursuant to 5 U.S.C. 552(a)(1). All persons affected by this directive who have not already received these documents from the manufacturer may obtain copies upon request to Avco Lycoming Textron, 550 South Main Street, Stratford, Connecticut 06497.

These documents also may be examined at the Office of the Regional Counsel, Federal Aviation Administration, New England Region, 12 New England Executive Park, Burlington, Massachusetts 01803, Room 311, Rules Docket Number 87–ANE–12, between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except federal holidays.

This amendment becomes effective on July 24, 1987.

Issued in Burlington, Massachusetts, on June 19, 1987.

Robert E. Whittington,

Director, New England Region.

[FR Doc. 87–16199 Filed 7–16–87; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 39

[Docket No. 87–ANE–21; Amdt. 39–5658]

Airworthiness Directives; Hartzell Propeller, Inc., Model HC–B4TN–5( )L/LT10574(B)

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) applicable to certain Hartzell Propeller, Inc., Model HC–B4TN–5( )L/LT10574(B) propellers. The AD requires repetitive inspections of the Model LT10574(B) blades for cracks until replaced with improved blades at the next overhaul. The AD is needed to prevent blade failure which could result in engine separation from the aircraft.

DATES: *Effective*—July 23, 1987. Compliance required as prescribed in the body of the AD, unless already accomplished. *Incorporation by Reference*—Approved by the Director of the Federal Register on July 23, 1987.

ADDRESSES: The applicable service document may be obtained from: Hartzell Propeller, Inc., 1800 Covington Avenue, Piqua, Ohio 45356.

A copy of the service document is contained in the Rules Docket, Office of the Regional Counsel, Federal Aviation Administration, New England Region, Attn: Rules Docket No. 87–ANE–21, 12 New England Executive Park, Burlington, Massachusetts 01803 and may be examined weekdays, except federal holidays, between 8:00 a.m. and 4:30 p.m.

FOR FURTHER INFORMATION CONTACT: Mr. Melvin Taylor, Chicago Aircraft Certification Office, Propulsion Branch, ACE–140C, Federal Aviation Administration, 2300 East Devon Avenue, Des Plains, Illinois 60018; telephone (312) 694–7134.

SUPPLEMENTARY INFORMATION: There have been reports of failure of the Hartzell Model LT10574(B) blades used on certain Hartzell Model HC–B4TN–5( )L propellers installed on Dornier Model 228–100 and –200 series airplanes. Investigation has revealed that the failures were due to damaging stresses experienced during landing reversal operations. The high stresses are caused by "reverse flutter" which may be accompanied by high propeller noise. The high stresses may result in mid-blade cracks and possible mid-blade failure which could lead to engine separation from the aircraft. Since this condition is likely to exist or develop on other propellers of the same type design, an AD is being issued which requires repetitive inspections of the Hartzell Model LT10574(B) blades until replaced with improved blades at next overhaul.

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

Conclusion

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39 [AMENDED]

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

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

§ 39.13 [Amended]

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

Hartzell Propeller, Inc.: Applies to Hartzell Model HC–B4TN–5( )L/LT10574(B) propellers installed on Dornier Model 228–100 and –200 series airplanes.

Compliance required as indicated unless already accomplished.

To prevent propeller mid-blade failure which could result in engine separation from the aircraft, accomplish the following:

(a) Prior to first flight of each day after the effective date of this AD, visually inspect the Model LT10574(B) blades in accordance with paragraph a. of Hartzell Service Bulletin (SB) No. 140B dated June 1, 1987. This inspection may be performed by the pilot. Blades found to have evidence of cracks must be removed from service and all blades in the affected propeller assembly must be replaced with Model LT10574A(B) or LT10574A(S)(B) blades, as applicable, prior to further flight.

(b) Within the next 100 hours time in service after the effective date of this AD and at intervals not to exceed 100 hours time in service thereafter, inspect the Model LT10574(B) blades in accordance with paragraph b. of Hartzell SB No. 140B dated June 1, 1987. Blades found to have evidence of cracks must be removed from service and all blades in the affected propeller assembly must be replaced with Model LT10574A(B) or LT10574A(S)(B) blades, as applicable, prior to further flight.

(c) At the next propeller overhaul, replace the Model LT10574(B) blades with Model LT10574A(B) or Model LT10574A(S)(B) blades, as applicable.

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

Upon request, an equivalent means of compliance with the requirements of this AD may be approved by the Manager, Chicago Aircraft Certification Office, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018.

Upon submission of substantiating data by an owner or operator through an

FAA maintenance inspector, the Manager, Chicago Aircraft Certification Office, may adjust the compliance time specified in this AD.

Hartzell SB No. 140B, dated June 1, 1987, identified and described in this document, is incorporated herein and made a part hereof pursuant to 5 U.S.C. 552(a)(1). All persons affected by this directive who have not already received this document from the manufacturer may obtain copies upon request to Hartzell Propeller, Inc., 1800 Covington Avenue, Piqua, Ohio 45356. This document also may be examined at the Office of the Regional Counsel, Federal Aviation Administration, New England Region, 12 New England Executive Park, Burlington, Massachusetts 01803, Room 311, Rules Docket 87–ANE–21, between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except federal holidays.

This amendment becomes effective on July 23, 1987.

Issued in Burlington, Massachusetts, on June 17, 1987.

Robert E. Whittington,

Director, New England Region.

[FR Doc. 87–16198 Filed 7–16–87; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 39

[Docket No. 87–ANE–20; Amdt. 39–5667]

Airworthiness Directives: Hartzell Propeller, Inc., Model HC–B4MN–5( )

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Hartzell Propeller, Inc., Model HC–B4MN–5( ) propellers. The AD requires replacement of the spring assembly, Part Number (P/N) B–831–54, with a redesigned spring assembly, P/N B–831–64. The AD is needed to prevent failure of the spring assembly pitch change rod which could result in loss of propeller control.

DATES: *Effective*—July 31, 1987. Compliance required as prescribed in the body of the AD, unless already accomplished. *Incorporation by Reference*—Approved by the Director of the Federal Register on July 31, 1987.

ADDRESSES: The applicable service document may be obtained from: Hartzell Propeller, Inc., 1800 Covington Avenue, Piqua, Ohio 45356.

A copy of the service document is ntained in the Rules Docket, Office of Regional Counsel, Federal Aviation inistration, New England Region, Attn: Rules Docket No. 87–ANE–20, 12 New England Executive Park, Burlington, Massachusetts 01803 and may be examined weekdays, except federal holidays, between 8:00 a.m. and 4:30 p.m.

FOR FURTHER INFORMATION CONTACT: Mr. Melvin Taylor, Chicago Aircraft Certification Office, Propulsion Branch, ACE–140C, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018; telephone (312) 694–7134.

SUPPLEMENTARY INFORMATION: There have been reports of failure of the pitch change rod, P/N B–3018S–2, on certain Hartzell Model HC–B4MN–5( ) propellers installed on CASA Model C–212–CC and –CF airplanes. Investigation has revealed that the failures were due to fatigue.

Failure of the pitch change rod has only been reported to occur on the ground when full reverse is selected. Operation with a failed pitch change rod could lead to loss of propeller control under certain flight conditions on the CASA Model C–212–CC or –CF airplane with composite blades because of the lower propeller operating pressures unique to these aircraft.

Since this condition is likely to exist or develop on other CASA Model C–212–CC and –CF airplanes, an AD is being issued which requires installation of a redesigned spring assembly with the associated strengthened pitch change rod, P/N C–1948.

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

Conclusion

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

List of Subjects in 14 CFR Part 39

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

Adoption of the amendment

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

PART 39—[AMENDED]

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

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

§ 39.13 [Amended]

2. By adding the § 39.13 the following new airworthiness directive (AD):

Hartzell Propeller, Inc.: Applies to Hartzell Model HC–B4MN–5( ) propellers installed on CASA Model C–212–CC and –CF airplanes.

Compliance required at next propeller overhaul or within 30 days after the effective date of this AD, whichever occurs sooner, unless already accomplished.

To prevent pitch change rod failure which could result in loss of propeller control, accomplish the following: Replace the spring assembly, P/N B–831–54, with spring assembly, P/N B–831–64, which includes a strengthened pitch change rod in accordance with Hartzell Service Bulletin No. 153, dated May 1, 1987.

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

Upon request, an equivalent means of compliance with the requirements of this AD may be approved by the Manager, Chicago Aircraft Certification Office, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018.

Upon submission of substantiating data by an owner or operator through an FAA maintenance inspector, the Manager, Chicago Aircraft Certification Office, may adjust the compliance time specified in this AD.

Hartzell Service Bulletin No. 153, dated May 1, 1987, identified and described in this document, is incorporated herein and made a part hereof pursuant to 5 U.S.C. 552(a)(1). All persons affected by this directive which have not already received this document from the manufacturer may obtain copies upon request to Hartzell Propeller, Inc., 1800 Covington Avenue, Piqua, Ohio 45356. This document also may be examined at the Office of the

Regional Counsel, Federal Aviation Administration, Attn: Rules Docket No. 87-ANE-20, 12 New England Executive Park, Burlington, Massachusetts 01803 weekdays, except federal holidays, between 8:00 a.m. and 4:30 p.m.

This amendment becomes effective on July 31, 1987.

Issued in Burlington, Massachusetts, on June 23, 1987.

Jack A. Sain,

Acting Director, New England Region.

[FR Doc. 87-16197 Filed 7-16-87; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 97

[Docket No. 25327; Amdt. No. 1352]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: *Effective:* An effective date for each SIAP is specified in the amendatory provisions. *Incorporation by reference*—approved by the Director of the Federal Register on December 31, 1980, and reapproved as of January 1, 1982.

ADDRESSES: Availability of matters incorporated by reference in the amendment is as follows:

For Examination—

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue SW., Washington, DC 20591;
2. The FAA Regional Office of the region in which the affected airport is located; or
3. The Flight Inspection Field Office which originated the SIAP.

For Purchase—

Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA-200), FAA Headquarters Building, 800 Independence Avenue SW., Washington, DC 20591; or
2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription—

Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

FOR FURTHER INFORMATION CONTACT: Donald K. Funai, Flight Procedures Standards Branch (AFS-230), Air Transportation Division, Office of Flight Standards, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone (202) 267-8277.

SUPPLEMENTARY INFORMATION: This amendment to Part 97 of the Federal Aviation Regulations (14 CFR Part 97) prescribes new, amended, suspended, or revoked Standard Instrument Approach Procedures (SIAPs). The complete regulatory description of each SIAP is contained in official FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR Part 51, and § 97.20 of the Federal Aviation Regulations (FARs). The applicable FAA Forms are identified as FAA Forms 8260-3, 8260-4, and 8260-5. Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form document is unnecessary. The provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

This amendment to Part 97 is effective on the date of publication and contains separate SIAPs which have compliance dates stated as effective dates based on related changes in the National Airspace System or the application of new or revised criteria. Some SIAP amendments may have been previously issued by the FAA in a National Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for some SIAP amendments may require making them effective in less than 30 days. For the remaining SIAPs, an effective date at least 30 days after publication is provided.

Further, the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Approach Procedures (TERPs). In developing these SIAPs, the TERPS criteria were applied to the conditions existing or anticipated at the affected airports. Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs is unnecessary, impracticable, and contrary to the public interest and, where applicable, that good cause exists for making some SIAPs effective in less than 30 days.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment 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 97

Approaches, standard instrument, Incorporation by reference.

Issued in Washington, DC on July 10, 1987.

Robert L. Goodrich,

Director of Flight Standards.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Part 97 of the Federal Aviation Regulations (14 CFR Part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 G.m.t. on the dates specified, as follows:

PART 97—[AMENDED]

1. The authority citation for Part 97 continues to read as follows:

Authority: 49 U.S.C. 1348, 1354(a), 1421, and 1510; 49 U.S.C. 106(g) (revised, Pub. L. 97-449, January 12, 1983; and 14 CFR 11.49(b)(2)).

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, ISMLS, MLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, identified as follows:

. . . Effective Sep 24, 1987

Alexandria, IN—Alexandria, VOR RWY 27, Amdt. 7
Rochester, NY—Rochester-Monroe County, ILS RWY 4, Amdt. 12
Brookings, SD—Brookings Muni, VOR RWY 12, Amdt. 8
Brookings, SD—Brookings Muni, VOR RWY 30, Amdt. 6
Jacksboro, TN—Campbell County, NDB RWY 23, Amdt. 2
Knoxville, TN—Knoxville Downtown Island, VOR/DME-B, Amdt. 4
Bonham, TX—Jones Field, NDB RWY 17, Orig.
Grundy, VA—Grundy Muni, VOR RWY 4, Amdt. 3
Wise, VA—Lonesome Pine, VOR RWY 24, Amdt. 4
Wise, VA—Lonesome Pine, VOR/DME RWY 24, Amdt. 1
Wise, VA—Lonesome Pine, SDF RWY 24, Amdt. 1
Wise, VA—Lonesome Pine, RNAV RWY 24, Amdt. 1

. . . Effective Aug 27, 1987

LaVerne, CA—Brackett Field, VOR-A, Amdt. 5
LaVerne, CA—Brackett Field, ILS RWY 26L, Amdt. 2
Lafayette, IN—Halsmer, VOR/DME-B, Amdt. 8, CANCELLED
Plymouth, MA—Plymouth Muni, NDB RWY 6, Amdt. 8, CANCELLED
Saginaw, MI—Tri-City, ILS RWY 23, Amdt. 4
Aitkin, MN—Aitkin Muni NDB RWY 16, Amdt. 2
Somerville, NJ—Somerset, VOR-A, Amdt. 1, CANCELLED
Las Cruces, NM—Las Cruces International, NDB-A, Amdt. 3
Conway, SC—Conway-Horry County, NDB-A, Orig.
Fredericksburg, TX—Gillespie County, VOR/DME-A, Amdt. 1
Mason, TX—Mason County, VOR/DME-A, Amdt. 2
Charlottesville, VA—Charlottesville-Albemarle, RNVA RWY 3, Amdt. 4, CANCELLED
Rhinelander, WI—Rhinelander-Oneida County, VOR RWY 5, Amdt. 9
Rhinelander, WI—Rhinelander-Oneida County, VOR RWY 9, Amdt. 2
Rhinelander, WI—Rhinelander-Oneida County, VOR/DME RWY 23, Amdt. 7
Rhinelander, WI—Rhinelander-Oneida County, VOR RWY 27, Amdt. 2
Rhinelander, WI—Rhinelander-Oneida County, ILS RWY 9, Amdt. 3

. . . Effective Jul 30, 1987

Pittsfield, MA—Pittsfield Muni, LOC/DME RWY 26, Amdt. 1
Pittsfield, MA—Pittsfield Muni, NDB RWY 26, Amdt. 1

. . . Effective July 2, 1987

Richmond, IN—Richmond Muni, ILS/DME RWY 24, Amdt. 1
Houston, TX—Houston Intercontinental, ILS RWY 9, Amdt. 1
San Antonio, TX—San Antonio Intl, NDB RWY 30L, Amdt. 10
San Antonio, TX—San Antonio Intl, ILS RWY 3, Amdt. 15

[FR Doc. 87-16196 Filed 7-16-87; 8:45 am]
BILLING CODE 4910-13-M

DEPARTMENT OF COMMERCE

Office of the Secretary

15 CFR Part 4

[Docket No. 70473-7114]

Public Information; Freedom of Information Reform Act of 1986

AGENCY: Department of Commerce.
ACTION: Final rule.

SUMMARY: The Department of Commerce has revised its Freedom of Information Act (FOIA) regulations to implement the requirements of the Freedom of Information Reform Act of 1986, Pub. L. 99-570, (FOIRA). These revisions conform to the provisions of the Uniform Freedom of Information Act Fee Schedule and Guidelines published by the Office of Management and Budget (OMB) on March 27, 1987.

EFFECTIVE DATE: August 17, 1987.

FOR FURTHER INFORMATION CONTACT: Geraldine P. LeBoo, Freedom of Information Officer, Office of Management and Organization, (202) 377-3271.

SUPPLEMENTARY INFORMATION: The FOIRA requires each agency to promulgate regulations, pursuant to notice and receipt of public comments, specifying the schedule of fees applicable to the processing of FOIA requests and establishing procedures and guidelines for determining when such fees should be waived or reduced. The FOIRA also requires each agency's schedule of fees to conform to the guidelines issued by OMB. OMB's guidelines were published on March 27, 1987 (52 FR 10012). In addition, on April 2, 1987, the Department of Justice issued guidance to agencies regarding fee waiver determinations. The Department of Commerce proposed rule, published for comment on April 28, 1987 (52 FR 15327), conforms to the OMB guidelines and reflects the Department of Justice guidance. The fee schedule also reflects the recommendations of a 1986 study conducted by the Department to evaluate FOIA fees imposed by the various components of the Department.

Four comments on the proposed rule were received. These comments primarily addressed definitions of terms contained in the proposed fee schedule regarding the different categories of requesters. In particular, the commenters objected to the definitions of "freelance journalist" "representative of the news media", "commercial use" and "educational institution." However, the Department's definitions of these terms conform to the OMB Fee Schedule, as required by FOIRA. One commenter asked that requesters be notified of the opportunity to reformulate the request if the estimated fees exceed $25. This provision has been added. The commenters also objected to the factors which the Department will consider in making determinations on fee waiver requests. These factors were described by the commenters as unnecessary and contrary to the intent of the statutory fee waiver provision. However, the listed factors are intended to provide guidance in interpretation of the statutory standards and clearly do not supersede those standards.

This final rule pertains only to the FOIA fee provisions. A rule finalizing the remainder of the proposed rule will be published as soon as practicable. Several technical administrative corrections have been made to the proposed rule. Section 4.10 has been renumbered as § 4.9. The definitions of terms related to the fee provision have been included in § 4.9. Former § 4.11 of the proposed rule titled "Other Charges" has also been included in § 4.9.

The General Counsel of the Department of Commerce has certified to the Chief Counsel for Advocacy of the Small Business Administration that this rule will not have a significant economic impact on a substantial number of small entities because only a very small percentage of that group will likely be affected by this regulation; i.e.; those entities that choose to submit requests for records under the Freedom of Information Act. As a result, neither an initial nor final Regulatory Flexibility Analysis has been or will be prepared.

This rule is not a major rule for the purpose of Executive Order 12291.

This rule does not contain a collection of information for purposes of the Paperwork Reduction Act.

List of Subjects in 15 CFR Part 4

Public information, Freedom of information.

For the reasons set forth in the preamble, 15 CFR Part 4 is amended as set forth below.

PART 4—PUBLIC INFORMATION

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

Authority: 5 U.S.C. 552 as amended; 5 U.S.C. 553, 5 U.S.C. 301; 31 U.S.C. 3716.

2. Section 4.9 is revised as follows:

§ 4.9 Fees.

(a) *Definitions.* The following definitions are applicable to this section.

(1) The term "direct costs" means those expenditures which an agency actually incurs in searching for and duplicating (and in the case of commercial requesters, reviewing) documents to respond to a FOIA request. Direct costs include, for example, the salary of the employee performing work (the basic rate of pay for the employee plus 16 percent of that rate to cover benefits) and the cost of operating duplicating machinery. Not included in direct costs are overhead expenses such as costs of space, and heating or lighting the facility in which the records are stored.

(2) The term "search" includes all time spent looking for material that is responsive to a request, including page-by-page or line-by-line identification of material within documents. Such activity should be distinguished, however, from "review" of material in order to determine whether the material is exempt from disclosure (see paragraph (a)(4) of this section). Searches may be done manually or by computer using existing programming.

(3) The term "duplication" refers to the process of making a copy of a document necessary to respond to a FOIA request. Such copies can take the form of paper copy, microform, audio-visual materials, or machine readable documentation (e.g., magnetic tape or disk), among others. The copy provided must be in a form that is reasonably usable by requesters.

(4) The term "review" refers to the process of examining documents located in response to a request that is for a commercial use (see paragraph (a)(5) of this section) to determine whether any portion of any document located is permitted to be withheld. It also includes processing any documents for disclosure, e.g., doing all that is necessary to excise them and otherwise prepare them for release. Review does not include time spent resolving general legal or policy issues regarding the application of exemptions.

(5) The term "commercial use request" refers to 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. In determining whether a requester properly belongs in this category, the Department must determine the use to which a requester will put the documents requested. Moreover, where the Department has reasonable cause to doubt the use to which a requester will put the records sought, or where that use is not clear from the request itself, the Department shall seek additional clarification before assigning the request to a specific category.

(6) The term "educational institution" refers to a preschool, a public or private elementary or secondary school, an institution of graduate higher education, an institution of undergraduate higher education, an institution of professional education and an institution of vocational education, which operates a program or programs of scholarly research.

(7) The term "non-commercial scientific institution" refers to an institution that is not operated on a "commercial" basis as that term is referenced in paragraph (a)(5) of this section, and which is operated solely for the purpose of conducting scientific research the results of which are not intended to promote any particular product or industry.

(8) The term "representative of the news media" refers to any person actively gathering news for an entity that is organized and operated to publish or broadcast news to the public. The term "news" means information that is about current events or that would be of current interest to the public. Examples of news media entities include television or radio stations broadcasting to the public at large, and publishers of periodicals (but only in those instances when they can qualify as disseminators of "news") who make their products available for purchase or subscription by the general public. These examples are not intended to be all-inclusive. Moreover, as traditional methods of news delivery evolve (e.g., electronic dissemination of newspapers through telecommunications services), such alternative media would be included in this category. In the case of "freelance" journalists, they may be regarded as working for a news organization if they can demonstrate a solid basis for expecting publication through that organization, even though not actually employed by it. A publication contract would be the clearest proof, but the Department may also look to the past publication record of a requester in making this determination.

(b) *Application—Uniform Fee Schedule.* The fees described in this section apply to FOIA requests processed by all units of the Department. They reflect rates for the full allocable direct cost of search, review, and duplication. The fees to be charged shall be based on the requester category.

(1) The four specific categories and chargeable fees are:

Category	Chargeable service
(i) Commercial Use Requesters.	Search, Review, and Duplication.
(ii) Educational and Non-Commercial Scientific Institution Requesters.	Duplication (excluding the cost of the first 100 pages).
(iii) Representatives of the News Media.	Duplication (excluding the cost of the first 100 pages).
(iv) All Other Requesters	Search and Duplication (excluding the cost of the first 2 hours of search and 100 pages).

(2) Uniform fee schedule.

Category	Rate
(i) Manual search	Actual salary rate of employee involved, plus 16 percent of salary rate.
(ii) Computerized search	Actual direct cost, including operator time.
(iii) Duplication of records:	
(A) Paper copy reproduction	$.07 per page.
(B) Computer tape or printout reproduction.	Actual cost, including operator time.
(C) Other reproduction (i.e. microfilm, microfiche, microform).	Actual direct cost, including operator time.
(iv) Review of records (includes preparation for release, i.e. excising).	Actual salary rate of employee conducting review, plus 16 percent of salary rate.

(3) *Charging interest.* Interest may be charged to those requesters who fail to pay fees charged in a timely fashion. Assessment of such interest will commence on the 31st day following the day on which the billing was sent. Interest will be charged at the rate specified in section 3717 of title 31 U.S.C. and will accrue from the date of the billing. The Department reserves the right to utilize consumer reporting agencies, and collection agencies, when appropriate, to encourage repayment as authorized by the Debt Collection Act of 1982 (Pub. L. 97–365).

(c) *Waiver or reduction of fees.* (1) Documents shall be furnished without

charge, or at reduced charges 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. To assure that the two basic requirements for waiver are met, Commerce shall reply on the following factors in making a determination on the fee waiver request:

(i) The subject of the request (whether the subject of the requested records concerns the operations or activities of the government);

(ii) The informative value of the information to be disclosed (whether the disclosure is likely to contribute to an understanding of government operations or activities);

(iii) The contribution to an understanding of the subject by the general public likely to result from disclosure (whether disclosure of the requested information will contribute to public understanding);

(iv) The significance of the contribution to public understanding (whether the disclosure is likely to contribute significantly to public understanding of government operations or activities);

(v) The existence and magnitude of a commercial interest (whether the requester has a commercial interest that would be furthered by the requested disclosure);

(vi) The primary interest in disclosure (whether the magnitude of the identified commercial interest of the requester is sufficiently large, in comparison with the public interest in disclosure, that disclosure is primarily in the commercial interest of the requester).

(2) Additionally, a fee shall not be charged, or alternatively it may be reduced, in the following instances:

(i) Requests for Department records made by a Federal agency, Federal court (excluding parties), Congressional committee or subcommittee, the General Accounting Office, or the Library of Congress, are not made under the Act, and fees payable under this Part do not apply.

(ii) The records are requested by a state or local government, an intergovernmental agency, a foreign government, a public international organization, or an agency thereof, and when it is determined by a responsible Departmental official that it is an appropriate courtesy, or the records are for purposes that are in the public interest and will promote the objectives of the Act and of the Department.

(iii) A fee shall not be charged if the allowable charges are less than or equal to the cost of routine collection and processing of the fee. Therefore, if the total of charges due for processing a request is $20 or less, no fee will be charged.

(d) *Payment of fees.* The following conditions shall apply to payment of fees charged under this part.

(1) A search fee provided in paragraph (b) of this section is chargeable even when no records responsive to the request are found, or when the records requested are determined by the responsible Department official to be totally exempt from disclosure. If the estimated search or duplication charges exceed $25 the requester shall be notified of the estimated amount of search or duplication fees, unless the requester has previously advised the Department of a willingness to pay an amount sufficient to cover the estimated fee. Such notice shall offer the requester the opportunity to confer with Department personnel with the object of reformulating the request in order to reduce the cost.

(2) A requester may be required to make an advance payment (i.e., payment before work is commenced or continued on a request) if the estimated or determined allowable charges that a requester may be required to pay will exceed $250 or the requester has previously failed to pay a fee charged in a timely manner (i.e., within 30 days of the date of the billing).

(i) When the estimated charges exceed $250, the Department shall notify the requester of the likely cost and obtain satisfactory assurance of full payment where the requester has a history of prompt payment of FOIA fees. If the requester has no history of prompt payment of FOIA fees, the Department shall require an advance payment of an amount up to the full estimated charges.

(ii) If a requester has previously failed to pay a fee charged in a timely manner, the Department shall require the requester to pay the full amount owed plus any applicable interest and to make an advance payment of the full amount of the estimated fee before the Department will process the request.

(3) Whenever the Department acts pursuant to paragraph (d)(2) of this section, the administrative time limits prescribed in 5 U.S.C. 552(a)(6) will begin only after the agency has received payment of the required fee.

(4) Upon the completion of processing of a request, when a specific fee is determined to be payable and appropriate notice has been given to the requester, the payment of such fee shall be received before the requested records or a portion of the records are made available to the requester.

(5) Payment of fees shall be made in cash or preferably by check or money order payable to "Treasury of the United States", and they shall be paid or sent to the unit stated in the billing notice or, if none, to the unit handling the request. Where appropriate, the responsible official may require that payment be made in the form of a certified check.

(6) If an advance payment of an estimated fee exceeds the actual total fee by $1 or more, the difference shall be refunded to the requester.

(7) When the responsible official reasonably believes that a requester or group of requesters acting in concert is attempting to break a request into a series of requests for the purpose of evading the assessment of fees, the unit may aggregate any such requests and charge accordingly.

(e) *Other charges.* (1) This part does not apply to any special statistical compilation, study, or other record requested pursuant to statutes specifically providing for setting the level of fees for particular types of records such as 15 U.S.C. 1525–27. The fee for the performance of such service is the actual cost of the work involved in compiling the record. All monies received by the Department in payment of the cost of this work are deposited in a separate account administered under the direction of the Secretary, and may be used to defray the ordinary expenses incidental to the work.

(2) The full cost of other special services will be assessed. Such services would include:

(i) Certifying that records are true copies; and

(ii) Sending records by special methods such as express mail, etc.

Dated: June 3, 1987.

Kay Bulow,

Assistant Secretary for Administration.

[FR Doc. 87–16268 Filed 7–16–87; 8:45 am]

BILLING CODE 3510–CW–M

International Trade Administration

15 CFR Part 371

[Docket No. 70623–7123]

Amending General Licenses G–COM, GCG, and G–CEU to Authorize Exports to Sweden

AGENCY: Export Administration, International Trade Administration, Commerce.

ACTION: Final rule.

SUMMARY: Export Administration is removing the requirement for a

validated license for certain shipments of U.S. origin commodities to Sweden. Because of Swedish restrictions on illegal reexports and intransit shipments of U.S. origin commodities, General Licenses G–COM, GCG, and G–CEU are being amended to authorize shipments to Sweden. This action is part of the Department of Commerce initiative to remove unnecessary export licensing requirements for exports to nations cooperating to protect U.S. strategically controlled goods and technology. In addition, this action will lessen the administrative burden on U.S. exporters and their foreign customers.

EFFECTIVE DATE: July 17, 1987.

FOR FURTHER INFORMATION CONTACT: John Black, Regulations Branch, Export Administration, Telephone: (202) 377–2440.

SUPPLEMENTARY INFORMATION:

Rulemaking Requirements

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

2. This rule involves a collection of information subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*). These collections have been approved by OMB under Control Numbers 0625–001 and 0625–0181.

3. Section 13(a) of the Export Administration Act of 1979, as amended (50 U.S.C. App. 2412(a)), exempts this rule from all requirements of section 553 of the Administrative Procedure Act (APA) (5 U.S.C. 553), including those requiring publication of a notice of proposed rulemaking, an opportunity for public comment, and a delay in effective date. This rule is also exempt from these APA requirements because it involves a foreign and military affairs function of the United States. Further, no other law requires that a notice of proposed rulemaking and an opportunity for public comment be given for this rule.

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

Therefore, this regulation is issued in final form. Although there is no formal comment period, public comments on this regulation are welcome on a continuing basis. Comments should be submitted to John Black, Office of Technology and Policy Analysis, Export Administration, International Trade Administration, U.S. Department of Commerce, P.O. Box 273, Washington, DC 20044.

List of Subjects in 15 CFR Part 371

Exports, Reporting and recordkeeping requirements.

Accordingly, Part 371 of the Export Administration Regulations is amended as follows:

PART 371—[AMENDED]

1. The authority citation for 15 CFR Part 371 continues to read as follows:

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

2. Section 371.8 is amended by removing "participating in COCOM" and by adding "Sweden," between "Spain," and "Turkey," in paragraph (b) and by revising the heading and paragraph (a) to read as follows:

§ 371.8 General License G–COM; certain shipments to cooperating countries.

(a) *Scope.* A general license designated G–COM is established, authorizing exports to Sweden and the COCOM participating countries, for use or consumption therein, of commodities that the United States may approve for export to controlled countries with only notification to the COCOM governments.

* * * * *

3. In paragraph 371.14(b) the second sentence is revised to read as follows:

§ 371.14 General License GCG; shipments to agencies of cooperating governments.

* * * * *

(b) *Definition of a Cooperating Government Agency.* * * * Cooperating governments are the governments of Sweden and the countries participating in COCOM (see § 370.2).

* * * * *

4. Section 371.20 is amended by revising the second sentence in paragraph (a) introductory text to read as follows:

§ 371.20 General license G–CEU; certified end-users.

* * * * *

(a) *Eligible end-users.* * * * Cooperating governments are the governments of Sweden and the countries participating in COCOM (see § 370.2). * * *

* * * * *

Dated: July 14, 1987.

Vincent F. DeCain,

Deputy Assistant Secretary for Export Administration.

[FR Doc. 87–16276 Filed 7–16–87; 8:45 am]

BILLING CODE 3510-DT-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Social Security Administration

20 CFR Part 404

[Regulations No. 4]

Federal Old-Age, Survivors, and Disability Insurance Benefits Period of Disability Dependency; One-Half Support

AGENCY: Social Security Administration, HHS.

ACTION: Final rules.

SUMMARY: We are amending our rules on the one-half support that must be provided by an insured person to a spouse, child or parent in certain cases. The change is a clarification of our present rules and provides that in determining one-half support, the insured individual's contributions must equal or exceed one-half of the claimant's ordinary living costs during a given period and that a claimant's income (from sources other than the insured person), that is available for support, must be one-half or less of his or her ordinary living costs.

DATE: These rules are effective July 17, 1987.

FOR FURTHER INFORMATION CONTACT: Dave Smith, Office of Regulations, Social Security Administration, 6401 Security Boulevard, Baltimore, Maryland 21235, Telephone 301–594–7460.

SUPPLEMENTARY INFORMATION: These regulations were published as a Notice of Proposed Rulemaking in the Federal Register on January 20, 1987 (52 FR 2116) with a 60-day comment period. No comments were received.

Under section 202 (d) and (h) of the Social Security Act (the Act), benefits are payable to certain children and parents of insured individuals if certain

requirements are met (see §§ 404.350 and 404.370). One of those requirements is that the insured individual must have provided at least one-half of the child's or parent's support at a specified time. Under section 202(b), (c), (e), (f), and (g) of the Act, a spouse's or surviving spouse's benefit is subject to a Government pension offset unless, at a specified time, the spouse or surviving spouse received at least one-half of his or her support from the insured individual (see § 404.408a).

Under the current regulations at § 404.366(b), one-half support exists if the insured individual makes regular contributions to the claimant's ordinary living costs and the amount exceeds one-half of the claimant's ordinary living costs. We also consider the total income available to the claimant whether or not it is actually used for his or her living costs. The Social Security Administration's operating instructions (exemplified by Social Security Ruling 85–1) provide that one-half support exists if the insured individual's contributions equal or exceed one-half of the claimant's ordinary living costs and the claimant's income (from sources other than the insured person), that is available for support, is equal to or less than one-half these costs. Thus, the change in § 404.366(b) provides that the insured individual provides one-half of the claimant's support if he or she makes regular contributions for the claimant's support that equal or exceed one-half of the claimant's ordinary living costs and the claimant's income (from sources other than the insured person) is equal to or less than one-half of those costs.

Regulatory Procedures

Executive Order No. 12291

The Secretary has determined that this is not a major rule under Executive Order 12291 because these regulations do not create costs or savings and do not otherwise meet any of the threshold criteria for a major rule. Accordingly, a regulatory impact analysis is not required.

Paperwork Reduction Act of 1980

These regulations impose no additional reporting and recordkeeping requirement requiring OMB clearance.

Regulatory Flexibility Act

We certify that these regulations will not have a significant economic impact on a substantial number of small entities because they affect only individuals. Therefore, a regulatory flexibility analysis as provided in Pub. L. 96–354, the Regulatory Flexibility Act, is not required.

(Catalog of Federal Domestic Assistance Program No. 13.802 Social Security—Disability Insurance, 13.803 Social Security—Retirement Insurance, 13.805 Social Security—Survivors Insurance.)

List of Subjects in 20 CFR Part 404

Administrative practice and procedure, Death benefits, Disability benefits, Old-age, survivors and disability insurance.

Dated: May 22, 1987.

Dorcas R. Hardy,

Commissioner of Social Security.

Approved: June 19, 1987.

Otis B. Bowen,

Secretary of Health and Human Services.

Subpart D of Part 404 of Title 20 of The Code of Federal Regulations is amended as follows:

PART 404—[AMENDED]

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

Authority: Secs. 202, 205, 215, 216, 223, 225, 228, and 1102 of the Social Security Act; Sec. 5, Reorganization Plan No. 1 of 1953; 42 U.S.C. 402, 405, 415, 416, 423, 425, 428, and 1302; and 5 U.S.C. Appendix.

2. In § 404.366, the introductory text preceding paragraph (a) and the introductory text of paragraph (b) are revised to read as follows:

§ 404.366 "Contributions for support", "one-half support", and "living with" the insured defined—determining first month of entitlement.

To be eligible for child's or parent's benefits, and in certain Government pension offset cases, you must be dependent upon the insured person at a particular time or be assumed dependent upon him or her. What it means to be a dependent child is explained in §§ 404.360 through 404.365; what it means to be a dependent parent is explained in § 404.370(f); and the Government pension offset is explained in § 404.408a. Your dependency upon the insured person may be based upon whether at a specified time you were receiving "contributions for your support" or "one-half of your support" from the insured person, or whether you were "living with" him or her. These terms are defined in paragraphs (a) through (c) of this section.

* * * * *

(b) "*One-half support*". The insured person provides one-half of your support if he or she makes regular contributions for your ordinary living costs; the amount of these contributions equals or exceeds one-half of your ordinary living costs; and any income (from sources other than the insured person) you have available for support purposes is one-half or less of your ordinary living costs. We will consider any income which is available to you for your support whether or not that income is actually used for your ordinary living costs. Ordinary living costs are the costs for your food, shelter, routine medical care, and similar necessities. A contribution may be in cash, goods, or services. The insured is not providing at least one-half of your support unless he or she has done so for a reasonable period of time. Ordinarily, we consider a reasonable period to be the 12-month period immediately preceding the time when the one-half support requirement must be met under the rules in §§ 404.362 through 404.364 (for child's benefits), in § 404.370(f) (for parent's benefits) and in § 404.408a(c) (for benefits where the Government pension offset may be applied). A shorter period will be considered reasonable under the following circumstances:

* * * * *

[FR Doc. 87–16152 Filed 7–16–87; 8:45 am]
BILLING CODE 4190–11–M

Food and Drug Administration

21 CFR Part 558

New Animal Drugs for Use in Animal Feeds; Tiamulin

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a new animal drug application (NADA) filed by Fermenta Animal Health Co. The NADA provides for use of Denagard® (tiamulin) Type A article to make a Type C swine feed used for control of swine dysentery associated with *Treponema hyodysenteriae* susceptible to tiamulin, and for increased rate of weight gain from weaning to 125 pounds body weight.

EFFECTIVE DATE: July 17, 1987.

FOR FURTHER INFORMATION CONTACT: Charles E. Haines, Center for Veterinary Medicine (HFV–133), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–3410.

SUPPLEMENTARY INFORMATION: Fermenta Animal Health Co., 7528 Auburn Road, P.O. Box 8001, Painesville, OH 44077, filed NADA 139–472 providing for use of Denagard® (tiamulin) Type A article containing 5,

10, or 113.4 grams of tiamulin (as the hydrogen fumarate) per pound to make a Type C swine feed containing 35 grams of tiamulin per ton for control of swine dysentery associated with *Treponema hyodysenteriae* susceptible to tiamulin and 10 grams per ton for increased rate of weight gain. The drug had been previously approved for use in swine drinking water to treat swine pneumonia due to *Haemophilus pleuropneumonia* and swine dysentery associated with *Treponema hyodysenteriae*, susceptible to tiamulin.

The NADA is approved and the regulations are amended in 21 CFR 558.4(d) in the table entitled "Category I" by adding a new entry alphabetically and by adding new 21 CFR 558.600. The basis for approval is discussed in the freedom of information summary.

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

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

List of Subjects in 21 CFR Part 558

Animal drugs, Animal feeds.

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

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

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

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

2. By revising § 558.4(d) in the table entitled "Category I" to add a new entry alphabetically to read as follows:

§ 558.4 Medicated feed applications.

* * * * *

(d) * * *

CATEGORY I

Drug	Assay limits percent [1] type A	Type B maximum (200×)	Assay limits percent [1] type B/C [2]
* * * * * * *			
Tiamulin	113.4 g/lb 100-108	3.5 g/lb (0.8%)	90-115
	5 and 10 g/1b 90-115		70-130
* * * * * * *			

[1] Percent of labeled amount.

[2] Values given represent ranges for either Type B or Type C medicated feeds. For those drugs that have two range limits, the first set is for a Type B medicated feed and the second set is for a Type C medicated feed. These values (ranges) have been assigned in order to provide for the possibility of dilution of a Type B medicated feed with lower assay limits to make Type C medicated feed.

3. By adding new § 558.600 to read as follows:

§ 558.600 Tiamulin.

(a) *Approvals.* Type A article containing 5, 10, or 113.4 grams of tiamulin (as tiamulin hydrogen fumarate) per pound to 054273 in § 510.600(c) of this chapter.

(b) *Related tolerances.* See § 556.738 of this chapter.

(c) *Conditions of use in swine.*—(1) *Amount.* 35 grams of tiamulin per ton.

(i) *Indications for use.* For control of swine dysentery associated with *Treponema hyodysenteriae* susceptible to tiamulin.

(ii) *Limitations.* Feed continuously as sole ration on premises with a history of swine dysentery but where signs of disease have not yet occurred or following approved treatment of disease. Withdraw 2 days before slaughter. Not for use in swine over 250 pounds body weight. Use as only source of tiamulin. Swine being treated with tiamulin should not have access to feeds containing polyether ionophores (e.g., lasalocid, monensin, narasin, or salinomycin) as adverse reactions may occur.

(2) *Amount.* 10 grams of tiamulin per ton.

(i) *Indications for use.* For increased rate of weight gain from weaning to 125 pounds body weight.

(ii) *Limitations.* Feed continuously as sole ration to starter-grower pigs. Use from weaning to 125 pounds body weight. Use as sole source of taimulin. Swine being treated with tiamulin should not have access to feeds containing polyether ionophores (e.g., lasalocid, monensin, narasin, or salinomycin) as adverse reactions may occur.

Dated: July 8, 1987.

Gerald B. Guest,

Director, Center for Veterinary Medicine.

[FR Doc. 87-16094 Filed 7-16-87; 8:45 am]

BILLING CODE 4160-01-M

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

29 CFR Part 1601

Procedural Regulations; No Cause Determinations

AGENCY: Equal Employment Opportunity Commission.

ACTION: Final Rule.

SUMMARY: The Equal Employment Opportunity Commission proposed to revise its procedural regulation (29 CFR Part 1601) to implement the Policy Statement on No Cause Determinations adopted by the Commission on December 15, 1986. 52 FR 11503 (April 9, 1987). This final rule adopts a review process by the Commission from District Directors' letters of determination that find no reasonable cause to believe that unlawful employment discrimination has occurred.

EFFECTIVE DATE: August 1, 1987.

FOR FURTHER INFORMATION CONTACT: Leonora L. Guarraia, Director, Determinations Review Program, Office of Program Operations (202) 634-6905.

SUPPLEMENTARY INFORMATION: The Equal Employment Opportunity

Commission issued a Notice of Proposed Rulemaking, 52 FR 11503 (April 9, 1987), proposing to establish a review procedure of cases where the field office director (referred to in the regulations as issuing director) finds there is not reasonable cause to believe that discrimination has occurred or is occurring. The Commission received eleven comments on the proposal. After a careful review of the comments, the Commission has decided to adopt the review procedure with several minor changes. At this time, the Commission is issuing final regulations on §§ 1601.6, 1601.18, 1601.19, 1601.21 (a) and (d), 1602.24(a) and 1601.28(b). A summary of the comments and changes to these sections is set out below.

The comments raised eight issues regarding the proposed review process. A number of commenters expressed concern that the review process, by creating another step in the investigative and decision-making process, will create a backlog and will delay the resolution of charges in which no cause determinations have been made by the issuing director. Similarly, commenters requested assurances that sufficient resources will be devoted to the Determinations Review Program to process the reviews in a timely and thorough manner. The Commission is committed to the Review Program as a part of its mission as a law enforcement agency and will ensure that the Determinations Review Program will receive sufficient resources to meet the demands of the Program, and that reviews will be accomplished in as timely and thorough a manner as is possible.

Several commenters suggested that the review process be extended to cause determinations by issuing directors, as well as to no cause determinations. The Commission has determined that its review of all cause determination cases prior to litigation is sufficient, and that an additional review process for cause determinations prior to the litigation reviews generally would be redundant.

Comments recommended that regulations include a section providing for notification to respondents of the Commission's acceptance of a request for review. While it was the intent of the Commission to provide such notification, for clarification purposes, the Commission has added a subparagraph at section 1601.19(a)(4) providing for issuance of a notice of review to all parties to the charge upon acceptance by the Commission of a request for review.

Some commenters requested that the regulations spell out a standard for granting an extension of time in which to request a review of an issuing director's no cause determination. The Commission has decided to delete the extension of time language from the regulations. If the Determinations Review Program receives any written communication from a charging party postmarked within the fourteen day period, it shall treat it as a timely request for review. After the fourteen day period, the issuing director's no cause determination becomes final and any further review would have to be by way of reconsideration of the final determination by the issuing director.

The comments recommended that charging parties and others who may request review of issuing directors' no cause determinations be required to submit reasons for their requests for review. While the Commission does not believe this is necessary, the issuing director's determination will include a form request for review which will request a statement of reasons for the review.

At least one comment suggested that the Commission adopt procedures to make clear to charging parties the right to request review of issuing directors' no cause determinations. The Commission agrees with the comment and intends to inform the charging party of the review step throughout the investigative process, especially during intake counselling sessions, in predetermination interviews and in the issuing director's letter of determination.

A number of comments recommended that the Commission adopt a standard of review for the review procedure. The Commission finds it unnecessary to enunciate a standard of review in the regulations because the Determinations Review Program will not operate like an appellate body considering appeals under a standard of review. The Program will generally review the issuing director's determination to determine whether there has been an incomplete investigation or an erroneous interpretation or application of law or fact.

One comment proposed that the review process be extended to issuing directors' jurisdictional dismissals of charges, as well as to no cause determinations. The comment recommended that the review process apply to dismissals that involve substantive factual or legal determinations. The Commission has decided not to adopt the proposal. The Review Program was designed to review no cause determinations for completeness of the investigation and correctness of the decision made. Generally, jurisdictional matters raise much narrower factual or legal questions than the more involved investigations and findings of no cause determinations. As part of its evaluation of this program, the Commission may consider adding other dismissals to the review program in the future.

Clarifying changes have been made to the regulations affected. A new § 1601.19(c) has been added to address issuing directors' no cause determinations for cases processed by 706 agencies. As stated in the Notice of Proposed Rulemaking, charges processed by 706 agencies are not included in the review process because the Commission reviews them for substantial weight pursuant to §§ 1601.21(e) and 1601.76. The proposed § 1601.19(c) has been redesignated § 1601.19(e) and a new § 1601.19(d) has been added.

Accordingly, Part 1601 is amended as follows:

Dated: July 10, 1987.

For the Commission.

Clarence Thomas,

Chairman.

PART 1601—[AMENDED]

1. The authority citation for 29 CFR Part 1601 continues to read as follows:

Authority: Sec. 713(a), Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e–12(a), unless otherwise noted.

§ 1601.6 [Amended]

§ 1601.18 [Redesignated as § 1601.6(b)]

2. 29 CFR 1601.6 is amended by designating the current text of the section as paragraph (a) and by redesignating the text of § 1601.18 as paragraph (b) of § 1601.6.

§ 1601.19 [Redesignated as § 1601.18 and amended]

3. 29 CFR 1601.19 is redesignated as § 1601.18 and amended as follows:

Paragraph (b) is removed, and paragraphs (c), (d), (e), (f) and (g) are redesignated as paragraphs (b), (c), (d), (e) and (f), respectively.

Redesignated paragraph (e) is amended by revising the first sentence as follows: "(e) Written notice of disposition, pursuant to paragraphs (a), (b), (c) or (d) of this section, shall be issued to the person claiming to be aggrieved and to the person making the charge on behalf of such person, where applicable; in the case of a Commissioner charge, to all persons specified in § 1601.28(b)(2); and to the respondent. * * * "

Redesignated paragraph (f) is amended by removing the third sentence and by revising the second sentence as follows: "(f) * * * The Commission

hereby delegates authority to Area Directors or Local Director to dismiss charges pursuant to paragraphs (a), (b) and (c) of this section, as limited by § 1601.21(d). * * * "

4. A new § 1601.19 is added as follows:

§ 1601.19 No cause determinations: Procedure and authority.

(a) Where the field office completes its investigation of a charge and finds that there is not reasonable cause to believe that an unlawful employment practice has occurred or is occurring as to all issues addressed in the determination or as to some but not all issues addressed in the determination, the issuing director shall issue a letter of determination to all parties to the charge indicating the finding. The issuing director's letter of determination shall not be final when issued. The letter of determination shall inform the person claiming to be aggrieved or the person on whose behalf a charge was filed of the right to request a review of the determination by the Commission. The person claiming to be aggrieved or the person on whose behalf a charge was filed may request a review of the issuing director's determination within 14 days of the date of the issuing director's determination by the Director, Determinations Review Program, Office of Program Operations, Equal Employment Opportunity Commission, 2401 E Street NW., Washington, DC 20507. The issuing director's letter of determination shall inform the person claiming to be aggrieved or the person on whose behalf a charge was filed of the right to sue in federal district court within 90 days of the date that the issuing director's letter of determination becomes the Commission's final determination.

(1) If the person claiming to be aggrieved or the person on whose behalf a charge was filed does not timely request a review of the issuing director's letter of determination, the letter of determination shall become the final determination of the Commission on the 15th day from the date of the issuing director's letter of determination. If the person claiming to be aggrieved or the person on whose behalf a charge was filed submits a timely request for review of the issuing director's letter of determination, the Commission shall process the request for review and issue a final determination. If, on review, a finding of reasonable cause is made, then the Commission shall issue a reasonable cause determination and process the charge in accordance with this part.

(2) A request for review shall be deemed timely if it is personally delivered or postmarked within 14 days after the date of the issuing director's letter of determination, or if, in the absence of a postmark, it is received by mail within 19 days from the date of the issuing director's letter of determination.

(3) Where a request for review is accepted by the Director, Determinations Review Programs, a notice of review shall promptly issue to all parties to the charge.

(4) The review procedure provided in this subsection shall not apply to charges processed by 706 agencies under contract with the Commission.

(5) The Commission hereby delegates authority to District Directors or upon delegation to Area Directors or Local Directors, except in those cases involving issues currently designated by the Commission for priority review, to issue a director's no cause letter of determination. The Commission hereby delegates authority to the Director, Determinations Review Program, Office of Program Operations, to issue Commission determinations of no reasonable cause following review.

(b) In those instances in which the Commission has not delegated the authority to issue no reasonable cause determinations to field offices, and the Commission or the Program Director or designee, Office of Program Operations, finds that no reasonable cause exists to believe an unlawful employment practice has occurred or is occurring as to all issues addressed in the determination, the Commission shall issue a decision or a letter of determination or the Program Director, Office of Program Operations, shall issue a letter of determination to all parties to the charge indicating the finding.

(1) A letter of determination or decision issued under this subsection shall be final when issued, and shall inform the person claiming to be aggrieved, the person on whose behalf a charge was filed or those persons specified in § 1601.28(b)(3)(ii) of the right to sue in federal district court within 90 days of the date the person claiming to be aggrieved or the person on whose behalf a charge was filed receives the letter of determination.

(2) The Commission hereby delegates authority to the Program Director, Office of Program Operations or upon delegation the Directors, Regional Programs, Office of Program Operations, except in those cases involving issues currently designated by the Commission for priority review, to issue no cause letters of determination.

(c) In those instances in which a charge was processed by a 706 agency under contract with the Commission and the Commission finds that no reasonable cause exists to believe an unlawful employment practice occurred or is occurring as to all issues addressed in the determination, the Commission shall issue a letter of determination to all parties to the charge indicating the finding.

(1) A letter of determination issued under this subsection shall be final when issued, and shall inform the person claiming to be aggrieved or the person on whose behalf a charge was filed of the right to sue in federal district court within 90 days of the date the person claiming to be aggrieved or the person on whose behalf a charge was filed receives the letter of determination.

(2) The Commission hereby delegates authority to District Directors or upon delegation to Area Directors or Local Directors, except in those cases involving issues currently designated by the Commission for priority review to issue no cause letters of determination.

(d) The Commission shall not issue a separate notice of right to sue for no cause determinations.

(e) The Commission may on its own initiative reconsider a final determination of no reasonable cause and an issuing director may, on his or her own initiative reconsider his or her final determination of no reasonable cause. If the Commission or an issuing director decides to reconsider a final no cause determination, a notice of intent to reconsider shall promptly issue to all parties to the charge. If such notice of intent to reconsider is issued within 90 days of receipt of the final no cause determination, and the person claiming to be aggrieved or the person on whose behalf a charge was filed has not filed suit and did not request and receive a notice of right to sue pursuant to § 1601.28(a) (1) or (2), the notice of intent to reconsider shall vacate the letter of determination and shall revoke the charging party's right to bring suit within 90 days. If the 90 day suit period has expired, the charging party has filed suit, or the charging party had requested a notice of right to sue pursuant to § 1601.28(a)(1) or (2), the notice of intent to reconsider shall vacate the letter of determination, but shall not revoke the charging party's right to sue in 90 days. After reconsideration, the Commission or issuing director shall issue a new determination. In those circumstances where the charging party's right to bring suit in 90 days was revoked, the determination shall include notice that a new 90 day suit period shall begin upon the charging party's receipt of the

determination. Where a member of the Commission has filed a Commissioner charge, he or she shall abstain from making a determination in that case.

§ 1601.21 [Amended]

5. 29 CFR 1601.21(a) is revised as follows:

(a) After completing its investigation, where the Commission has not settled or dismissed a charge or made a no cause finding as to every allegation addressed in the determination under § 1601.19, the Commission shall issue a determination that reasonable cause exists to believe that an unlawful employment practice has occurred or is occurring under Title VII. A determination finding reasonable cause is based on, and limited to, evidence obtained by the Commission and does not reflect any judgment on the merits of allegations not addressed in the determination.

* * * * *

6. The first two sentences of 29 CFR 1601.21(d) introductory text are revised as follows:

* * * * *

(d) The Commission hereby delegates to District Directors or upon delegation, Area Directors or Local Directors; and the Program Director, Office of Program Operations or upon delegation, the Directors, Regional Programs, Office of Program Operations, the authority, except in those cases involving issues currently designated by the Commission for priority review, upon completion of an investigation, to make a determination finding reasonable cause, issue a cause letter of determination and serve a copy of the determination upon the parties. Each determination issued under this section is final when the letter of determination is issued. * * *

* * * * *

§ 1601.24 [Amended]

7. The first sentence of 29 CFR 1601.24(a) is revised as follows:

(a) Where the Commission determines that there is reasonable cause to believe that an unlawful employment practice has occurred or is occurring and after the review provided for in § 1601.19, the Commission shall endeavor to eliminate such practice by informal methods of conference, conciliation and persuasion. * * *

* * * * *

§ 1601.28 [Amended]

8. 29 CFR 1601.28(b)(3) is amended by changing the reference from § 1601.19 to § 1601.18.

[FR Doc. 87-16115 Filed 7-16-87; 8:45 am]
BILLING CODE 6570-06-M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 935

Approval of Permanent Program Amendments From the State of Ohio Under the Surface Mining Control and Reclamation Act of 1977

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSMRE), Interior.

ACTION: Final rule.

SUMMARY: OSMRE is announcing the approval, with certain exceptions, of program amendments submitted by Ohio as modifications to the State's permanent regulatory program (hereinafter referred to as the Ohio program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The amendments were submitted on May 16, 1986, with additional materials subsequently submitted on December 1, 1986. The amendments pertain to: definitions, applications for mining permits, public hearings, permit review, coal exploration, bonding procedures, performance standards, underground mining, small operator assistance program, lands unsuitable for surface mining, and inspection and enforcement procedures among others.

EFFECTIVE DATE: July 17, 1987.

FOR FURTHER INFORMATION CONTACT: Ms. Nina Rose Hatfield, Columbus Field Office Director, Office of Surface Mining Reclamation and Enforcement, 2242 S. Hamilton Road, Columbus, Ohio 43232; Telephone: (614) 866-0578.

SUPPLEMENTARY INFORMATION:

I. Background

The Ohio program was conditionally approved by the Secretary of the Interior on August 16, 1982. This conditional approval was published in the **Federal Register** on August 10, 1982 (47 FR 34717). Information pertinent to the general background, revisions, modifications and amendments to the proposed permanent program, as well as the Secretary's findings, the disposition of comments, and a detailed explanation of the conditions of approval of the Ohio program can be found in the August 10, 1982 **Federal Register**. Subsequent actions concerning the conditions of approval and program amendments may be found at 30 CFR 935.11 and 935.15, respectively.

II. Submission of Program Amendments

By letter dated May 16, 1986, the Ohio Department of Natural Resources, Division of Reclamation (DOR) submitted proposed amendments to Ohio's regulatory program. The changes were proposed to bring the Ohio program regulations into conformity with the revised Federal rules. Because State regulations are required to be no less effective than Federal rules, Ohio was asked to submit revised regulations to OSMRE for review and approval.

During review of the amendments, OSMRE identified concerns relating to several different sections of the proposed regulations. The concerns included premature closing of public records on bond release, reassessing good faith points following an abatement, coal exploration, use of an agricultural variance from approximate original contour, not requiring use of Soil Conservation Service soil reconstruction specifications, and not requiring the same management level on reclaimed land as on undisturbed land. OSMRE notified the State of these concerns, among others, by letter dated September 30, 1986.

On December 1, 1986, the DOR responded by submitting revisions to Ohio's regulations that addressed OSMRE's concerns. The revisions responded to all of OSMRE's objections with changes, explanations, or policy statements.

OSMRE published an announcement of the receipt of the modified amendment and the reopening and extension of the comment period in the **Federal Register** on February 2, 1987 (52 FR 3145). The notice stated that written comments, data, or other relevant information relating to this rulemaking would be accepted through March 4, 1987.

III. Director's Findings

The Director finds, in accordance with SMCRA and 30 CFR 732.17 and 732.15, that the program amendments submitted by Ohio on May 16, 1986 and amended on December 1, 1986, meet the requirements of SMCRA and 30 CFR Chapter VII, with the exceptions discussed below. Only those provisions of particular interest are discussed in the specific findings. The provisions not specifically discussed are found to be no less stringent than SMCRA and no less effective than the Federal rules.

Headings of findings are numbered as listed in the Ohio Administrative Code (OAC), unless otherwise noted.

1. OAC 1501:13–1–01 Effective Date and Applicability

Revisions to this section include deletion of language in paragraphs (A) & (B) concerning approval of the Ohio permanent program and the transition from the interim to permanent programs. Other revisions include revised references for surface and underground mine operations. The Director finds that the amendments to OAC 1501:13–1–01 are no less effective than the Federal regulations in 30 CFR 701.11.

2. OAC 1501:13–1–02 Definitions

Revisions to this section include consolidation of definitions of terms from other sections of the rules, addition of new terms being defined, and revisions to definitions of previously defined terms. New terms and/or substantive revisions to existing terms include the following: coal exploration permit, coal mine waste, coal preparation, coal preparation plant, coal processing waste, collateral bond, complete application, cumulative hydrologic impact assessment, engineer, excess spoil, forfeiture of performance bond, fragile lands, general area, head-of-hollow fill, highwall remnant, historic lands, impounding structure, impoundments, incremental area, monitoring, mountaintop removal mining, MSHA, natural hazard lands, notice of intention to explore, operation, operator, permanent impoundment, permit year, person, previously mined area, principal shareholder, probable hydrologic consequences, property to be mined, public park, publicly owned park, reasonably available spoil, refuse pile, remining, road, sedimentation pond, self-bond, soil horizons, substantial legal and financial commitments in a coal mining operation, substantially disturb, support facilities, surface mining operations, surveyor, temporary impoundments, topsoil, underground development waste, valley fill, and violation notice. The Federal regulations at 30 CFR 701.5 and 761.5 address definitions of those terms used in the regulations. The terms listed above are defined so that they are no less effective than their Federal counterparts.

The definition of "cemetery" was not revised by Ohio as required by the Director's letter to Ohio dated November 6, 1985. As indicated in that letter, the U.S. District Court for the District of Columbia remanded the OSMRE definition of cemetery in so far as it excludes private family burial grounds. Ohio's response to this deficiency as indicated in a letter dated December 1, 1986 is as follows:

Ohio recognizes that the U.S. District Court for the District of Columbia found that OSMRE had no basis for distinguishing between family burial grounds and other cemeteries, and therefore remanded that portion of the federal definition of cemetery that had excluded family burial grounds and isolated grave sites. However, in *Holmes Limestone Co.* v. *Watt*, 655 F. 2d 732, 17 ERC 1031 (1981), the U.S. Court of Appeals for the Sixth Circuit reversed and remanded the lower court decision which dissolved a preliminary injunction against the Department of the Interior from enforcing a prohibition against mining within 100 feet of a family burial plot. The appellate court in this judicial district clearly held that it had the jurisdiction to consider Holmes Limestone's challenge to the Department of the Interior's enforcement action, and stated further that "(t)here is no evidence that Congress ever intended to regulate private family burial plots not open to the public." 17 ERC 1031 at 1037. On remand, the lower court granted the preliminary injunction based on the likelihood that a private family burial plot may not be considered a cemetery within the meaning of the Act. Ohio's current definition of cemetery found at OAC section 1501:13–1–02(M) of its proposed rule is consistent with the above ruling of the Federal District Court of Appeals for Ohio. Therefore, pending a resolution of these conflicting district court decisions, Ohio is subject to the ruling of its respective federal district court.

The Director disagrees with Ohio's interpretation of the Sixth Circuit and U.S. District Court of the Northern District of Ohio's findings. While the dicta in the Sixth Circuit's opinion are informative, the holding was to reverse and remand the case to the District Court for further action. The District Court also did not rule on the merits of the case, because the issue was moot as a result of OSMRE changing the definition of cemetery to exclude family burial grounds from the meaning of cemetery. It was the OSMRE definition on which the Ohio Northern District Court based its decision and the District of Columbia District Court subsequently remanded that definition as not being consistent with SMCRA.

In 30 CFR 761.5, the phrase "except for private family burial grounds" was suspended by OSMRE. (51 FR 41960, November 20, 1986). The Ohio definition of cemetery does not include private family burial grounds. Therefore, the Director finds that OAC 1501:13–1–02(M) is less effective than 30 CFR 761.5 and is disapproving it. Ohio is being required to amend its program to be no less effective than the Federal provision.

3. OAC 1501:13–1–10 Availability of Records

This section is revised to require maintenance of records concerning permit applications, revisions, renewals, transfers, and inspection and enforcement actions. These records are to be located and available to the public at the local district office of DOR. Records must be maintained for five years following bond release. The section also elaborates on records which are confidential and unavailable to the public. The Federal regulations at 30 CFR 840.14 address availability of records. The Director finds that the requirements in OAC 1501:13–1–10 are no less effective than the Federal regulations.

4. OAC 1501:13–1–13 Rule References

As proposed, this rule specifies how rule references are to be interpreted. The Director finds that there is no Federal counterpart to this rule and that the rule is not inconsistent with SMCRA and is no less effective than 30 CFR Chapter VII.

5. OAC 1501:13–3–03 Areas Where Mining is Prohibited or Limited

Revisions to this rule address prohibition of mining within the wild and scenic rivers system and state-designated nature preserves and within 1000 feet of state-designated scenic areas. The revision adds study rivers and study river corridors as established in any guidelines pursuant to the Act in accordance with OSMRE rules at 30 CFR 761.11(a), as published in the **Federal Register** (51 FR 25818, July 16, 1986). The rule also prohibits mining on lands listed or eligible for listing on the National Register of Historic Places. 30 CFR 761.11(c) as published in the **Federal Register** (52 FR 4261, February 10, 1987) does not prohibit mining on eligible sites. The Director finds that OAC 1501:13–3–03 is no less effective than 30 CFR 761.11.

6. OAC 1501:13–3–04 Procedures for Identifying Areas Where Mining Is Prohibited or Limited

Revision to paragraph (A) adds a requirement that the National Park Service and the U.S. Fish and Wildlife Service be notified of requests for determination of valid existing rights on areas within their jurisdiction. Paragraph (C) sets provisions for a thirty-day comment period and extensions to that period. The rule also requires at least two weeks' public notice of meetings to discuss mining within 100 feet of the outside right-of-way of a public road and written findings of the meeting within 30 days. Paragraph (D) sets forth requirements for waivers for mining within 300 feet of occupied dwellings. Paragraph (E) includes places listed or eligible for listing on the "National Register of

Historic Places." 30 CFR 761.12(f)(1), as published in the **Federal Register** (52 FR 4261, February 10, 1987) does not require this phrase. The Director finds that revision to OAC 1501:13–3–04 is no less effective than 30 CFR 761.12.

7. OAC 1501:13–3–05 Criteria for Designating Areas Unsuitable for Coal Mining Operations

The definitions found in this rule have been deleted and redefined under OAC 1501:13–1–02. Paragraph (C) revises appeal proceedings of valid existing right determinations. Appeals of these determinations are to be directed to the Reclamation Board of Review. This revision is in accordance with the Federal requirements of 30 CFR 761.12(h). The Director finds this amendment to be no less effective than the Federal rule.

8. OAC 1501:13–3–06 Exploration on Land Designated as Unsuitable for Coal Mining Operations

The rule is revised for clarification purposes and there is no substantive change. The Director finds this rule to be no less effective than 30 CFR Part 772.

9. OAC 1501:13–3–07 Procedures for Designating Areas Unsuitable for Coal Mining Operations

Paragraph (A) is amended to specify criteria for demonstrating that a party has been adversely affected and sets minimum standards for allegations of facts and supporting evidence to be contained in unsuitability petitions and terminations of unsuitability designations. Paragraph (B) describes requirements for public notice of unsuitability petitions, defines frivolous petitions, and allows the Chief discretion in processing petitions on areas where a complete permit application has been received. Paragraph (C) sets out hearing requirements and requires a record of the hearing and what the record must include. Paragraph (F) allows the Chief discretion in the disclosure to the public of properties listed or nominated for listing on the "National Register of Historic Places" if such disclosure could endanger these properties. Paragraph (A) of OAC 1501:13–3–07 addresses the requirements in 30 CFR 764.13. Paragraph (B) of OAC 1501:13–3–07 addresses the requirements in 30 CFR 764.15. Paragraph (C) addresses the requirements in 30 CFR 762.15. Paragraph (F) addresses the requirements in 30 CFR 764.23. The Director finds that all amendments to OAC 1501:13–3–07 are no less effective than the Federal regulations described above.

10. OAC 1501: 13–4–01 General Contents Requirement for Permit Applications

Paragraph (A) is revised to include review by the Chief of renewals, significant revisions, and notices of intention to explore. The definitions have been deleted from paragraph (B) and placed under OAC 1501:13–1–02. The applicability statement in paragraph (C) is deleted. Applicability is addressed under OAC 1501:13–1–01. Under revised paragraph (B), coordination of review and issuance of permits with certain State and Federal laws is deleted. Other Federal laws are added for which coordination must occur. Additions include the Migratory Bird Treaty of 1918 and the Bald Eagle Protection Act. Paragraphs (E), (F), and (H) are deleted. Paragraphs (E), (F), and (H) had addressed the transition between interim and permanent programs. Paragraph (G) becomes paragraph (C). Paragraph (I) is now (D). Revisions include a requirement that technical analysis be performed by or under the direction of a professional on the subject and a requirement that maps distinguish phases of the mining conducted or to be conducted under different phases of law and regulation. New paragraph (E) increases the permit fee from $50 to $75 an acre. The Federal regulations at 30 CFR 773.12 address coordination of review and issuance of permits. Old paragraphs (E), (F), and (H), which are deleted, are addressed under 30 CFR 773.11 and no longer apply to the Ohio program since all operations are now under a permanent program permit. 30 CFR 777.13(b) requires that technical analysis be performed by or under the direction of qualified professionals on the subject matter. 30 CFR 777.14(b) sets out mapping requirements for different phases of mining and 30 CFR 777.17 requires permit fees to be determined by the regulatory authority. The Director finds that all amendments to OAC 1501:13–4–01 are no less effective than the Federal regulations described above.

11. OAC 1501:13–4–02 Requirements of Coal Exploration

Paragraph (A) requires that any person who intends to conduct coal exploration of any kind outside the area covered by a coal mining and reclamation permit file a written notice of intention to explore with the Chief. Except on areas designated as unsuitable for mining, exploration which will not result in substantial disturbance to the natural land surface may occur under the notice of intent. Exploration which will substantially disturb the land surface and all exploration on areas designated as unsuitable for mining requires the issuance of an exploration permit in addition to filing the notice of intent. Paragraph (B)(1) sets out requirements of the notice of intent which now include a map showing the location of the exploration area, a description of equipment to be used, a description of practices to be used to reclaim the area, and a statement that substantial disturbance will not occur. Paragraph (B)(2) sets out additional requirements for exploration that will substantially distrub the ground surface including a description of practices to be used to reclaim the area in accordance with OAC 1501:13–8–01 and an estimated timetable for conducting exploration and reclamation phases.

Paragraph (C) requires the Chief to review notices of intent to explore and determine whether substantial disturbance will or will not occur and to notify the person filing the notice that exploration may begin or that additional information is needed. Exploration permits shall be issued or denied within 60 days of the receipt of the notice of intent to explore. Paragraph (D) has no substantive revisions. Paragraph (E) requires that areas not substantially disturbed by exploration be reclaimed as specified by practices described in the notice of intent and OAC 1501:13–9–02 and that the person conducting the exploration notify the appropriate DOR district office of completion dates of exploration and reclamation. Paragraphs (F), (G), and (H) are not being revised substantially. Paragraph (I) directs appeals by adversely affected persons to the Reclamation Board of Review. OAC 1501:13–4–02 addresses the requirements found in 30 CFR part 772. 30 CFR 772.11(a) required notice of intent to explore outside a permit area during which 250 tons or less of coal will be removed. This regulation was suspended by OSMRE (51 FR 41961, November 20, 1986). The notice of intent to explore also requires submission of a narrative or map describing the area and a description of the exploration and reclamation methods. The Ohio amendment requires notices of intent for all exploration. 30 CFR 772.12 requires an exploration permit application where 250 tons or more of coal will be removed. OAC 1501:13–4–02(D) requires that any person who intends to remove more than 250 tons of coal obtain a coal mining and reclamation permit. Therefore, the Ohio regulations are no less effective than the Federal provisions. OAC 1501:13–4–02(D) requires that exploration which substantially disturbs the surface comply with performance standards and permit terms as does 30 CFR 772.13. The

Director finds that amendments to OAC 1513:13–4–02 are no less effective than the Federal regulations at 30 CFR Part 772.

12. OAC 1501:13–4–03 Permit Applications; Requirements for Legal and Financial Compliance and Related Information

Amendments to this section under paragraph (A) require submission of the name and street address of sole proprietors; information on pending and previous coal mining permits held in the United States; U.S. Department of Labor, Mine Safety and Health Administration identification numbers; and a statement requesting confidentiality of records if so desired. Paragraph (B) adds information requirements on violations received by the applicant or any subsidiary, affiliate, or persons controlled by or under common control with the applicant in connection with coal mining operations. Paragraph (D) is amended to indicate the submission of the road permit required under OAC 1501:13–3–04 with the application. Paragraph (E) establishes requirements to be met in requesting a permit term longer than five years. Paragraph (H) sets out requirements for facilities or structures used by two or more separately permitted operations. The changes to OAC 1501:13–4–03 address the Federal requirements of 30 CFR Part 778. The Director finds that amendments proposed to OAC 1501:13–4–03 are no less effective than the Federal provisions.

13. OAC 1501:13–4–04 Permit Application Requirements for Information on Environmental Resources

Revision to paragraph (A) adds a requirement that each application describe lands subject to coal mining over the life of the mine including sub-areas for which individual permits would be sought. Paragraph (B) was unchanged. Paragraph (C) requires additional geologic information to determine the probable hydrologic consequences, toxic-forming material, and feasibility of reclamation. The minimum requirements of the geologic description are elaborated. Paragraph (D) adds additional requirements to be met in the submission of ground water information and paragraph (E) specifies additional information to address surface water. Paragraph (F) requires alternative water supply information to include the suitability of the source for its intended use. Paragraph (G) adds a requirement for supplemental information if the probable hydrologic consequences suggest adverse effects. Paragraph (I) requires a land use map and a showing of productivity based on current data. New requirements for fish and wildlife data are required by paragraph (J). Minor revisions are made in paragraphs (K) and (L) concerning mapping requirements. The requirements in paragraph (M) are revised to reflect the U.S. Soil Conservation Service standards for investigation of prime farmlands. The amendments to OAC 1501:13–4–04(A) address the requirements in Federal regulation 30 CFR 779.12(a). Amendments to OAC 1501:13–4–04(E) address 30 CFR 780.22. Changes to OAC 1501:13–4–04 (D), (E), (F), and (G) address the requirements in 30 CFR 780.21. Revision to paragraph (I) addresses requirements in Federal regulation 30 CFR 780.23. Fish and wildlife requirements in paragraph (J) are found in 30 CFR 780.16. Paragraphs (K) and (L) address mapping requirements in 30 CFR 780.14. Paragraph (M) addresses prime farmland requirements in 30 CFR 785.17. The Director finds all amendments proposed to OAC 1501:13–4–04 to be no less effective than the Federal rules listed above.

14. OAC 1501:13–4–05 Permit Application Requirements for Reclamation and Operation Plans

Paragraphs (A) and (B) are unchanged and have been approved previously. Paragraph (C) addresses requirements for blasting plans to be submitted with permit applications and requires copies of approvals of state and federal agencies for blasting within 500 feet of active underground mines. Paragraph (D) requires a demonstration of suitability for topsoil substitutes and descriptions of irrigation, disease control, and measures proposed to determine vegetative success. Paragraph (E) includes revisions to the requirements addressing protection of the hydrologic balance and paragraph (F) spells out requirements for ground and surface water monitoring plans. Paragraph (H) addressed all information required to be submitted to address ponds, impoundments, banks, dams, and embankments. Revisions to paragraph (N) address disposal of excess spoil. Paragraph (O) addresses the air pollution control plan and (P), the Fish and Wildlife Plan. The Federal rules at 30 CFR 780.13 concern blasting plans. General requirements of reclamation plans are described in 30 CFR 780.18. Plans for the protection of the hydrologic balance are addressed in 30 CFR 780.21. 30 CFR 780.25 explains the requirements for the reclamation plan concerning ponds, impoundments, banks, dams, and embankments. The excess spoil disposal requirements are contained in 30 CFR 780.35. Air pollultion control plan requirements are contained in 30 CFR 780.15. Requirements for the Fish and Wildlife Plan are detailed in 30 CFR 780.16. The Director has approved an amendment to OAC 1501:13–4–05(L) concerning disposal of excess spoil (51 FR 33034, September 18, 1986). This rule was effective on January 15, 1987 in Ohio. The rule proposed under this amendment revises references to paragraph letters. The Director finds that all amendments to OAC 1501:13–4–05 are no less effective than the Federal rules.

15. OAC 1501:13–4–06 Permit Applications, Revisions, and Renewals and Transfers, Assignments, and Sales of Permit Rights

This rule has been completely rewritten and the previous OAC 1501:13–4–06 will be rescinded. Paragraphs (A) and (B) contain requirements for applications for permit renewals. Paragraph (C) addresses revisions to permit applications. Paragraph (D) sets out requirements to be met for requests that the Chief prepare the determination of probable hydrologic consequences. Requirements to be met for revisions to permits are contained in paragraphs (E) and (F). Paragraph (G) requires the Chief to review permits no later than the middle of the permit term. Rules concerning the transfer, assignment, or sale of permit rights are described in paragraph (H). Paragraphs (I) and (J) require notification to the Chief of changes in persons responsible and addresses as shown in the permit. Paragraph (K) requires applicants eligible for S.O.A.P. assistance to file S.O.A.P. information with the complete permit application. Paragraph (L) requires pending applications to reflect any new law or rules adopted during the review of the application and paragraph (M) indicates that appeals to decisions by the Chief under this section be filed with the Reclamation Board of Review. The Federal rules in 30 CFR 774.15 address permit renewals. Paragraphs (C) and (D) have no Federal counterpart. Permit revisions are addressed in 30 CFR 774.13, which allows the regulatory authority to establish time periods for review and guidelines on the extent and scale of revisions and which requires extensions to the area of a permit to be made by applying for a new permit, with the exception of incidental boundary revisions. 30 CFR 774.11 addresses mid-term permit reviews by the regulatory

authority and 30 CFR 774.17 explains the requirements for transfer, assignment, or sale of permit rights. Paragraphs (I), (J), (K), and (L) have no direct federal counterpart. 30 CFR Part 775 concerns administrative review of decisions on applications. The Director finds that amendments to OAC 1501:13–4–06 are no less effective than the Federal rules cited above.

16. OAC 1501:13–4–08 Hydrologic Map and Cross Sections

The changes to OAC 1501:13–4–08 require additional information to be shown on hydrologic maps. 30 CFR 780.14 addresses mapping requirements in the Federal rules and 30 CFR 780.21 indicates hydrology requirements. The Director finds that revisions to OAC 1501:13–4–08 are no less effective than the Federal rules discussed above.

17. OAC 1501:13–4–12 Requirements for Permits for Special Categories of Mining

Revisions to this section include numerous grammatical and reference changes. Changes are also included in paragraph (B) requiring additional information to be submitted with applications containing experimental practices and requiring reviews of the permits to be conducted at least every two and one-half years. Paragraph (C) contains minor revisions to the rules on mountaintop removal mining. Paragraph (E) revises rules that the Chief and applicant must follow to grant or obtain a permit which incorporates a variance from approximate original contour. Paragraph (f) amends portions of the rules dealing with prime farmland. Paragraph (I) addresses rules on coal preparation plants and support facilities and paragraph (K) sets out rules in remining situations. The amendment submitted by Ohio addresses the requirements contained in 30 CFR 785.13, 785.14, 785.15, 785.16, 785.17, and 785.21. The Director finds that the revisions submitted are no less effective than the Federal provisions.

18. OAC 1501:13–4–13 Underground Mining Permit Application Requirements for Information on Environmental Resources

Amendments to this section are similar to those previously addressed under OAC 1501:13–4–04 but apply to underground mines. Additional requirements are added to address special areas dealing with underground mines. Paragraph (C)(1)(d) concerns the subsidence control plan. Paragraph (C)(3)(d) addresses requirements for test borings on lands which will be mined without the removal of overburden. OAC 1501:13–4–13 is the Ohio counterpart to the Federal regulation 30 CFR Part 783 which sets forth minimum requirements for information on environmental resources for underground mines. The Director finds that the amendment to OAC 1501:13–4–13 is no less effective than the Federal rules in 30 CFR Part 783.

19. OAC 1501:13–4–14 Underground Mining Permit Application Requirements for Reclamation and Operations Plans

Revisions to this section are similar to those previously addressed under OAC 1501:13–4–05 but apply to underground mines. Additional requirements are added to address special areas dealing with underground mining. 30 CFR Part 784 sets forth the Federal requirements. The Director finds that amendments to OAC 1501:13–4–14 are no less effective than the Federal rules in 30 CFR Part 784.

20. OAC 1501:13–5–01 Review of Public Participation, and Approval or Disapproval of Permit Applications and Permit Terms and Conditions

This section has been rewritten and the existing rule is to be rescinded. Paragraph (A) describes the requirements for public notices of filing of permit applications, renewals, and revisions. Paragraph (B) addresses comments and objections to applications and paragraph (C) concerns informal conferences concerning permit applications. Paragraph (D) spells out the preliminary review of applications to be done by the Chief and paragraph (E) sets the criteria that must be met for approval or denial of a permit application. Paragraph (F) describes general conditions of permits and rights-of-entry. The items discussed above address the requirements in 30 CFR 773.13, 773.15, and 773.17. The Director finds that the amendments to OAC 1501:13–5–01 are no less effective than the Federal rules in 30 CFR Part 773.

21. OAC 1501:13–6–03 Small Operator Assistance Program

Amendments to this section include the deletion of definitions in paragraph (B). The definitions are now located in 1501:13–1–02. Paragraph (C) is revised to more clearly establish eligibility requirements. Paragraph (D) adds additional mapping requirements and (E) is revised to require the Chief to notify the applicant of his decision on eligibility. Paragraph (F) is slightly revised to require qualified labs to make statements on drilling and to require Ohio to develop procedures for interstate coordination and exchange of data between states. Paragraph (G) adds qualifications for laboratories. Paragraph (I) addresses applicant liability for reimbursement of funds. Other editorial and nonsubstantive changes were made throughout this section. The Federal rules in 30 CFR Part 795 address the Small Operator Assistance Program. The Director finds that amendments to OAC 1501:13–6–03 are no less effective than 30 CFR Part 795.

22. OAC 1501:13–7–01 General Requirements for Bonding of Coal Mining and Reclamation Operations

This section is revised with minor grammatical and nonsubstantive changes and by deleting the definitions in paragraph (A). The definitions are now located in OAC 1501:13–1–02. Other revisions include paragraph (B), which allows the Chief, upon request, to release bond from areas that were not disturbed by surface coal mining operations. Paragraph (C) is revised to assure that permits be conditioned to require that adequate bond coverage be in effect at all times.

The Federal rules at 30 CFR 800.11 address the requirements to file a bond. 30 CFR 800.11(b) was remanded by the U.S. District Court of the District of Columbia for being inconsistent with SMCRA. The court held that since 30 CFR 800.11(b) allows bond to be posted for less than the entire area within the permit area upon which surface coal mining and reclamation operations will be conducted during the initial permit term, 30 CFR 800.11(b) is inconsistent with section 509 of SMCRA. OSMRE suspended in part 30 CFR 800.11(b) on February 21, 1985 (50 FR 7278). Ohio was informed by letters dated November 6, 1985, and September 30, 1986, that OAC 1501:13–7–01(A)(6) allows the use of incremental bonding and is, therefore, inconsistent with the court decision. The Secretary has appealed the determination that incremental bonding is inconsistent with SMCRA. The Director is deferring action on the approval of the OAC 1501: 13–7–01(A)(6) pending a decision on the appeal.

30 CFR 800.15 addresses adjustments to the amount of bond. 30 CFR 800.15(c) indicates that a permittee may request reduction of the amount of bond upon submission of evidence to the regulatory authority proving that the permittee's method of operation or other circumstances reduces the estimated cost to reclaim the area. It also indicates that bond adjustments which involve undisturbed areas are not considered bond release subject to the procedures of 30 CFR 800.40. 30 CFR 800.11(b) indicates that the bond must cover the

entire area of the permit upon which surface coal mining and reclamation operations will be conducted. The Director finds that the amendment to OAC 1501:13–7–01(B) is no less effective than the Federal rules cited above.

30 CFR 800.4(g) requires the regulatory authority to condition permits to require adequate bond coverage at all times. The Director finds that OAC 1501:13–7–01(C)(6), which contains a similar requirement, is no less effective than the Federal rule.

23. OAC 1501:13–7–02 Amount and Duration of Performance Bond

Paragraph (A) is amended to include a statement which allows the operator's financial liability for repairing subsidence damage to be satisfied by the liability insurance policy. Paragraph (C) is revised to address the period of liability under the performance bond. Information on the period of responsibility is deleted and is now addressed in OAC 1501:13–9–15. 30 CFR 817.121(b)(2) indicates that compensation for subsidence damage may be accomplished by purchase prior to mining of a noncancellable premium prepaid insurance policy. 30 CFR 800.13 addresses the period of liability for performance bond. The Ohio amendments are identical to the Federal standards. The Director finds that amendments to OAC 1501:13–7–02 are no less effective than the Federal regulations.

24. OAC 1501:13–7–03 Form, Conditions, and Terms of Performance Bonds

Several nonsubstantive and grammatical corrections were made to this section. Paragraph (B)(5)(g) is revised to set requirements upon the operator in the event the surety company is incapacitated. Paragraph (B)(6) makes changes to the requirements of collateral bonds and paragraph (B)(7) addresses letters of credit. Paragraph (B)(8) addresses requirements to be followed in the event that a bank holding the bond becomes incapacitated. Paragraph (B)(9) is revised to address notification requests by persons with an interest in collateral posted as bond. The Federal rules at 30 CFR 800.16 address the terms and conditions of bonds and 30 CFR 800.21 address collateral bonds. The Ohio amendments are identical to the Federal standards. The Director finds that the proposed revisions are no less effective than the Federal rules.

25. OAC 1501:13–7–04 Self-bonding

This section addresses new requirements for self-bonding. The rule, as written, is nearly identical to the Federal Rules in 30 CFR 800.23. The Director finds the amendment is no less effective than the Federal provisions.

26. OAC 1501:13–7–05 Procedures, Criteria, and Schedule for Release of Performance Bond

Revisions to paragraph (A) include the items of information required to be filed with a request for bond release. The information required for each phase is addressed. Also revised are certain requirements to be met in the public notice process of requested bond releases, in the changing of bond release hearings to informal conferences, and in other notification procedures. Paragraph (B) is revised to delete resoiling as a requirement for a phase I release and to add it to the phase II requirements. Other revisions to paragraph (B) include rewording of the prime farmland requirements for a phase II release and specifying success standards for a phase III release. Bond amounts to be released under each phase are revised to percentages instead of dollar amounts. The Federal rules in 30 CFR 800.40 address the requirements to release performance bond. The Ohio amendments are similar to the Federal regulations. The Director finds that the amendments to OAC 1501:13–7–05 are no less effective than the Federal rules.

27. OAC 1501:13–7–06 Performance Bond Forfeiture Criteria and Procedures

This section is revised with several nonsubstantive and grammatical corrections as well as substantive revisions. The amendment includes revisions to the bond forfeiture criteria, show-cause for abandonment procedures, forfeiture procedures, reclamation by the surety, and reclamation by the Chief. 30 CFR 800.50 addresses forfeiture of bonds under the Federal rules. The Ohio amendments are similar to the Federal regulations. The Director finds that amendments to OAC 1501:13–7–06 are no less effective than the Federal regulations.

28. OAC 1501:13–7–07 Liability Insurance

This section is amended to require that a permittee must have liability insurance except for reclamation operations performed by another agent in which case the agent must have the required insurance. The insurance must be in adequate amounts as prescribed in the rule. For applications received after this rule, the amounts are increased. The Federal rule at 30 CFR 800.60 addresses liability insurance. The Ohio amendments are similar to the Federal regulations. The Director finds that amendments to OAC 1501:13–7–07 are no less effective than the Federal rule.

29. OAC 1501:13–7–08 Bond Release Conference

This section sets out the requirements to be met for requests and procedures for holding bond released conferences. It also includes requirements for the Chief to issue decisions for bond releases and how appeals of those decisions are to be made. 30 CFR 800.40(f) addresses hearings on bond release. The Ohio amendments are similar to the Federal requirements. The Director finds that OAC 1501:13–7–08 is no less effective than 30 CFR 800.40.

30. OAC 1501:13–8–01 Coal Exploration and Performance Standards

This section has been totally revised. The amended rule is nearly identical to the Federal rule in 30 CFR Part 815 with the exception of two additional requirements not specified in the Federal rule. Ohio has also required that the use of explosives in exploration operations be in accordance with OAC 1501:13–9–06 and that the Chief be notified upon completion of exploration and reclamation. The Ohio amendments are similar to the Federal requirements. The Director finds that OAC 1501:13–8–01 is no less effective than 30 CFR Part 815.

31. OAC 1501:13–9–01 Signs and Markers

This section is revised by nonsubstantive changes and by the deletion of the requirement to post blasting signs. This requirement is now found in OAC 1501:13–9–06. The Director finds that the revisions are no less effective than the Federal regulations in 30 CFR 816.11/817.11.

32. OAC 1501:13–9–04 Protection of the Hydrologic System

Ohio has proposed substantial revision to this section. Paragraph (A) is revised to incorporate similar language concerning the general protection of the hydrologic system as that found in 30 CFR 816.41/817.41(a) of the Federal rules. Paragraph (B) is revised to include specific requirements to be met in obtaining an exemption from directing all drainage to a sediment pond. Other revisions are incorporated to include newly defined terms and phrases. Paragraph (B) incorporates changes found in 30 CFR 816.42/817.42 and 816.46/817.46 (b) and (e). Paragraph (C) has been amended to address maintenance of facilities. Similar provisions are found in 30 CFR 816.46/817.46(b)(5). Paragraph (D) now requires

sediment control measures nearly identical to those required by the Federal rules in 30 CFR 816.45/817.45. Paragraph (E) is proposed to address stream buffer zones with very similar language to that in 30 CFR 816.57/817.57. Paragraph (F) addresses diversions and is nearly identical to 30 CFR 816.43/817.43 with the exception of using a 24-hour storm event in the design instead of the six-hour event used in the Federal rules. Paragraph (G) concerns siltation structures and is nearly identical to 30 CFR 816.46/817.46 with the exception of using a 24-hour storm event instead of a six-hour event in the design of ponds that meet the criteria of 30 CFR 77.216(a). Paragraph (H) sets out requirements on impoundments. Again the Ohio proposal is very similar to the Federal regulations in 30 CFR 816.49/817.49. Differences include the stability criteria used and the storm event used in design. The Ohio rule refers to the standards in Stat. 666, 16 U.S.C. 1006 instead of the 1.5 and 1.2 safety factors used in the present Federal rules. OSMRE revised 30 CFR 816.49/816.49 (a)(3) as published in the **Federal Register** on September 26, 1983, to adopt the 1.5 and 1.2 safety factors instead of referencing the standards in 16 U.S.C. 1006. In the preamble for the final rule OSMRE noted that the safety factors of 1.5 and 1.2 are comparable to those safety factors in U.S.C. 1006 but are simplified. Therefore, the Ohio requirement is as effective as the Federal requirement. Ohio also defines "sumps" and specifies criteria for their use in approved drainage control systems. Although the Federal rules do not address sumps, their use as a secondary sediment structure and haulroad drainage control structure does not conflict with the Federal rules. Paragraph (I) addresses discharge structures and is nearly identical to 30 CFR 816.47/817.47. Revisions to paragraphs (J), (K), and (L) are nonsubstantive. Paragraph (M) addresses surface water protection and is similar to 30 CFR 817.41/816.41(d). Paragraph (N) addresses monitoring of surface and ground water and is similar to those requirements in 30 CFR 816.41/817.41 (c) and (e). Paragraph (O) concerns transfer of wells and is nearly the same as 30 CFR 816.41/817.41(g). Revision to paragraph (P) adds an additional requirement to the water replacement standards which specifically requires reimbursement of costs to the landowner to obtain water until the supply is replaced. Paragraph (P) addresses water supply replacement similar to the Federal rule at 30 CFR 816.41(h). Revision to paragraph (Q) concerning discharges into underground mines is nearly identical to 30 CFR 816.41(i) and 30 CFR 817.41(h). The Director finds that all revisions proposed to OAC 1501:13–9–04 are no less effective than the Federal rules listed above.

33. OAC 1501:13–9–06 Use of Explosives

Revisions to this section were previously submitted by Ohio under program amendment number 26 with the exception of some minor changes. Program amendment 26 was approved by the Director in the **Federal Register** (51 FR 39528, October 29, 1986). Since this approval, Ohio revised paragraph (A) to address blasting in coal exploration operations. Ohio promulgated this rule effective March 1, 1987. The Director finds that the addition of coal exploration operations to the blasting rules is no less effective than 30 CFR 816.61/817.61.

34. OAC 1501:13–9–07 Disposal of Excess Spoil

The proposed rule submitted with this amendment has been replaced by the rule submitted and revised under program amendment number 23. Program amendment number 23 received the Director's approval in the **Federal Register** published on March 5, 1987 and September 18, 1986 (52 FR 6797 and 51 FR 33034, respectively). OAC 1501:13–9–07 was promulgated by Ohio and has an effective date of January 15, 1987. Any differences in the rule submitted under amendment number 25 have been superseded by the final rule effective January 15, 1987. The Director has previously acted on this rule as indicated above and found it to be no less effective than the Federal provisions.

35. OAC 1501:13–9–08 Protection of Underground Mining

This section is revised to require joint approval by the State regulatory authority, Federal Mine Safety and Health Administration, and State Division of Mines for mining within 500 feet of an underground mine. This revision closely resembles the Federal requirements in 30 CFR 816.79. The Director finds the amendment to be no less effective than the Federal rule.

36. OAC 1501:13–9–09 Disposal of Coal Mine Wastes and Non-Coal Mine Wastes

This section has been totally rewritten. Paragraph (A) closely resembles the Federal standards in 30 CFR 816.81/817.81 with the following exceptions. Paragraph (A)(4) requires foundation investigations and laboratory testing as deemed necessary by the certifying engineer, (A)(5) sets compaction requirements, and (A)(7) allows coal mine waste disposal in excess spoil fills in accordance with OAC 1501:13–9–07(k). Paragraph A(4) is inconsistent with 30 CFR 816.81/817.81(d) in that it allows the certifying engineer to determine the levels of foundation investigation and laboratory testing. OSMRE in promulgating 30 CFR 816.81/817.81(d) (48 FR 44014, September 26, 1983) indicated in the preamble that only the testing of the materials to be used in the embankment can be determined by the engineer. Paragraph (B) is also nearly identical to 30 CFR 816.83/817.83 with the exception that the diversion design storm event is 24–hour instead of six-hour.

Again, paragraph (C) is nearly the same as 30 CFR 816.84/817.83 with the exception of the design storm being 24–hour instead of six-hour. Paragraph (D) is the same as 30 CFR 816.87. Paragraph (E) is nearly identical to 30 CFR 816.89/817.89 with the exception of the lack of a corresponding section to 30 CFR 816.89/817.89(c). OSMRE suspended 816.89/817.89(d) (51 FR 41962, November 20, 1986) as per the decision by the U.S. District Court of the District of Columbia. It was suspended due to the lack of public notice and comment. The Ohio rule does not suffer from this deficiency. However, the Ohio rule does not prohibit disposal of non-coal mine waste in a refuse pile or impoundment structure, not does it prohibit excavation for a non-coal waste disposal site within eight feet of a coal outcrop or storage area. The Director finds that the amendment to OAC 1401:13–9–09 is no less effective than the Federal rules cited above except for the lack of an Ohio counterpart to 30 CFR 816.89/817.89(c) and the need to require foundation investigations and laboratory testing consistent with 30 CFR 816.81/817.81(d). Ohio must amend its program to be no less effective than the Federal standards.

37. OAC 1501: 13–9–10 Training, Examination, and Certification of Blasters

Revisions to this section include minor grammatical changes, deletion of language concerning approval of the rule by OSMRE, and adding language which requires blasting on coal exploration operations to be conducted by a certified blaster. The Federal rules in 30 CFR Part 850 address certification of blasters. The Director finds that the revisions proposed to OAC 1501:13–9–10 are no less effective than the Federal regulations.

38. OAC 1501: 13–9–11 Protection of Fish, Wildlife, and Related Environmental Values

This section has been amended by adding that disturbances and adverse impacts on fish and wildlife be minimized to the extent possible using the best technology currently available. Paragraph (B) prohibits mining which would jeopardize endangered or threatened species, result in destruction of critical habitats, or result in unlawful taking of eagles, nests, or eggs. It also requires the Chief to consult with other wildlife agencies upon reports from operations of the presence of protected wildlife. Paragraph (C) encourages permanent ponds for wildlife use where cropland, pastureland, or undeveloped land uses are involved. Paragraph (D) sets out requirements for powerlines and haulroads as they apply to wildlife. OSMRE has proposed rules at 30 CFR 816.97 to address concerns of the U.S. District Court of the District of Columbia. (51 FR 19498, May 29, 1986.) These rules have not yet been finalized. The Director finds that the amendments proposed to OAC 1501:13–9–11 are no less effective than the current Federal rule at 30 CFR 816.97/817.97. However, when a new Federal rule is promulgated with changes to 30 CFR 816.97/817.97, Ohio will be notified of any changes that may be necessary to remain no less effective than the Federal rule.

39. OAC 1501:13–9–13 Contemporaneous Reclamation

This section has been rewritten to include an introductory paragraph nearly identical to the Federal requirement in 30 CFR 816.100/817.100. It also sets the minimum standards to be met by the operator for contemporaneous reclamation. The Director finds that the standards proposed are no less effective than the Federal rules.

40. OAC 1501:13–9–14 Backfilling and Grading

Paragraph (A) is revised to change rule references. Paragraph (B) is revised to indicate that the five-degree tolerance on slope measurements applies, provided that it does not conflict with the approved post-mining land use. Paragaph (C) is revised to require a minimum long-term safety factor of 1.3 for final slopes and to delete language which exempted previously mined areas from approximate original contour criteria. Paragraph (D) is added to require all spoil to be placed in the mined out area unless it is excess spoil. Paragraph (H) is revised to require repair of rills and gullies when they disrupt the post-mining land use or contribute to a violation of water quality standards. Paragraph (I) is revised to set our different requirements for the disposal of coal mine waste. Paragraph (K) spells out when variances from approximate original contour are permitted and when highwalls do not have to be totally eliminated due to previous mining. The Federal rules in 30 CFR 816.102/817.102, 816.106/817.106 and 819.19 address the backfilling and grading of areas affected by mining and augering. The Director finds that proposed changes to OAC 1501:13–9–14 are no less effective than the Federal rules.

41. OAC 1501:13–9–15 Revegetation

Paragraph (A) of this section is revised by defining the following terms: countable tree, ground cover, herbaceous species and woody plants. Paragraph (B) describes the general requirements of revegetation. Paragraph (C) explains the requirements to be met for the use of natural and introduced plant species. This section allows for certain exceptions for temporary cover and for cropland uses. Paragraph (D) requires seeding to be accomplished during the first normal period for favorable planting conditions following topsoil replacement. Paragraph (E) sets out mulching requirements and information that an operator must submit to show that mulch is not necessary. Revisions to paragraph (F) (1) and (2) indicate how success of revegetation is to be judged and when the period of extended responsibility begins. Paragraph (F)(3) indicates that vegetation must be established to obtain a phase II release and defines "established" on areas to be planted only with herbaceous species. An area can be released for phase III when the extended period of responsibility expires and the production standard and ground cover standards are met. The ground cover standards are also spelled out. Paragraph (F)(4) sets standards for cropland other than prime farmland. Revisions now require the area to meet ground cover standards of paragraph (F)(3)(c) to obtain a phase II release. To be eligible for a phase III release on cropland, the revision requires that when the five-year period of extended responsibility expires, the yield data of crop harvest from the last two years of the responsibility period equals or exceeds the average county yield for comparable crops. Paragraph (F)(5) sets out standards for revegetation success on prime farmland. Success is to be determined on the basis of an average crop production from the reclaimed area compared to the target yields specified in the Ohio Cooperative Extension Service Bulletin Number 685. Measurement of productivity must be initiated within ten years of resoiling. Reference crops must be selected from crops most commonly produced on surrounding prime farmland and, where row crops are dominant, the row crop requiring the greatest rooting depth must be used. To obtain a phase II release, the revisions require one year of crop harvest to equal or exceed the target yield. For a phase III release to be obtained, the five year period must expire and yield data from the last two years of the period, plus the one year submitted for the phase II, must equal or exceed the target yield.

Adjustments to crop yields can be made if approved by the Chief and the U.S. Soil Conservation Service for certain reasons. Paragraphs (F) (6) and (7) set out requirements of success of revegetation for industrial, residential and commercial land uses. Paragraph (F)(8) indicates success requirements for areas which require the planting of woody plants as the primary vegetation. Species must be compatible with the post-mining land use. Revegetation shall be determined to be successful for phase II bond release when there are at least six hundred trees or shrubs per acre and the herbaceous ground cover provides thirty percent cover or is sufficient to control erosion. To obtain a phase III release, the five-year period must expire and the area must have at least 400 countable trees per acre and sufficient herbaceous cover to control erosion or 30 percent cover, whichever is greater. Paragraphs (F) (9), (10), and (11) indicate requirements for other land uses including recreation land, commercial and non-commercial forest land, and fish and wildlife habitats.

The Federal rules in 30 CFR 816.111/817.111 describe the general requirements to be met for revegetation. OAC 1501:13–9–15 (A), (B), and (C) are nearly identical to 30 CFR 816.111/817.111. 30 CFR 816.113/817.113 and 816.114/817.114 address timing of revegetation and mulching and are very similar to OAC 1501:13–9–15 (D) and (E). 30 CFR 816.116/817.116 addresses standards for success and requires statistically valid sampling techniques for measuring success to be selected by the regulatory authority and included in the approved program. The sampling techniques shall use a 90 percent statistical confidence interval. The proposed Ohio rule does not identify a statistically valid sampling technique. However, along with the submission of this amendment, Ohio defended the current method of vegetative success

analysis. The content of Ohio's submission is quoted below:

Item Number 33 requires that the Division adopt a statistically valid sampling technique for measuring success standards. The Division contends that, although its method of measuring revegetation is substantially different from the federal government's random sampling method, the Division is at least as effective as Federal regulations in this regard. The Division's rule, OAC 1501:13–9–15, does not require an estimation of the average cover on reclaimed land by the random placement of points of plots. The Division inspectors are trained to review the entire area proposed for bond release, rather than some smaller, statistically representative sample of the whole. In reviewing the success of ground cover, the Division inspectors do not approve any area proposed for release that has more than a total of 1 percent of the total area with less than 30 percent ground cover. In addition, no single area with less than 30 percent cover can exceed the lesser of 3,000 square feet or 0.3 percent of the total area proposed for release. No more than 10 percent of the area can have a cover of between 30 percent and 75 percent and at least 89 percent of the area must have at least 75 percent ground cover. In other words, the Division does not approve areas which contain large or numerous patches of lesser vegetation.

Random sampling, even when carried out in a statistically valid manner, will not always reveal that the area has large or numerous patches of poor vegetation, which is why the results of random sampling reviews are always qualified by an expression of sampling error. Ohio has not need to conform to a 90 percent statistical confidence interval because it does not utilize a sampling technique.

OSMRE has expressed concern regarding the manner in which the Division's inspectors are trained to evaluate the success of vegetation. New inspectors undergo an intensive training period, followed by an evaluation by their supervisors. Inspectors are trained during field inspections to distinguish the difference between barren land (land with less than 30 percent cover), sparse land (land with between 30 percent and 75 percent cover), and adequately vegetated land (land with at least 75 percent cover). They are also trained in the field measurement of areas that are less than adequately vegetated, so they are able to determine the percentage of the total area that is barren to sparse. The inspectors' initial training is supplemented periodically by refresher training courses for all staff.

In addition, inspectors are taught to pay particular attention to potential problem areas. Since inspectors conduct complete inspections of the areas affected by mining each calendar quarter, inspectors are well-acquainted with the areas to which they are assigned. At the time of a bond release inspection, inspectors not only review 100 percent of the area proposed for release, but also scrutinize carefully those areas which previously have had problems with erosion or poor revegetation, thereby providing another measure of protection for those areas. Unlike the Federal program, moreover, the Ohio program does not permit problem areas to be separated from the whole area proposed for release so that operators can obtain a release for all parts of a permit except the problem areas.

Ohio has indicated through the above information that they believe that since they do not do an evaluation of revegetation by a sampling technique, there is no need to have a statistically valid method, since their method is based on a 100 percent sample. OSMRE agrees that evaluation of the whole area is a valuable evaluation tool in conjunction with a sampling method to evaluate an area. However, the technique used by Ohio is highly dependent upon the training, experience, and objectivity of the inspector and can result in considerable variability among inspectors. Ohio has not provided information to demonstrate that the method utilized will achieve similar results to those required by the Federal regulations. Ohio did not submit information that explains their vegetative measurement evaluation techniques, that shows that their method is as effective as a statistically valid sampling technique, and that shows that the method produces a result with a 90 percent statistical confidence interval. Information did not include, at a minimum, comparison of Ohio's method to statistically proven methods, test plot results using different methods, training programs required of inspectors for the evaluation of vegetative success, support of Ohio's method by experts and agencies involved with vegetative evaluation, initiation of a training and testing program to ensure consistent review of vegetative success, and other items to show that Ohio's method is as effective as those outlined in 30 CFR 816.116/817.116. Therefore, the Director finds that Ohio's method of evaluation of revegetation in OAC 1501:13–9–15 is less effective than the Federal rules. The Director is, therefore, requiring Ohio to amend its program to be no less effective than the Federal regulations.

30 CFR 800.40(c)(2,3) sets standards for when plase II and III bond releases may occur and 30 CFR 816.116/817.116(c) sets standards for the beginning of the period of extended responsibility. The standards set by Ohio in OAC 1501:13–9–15(F) for phase II and III releases are broken down by different land use.

Standards under paragraph (F)(3) are similar to those addressed in the above-mentioned Federal rules with the exception of the ground cover standards discussed. Standards under (F)(4) address cropland, other than prime farmland. 30 CFR 816.116(b)(2) requires crop production on the revegetated area to be at least equal to that of a reference area or such other success standards approved by the regulatory authority. Paragraph (F)(4)(b) allows of bond for phase II to occur when species planted meet, at a minimum, the ground cover standards of paragraph (F)(3)(c). In order to meet the ground cover standards of paragraph (F)(3)(c), a forage planting would have to occur even in instances where the final vegetation will be row crops. Ohio has confirmed their intent to impose this requirement. This requirement differs from the Federal requirement but is effective. 30 CFR 800.40(c)(2) indicates that a phase II release can occur upon establishment of revegetation in accordance with the approved reclamation plan. Paragraph (F)(4)(c) indicates standards for a phase III release on cropland. The Federal rules at 30 CFR 800.40(c)(3) address phase III release and 30 CFR 816.116/817.116(c)(2) addresses success standards. 30 CFR 816.116/817.116(c)(2) has been suspended by OSMRE (51 FR 41962, November 20, 1986) since it permits revegetation success to be measured over less than the growing seasons of the last two years of the responsibility period. 1501:13–9–15(F)(4)(c) requires yield data on crop harvest from the last two years of the responsibility period to equal or exceed the average county yield for comparable crops, so it is not affected by the suspension. 30 CFR 816.116/817.116(b)(2), as stated above, requires crop production to be equal to or exceed that of a reference area or other success standards approved by the regulatory authority. In 48 FR 40151, September 2, 1983 (preamble to OSMRE final rule at 30 CFR 816.116), OSMRE addresses comments concerning the use of county average yields. The language does not prohibit the use of a county yields. However, it does indicate that the standard must be representative of unmined lands in the area being reclaimed. A county-wide average is considered to be representative of all soils and not just soils on unmined areas.

Ohio's response accompanying the revisions to this amendment intended to correct this deficiency was as follows:

Items 34 and 35 refer to a discussion in the preamble to the federal regulations that requires that average county yields *by soil type* be used to evaluate the success of revegetation for nonprime farmland cropland. Ohio currently uses the Ohio Crop Reporting Service to obtain information on the average county yield for crops on nonprime farmland and cropland, a source which does not provide yield data by soil type by county, but which is the only available source of crop information for Ohio that is listed by county.

Ohio Agricultural Statistics, published by the Ohio Crop Reporting Service, lists average yields by crop by county, yields which are computed using a combination of the prime farmland and other classes of cropland in that county. The Division is not aware of any other agency that records Ohio crop yield information by soil type by county. Although OSMRE's letter contends that Ohio's nonprime farmland cropland success standard is not specific to types of soils in the permitted area, the Division fails to see how it can adopt a by soil type by county standard when such information is unavailable in Ohio.

The lack of information on yields by soil type is not justification for not requiring this information to be obtained. Ohio must revise its rules to limit the average county yield to the specific soil types existing on the area prior to mining, or clarify that the average county yields to be used for comparison are only representative of unmined lands. Therefore, the Director finds that OAC 1501:13–9–15(f)(4)(c) is less effective than the Federal rules and is disapproving it. He is also requiring Ohio to amend its program to be no less effective than the Federal provisions.

Paragraph (F)(5) addresses success standards on prime farmland. Under OAC 1501:13–9–15(F)(5)(e), Ohio indicates that the five-year period of extended responsibility shall begin, for row crops, in accordance with paragraph (F)(4)(b) and for hay crops in accordance with paragraph (F)(2)(b). It appears that the reference to paragraph (F)(4)(b) should actually be to paragraph (F)(4)(a) which addresses the start of the five-year period for cropland.

The Federal rules at 30 CFR 800.40(c)(2) indicate that no part of a bond shall be released ". . . until soil productivity for prime farmlands has returned to the equivalent levels of yield as non-mined land of the same soil type in the surrounding area." 30 CFR 823.15 addresses revegetation and soil productivity on prime farmlands. 30 CFR 823.15(b) requires measurement of soil productivity to begin within ten years and to be measured on a representative sample or on all of the reclaimed prime farmland. The measurement method must be a statistically valid sampling technique at a 90 percent or greater confidence level. Ohio has explained its measurement procedure in Division Advisory Memo No. 54 for yield verification on prime farmland and cropland. This procedure is currently being reviewed by the U.S. Soil Conservation Service. 30 CFR 823.15(b)(6) and (7) sets requirements for reference crops. This section requires reference crops to be selected from crops most commonly produced on surrounding prime farmland. Where row crops are used as the reference crop, the row crop requiring the greatest rooting depth must be used. OAC 1501:13–9–15(F)(5)(d) meets this requirement.

30 CFR 823.15(b)(3) requires a minimum measurement period of three years for determining average annual crop production prior to release of bond. Under OAC 1501:13–9–15(F)(5)(f) Ohio only requires one year of yield data showing that the crop harvest equals or exceeds the target yields specified to obtain a phase II release. Paragraph (F)(5)(g) requires two additional years of yield data to obtain a phase III release. This change was made on the December resubmission of this amendment and was accompanied by the following explanation:

> The final item that Ohio would like to discuss concerns the success standards for prime farmland. In the May 16, 1986, version of program amendment number twenty-five, Ohio proposed that three years of yield data be required on prime farmland prior to a phase II bond release. Ohio made this proposal as a result of a recommendation from the Eastern Technical Center (ETC). This recommendation, which was later spelled out in an August 25, 1986, memorandum from Lewis M. McNay of the ETC to Nina Rose Hatfield, interpreted the requirements of 30 CFR 800.40(c)(2) and (c)(3), and 30 CFR 823.15(b)(3) as meaning that three years of yield data were required for a phase II release, and that no additional data was required for a phase III release. Ohio has carefully reviewed this recommendation, and believes that it does not accurately reflect the intent of the federal regulations. Ohio requests, therefore, that this matter be submitted to and reviewed by the Solicitor's Office of U.S. Department of the Interior. Ohio will await a written decision from the Solicitor's Office prior to making changes to its current proposed rule revision in this regard.

Since the December 1, 1986 submission, OSMRE has responded to an inquiry from the Ohio Mining and Reclamation Association addressing this same issue. The Director responded by letter dated February 2, 1987 to the Ohio Mining and Reclamation Association that three years of yield data is required for a phase II release on prime farmland. In response to Ohio's request, the Solicitor's Office has reviewed the matter and has concurred with OSMRE's previous findings. Therefore, Ohio must revise its rules so that at least three years of yield data are required to obtain a phase II release on prime farmland. The Director is also requiring that Ohio not approve release of phase II bond without the required three years of yield data. Ohio uses target yields specified in the Ohio Cooperative Extension Service Bulletin Number 685 as the basis to determine comparable yields on restored prime farmland. 30 CFR 823.15(b)(7) allows current yield records of representative local farms with the concurrence of the U.S. Soil Conservation Service. The Technical and Standard Specifications issued by the U.S. Soil Conservation Service approve of the use of Bulletin 685 for target yields. These specifications are incorporated by Ohio in Division Advisory Memorandum No. 1.

30 CFR 816.116/817.116(b)(4) requires vegetation on industrial or commercial and residential land uses to be no less than that necessary to control erosion, as does OAC 1501:13–9–15(F)(6). 30 CFR 800.40(c) (2) and (3) address phase releases. 30 CFR 816.116(b)(3) addresses requirements for vegetative success on areas developed as fish and wildlife habitat, recreation, shelter belts, or forest products. Stocking requirements are to be set by the regulatory authority with consultation with State agencies in forestry and wildlife. 30 CFR 816.116/817.116(b)(3)(ii) was suspended by OSMRE (51 FR 41962, November 20, 1986) insofar as it permits the counting of trees and shrubs which have been in place less than the applicable period of responsibility in determining revegetation success. This suspension was as a result of a U.S. District Court of the District of Columbia decision. Ohio's definition of "countable tree" under OAC 1501:13–9–15(A) requires the tree or shrub to be in place at least five years. The Ohio rule, therefore, is in accordance with the Court's findings. The Ohio standard for a phase II release is within those outlined in 30 CFR 800.40(c)(2). However, Ohio does not specify a method for determining that trees and shrubs are established as was one under OAC 1501:13–9–15(F)(3)(b) for herbaceous species. Ohio may want to consider criteria for determining establishment of woody species. 30 CFR 800.40(c)(2) does require that vegetation be established for a phase II release.

The Director finds, based upon the above discussions, that proposed amendments to OAC 1501:13–9–15 are no less effective than the Federal requirements in 30 CFR 800.40 and 30 CFR 816.116/817.116 with the following exceptions:

Ohio does not identify a statistically valid sampling technique for the evaluation of vegetation or justify its current method to show that it has a 90 percent confidence level. Therefore the Director is disapproving Ohio's method of evaluation of revegetation and requiring Ohio to revise its method to a statistically valid method.

Under OAC 1501:13–9–15(F)(4)(c), Ohio requires that, on crop land other

than prime farmland, yield data from crop harvest during the last two years of the period of extended responsibility must meet or exceed the average county yield for comparable crops to obtain a phase III release. This requirement is less effective than 30 CFR 816.116/817.116(a)(2) since an average county yield is not specifically representative of unmined lands in the area being reclaimed. Therefore the Director is disapproving OAC 1501:13–9–15(F)(4)(2) and is requiring Ohio to submit information to clarify that the average county yields to be used are only representative of unmined lands or to revise its rules to limit the average county yield to specific soil types.

OAC 1501:13–9–15(F)(5)(f) is less effective than 30 CFR 800.40(c) (2) and (3) and 30 CFR 823.15(b)(3) in that it allows phase II bond release with less than three years of yield data to verify that prime farmland has been returned to equivalent levels of yield as non-mined prime farmland of the same soil type. Therefore, the Director is disapproving OAC 1501:13–9–15(F)(5)(f) and is requiring Ohio to revise its rules to require three years of yield data before releasing a phase II bond. Also Ohio is not to release phase II bonds without the required three years of yield data.

42. OAC 1501:13–10–01: Roads Performance Standards

This section addresses road classification systems, performance standards, and design and construction; road locations, maintenance, and reclamation; and primary roads. The proposed amendment is nearly identical to the Federal rules in 30 CFR 816.150/817.150 and 30 CFR 816.151/817.151. Although the Federal rules have been suspended (50 FR 7278, February 21, 1985) for inadequate notice and public comment, the Ohio rule does not suffer from this defect. The Director finds that OAC 1501:13–10–01 is no less stringent than Section 515(b)(17) of SMCRA.

43. OAC 1501:13–13–02: Auger Mining, Additional Performance Standards

Paragraphs (A), (B), (C), and (D) as proposed are nearly identical to 30 CFR 819.12, 819.13, 819.15, and 819.17. Paragraph (E) addresses the general requirements of 30 CFR 819.19(a) and references the backfilling and grading requirements of OAC 1501;13–9–14. Paragraph (F) closely resembles 30 CFR 819.21. Paragraph (G) is similar to 30 CFR 819.19(b) and incorporates remining requirements by reference. The Director finds that OAC 1501:13–13–02 is no less effective than the requirements of 30 CFR Part 819.

44. OAC 1501:13–13–03: Operations on Prime Farmland

Revisions to this section are mostly grammatical and nonsubstantive. Ohio has replace the term "A horizon" with "topsoil" and requires alternative material, if approved, to have greater productive capacity than that existing prior to mining. Paragraph (B) incorporates U.S. Soil Conservation Service Soil Reconstruction Specifications as required by 30 CFR 823.14. The Director finds that the amendments proposed to OAC 1501:13–13–03 are no less effective than 30 CFR Part 823.

45. OAC 1501:13–13–04: Mountaintop Removal Mining

Revisions to this section are grammatical and nonsubstantive. Other revisions clarify the rule and revise references. The Director finds the revisions are no less effective than the Federal rules in 30 CFR Part 824.

46. OAC 1501:13–13–05: Steep Slope Mining

Revisions to this section are nonsubstantive with the exception of a revision to paragraph (A)(2) which limits disturbance above the highwall. The Director finds that the revisions proposed are no less effective than the Federal rules in 30 CFR 816.107/817.107.

47. OAC 1501:13–13–06: Coal Preparation Plants and Support Facilities Not Located at or Near the Mine Site or Not Within the Permit Area For a Mine

Revisions to this section include grammatical and nonsubstantive changes. Paragraph (A) includes a requirement to obtain bond and to operate the facility in accordance with these rules. Revisions to this rule are very similar to the requirements of 30 CFR 827.12. The Director finds that the proposed revisions are no less effective than 30 CFR 827.17.

48. OAC 1501:13–14–01: Inspections

Paragraph (B) is revised to afford right-of-entry on lands where surface coal mining operations are believed to be taking place. Paragraph (E) adds inspection responsibility on exploration operations as are necessary to ensure compliance. Paragraph (G) is revised to give citizens the right to request an inspection if there is reason to believe that a violation exists (not only imminent danger violations.) Paragraph (H) is amended to require that a person alleged to be in violation be given copies of the results of informal reviews. Paragraph (K) revises the requirements on compliance reviews and conferences. The Federal rules in 30 CFR Part 840 address inspections by a state regulatory authority. The Director finds that the proposed amendments are no less effective than 30 CFR Part 840.

49. OAC 1501:13–14–02: Enforcement

This section is revised with grammatical and nonsubstantive changes among others. Paragraph (A) is amended to include language that mining without a permit is considered a condition or practice which causes or can reasonably be expected to cause imminent environmental harm with one exception and requires the issuance of a cessation order. Also added under paragraph (A) is a requirement that the Chief review all failure-to-abate cessation orders for patterns of violations as required under paragraph (D). The reference to paragraph (D) appears to be a typographical error which should reference paragraph (C). Paragraph (C) is substantially revised to address the requirements of show-cause orders and hearings. Paragraph (D) is revised to indicate that mailing of enforcement actions is to occur to the address listed in the permit. Paragraph (E) is amended to indicate that hearings concerning the cessation of mining are to be held in accordance with section 1513.13 of the Ohio Revised Code and the notice or order will not expire if the hearing is waived by the person it was issued to. Ohio has also submitted an interpretation of the paragraph by letter dated October 27, 1987, that unless the hearing is requested by the permittee it is deemed to be waived and a hearing will not be held. The Federal rules in 30 CFR Part 843 address enforcement procedures and 43 CFR 4.1190 through 4.1196 address show-cause proceedings. The Director finds the provisions and amendments to OAC 1501:13–14–02 no less effective than the Federal rules.

50. OAC 1501:13–14–03: Civil Penalties

Grammatical and nonsubstantive changes have been made throughout this section. Paragraph (C) is amended to describe negligence and good faith in more specific terms. Paragraph (D) adds language to indicate that penalties on failure-to-abate cessation orders are in addition to the penalty on the original violation. Paragraph (E) now requires the Chief to issue a proposed assessment within 30 days of the issuance of the notice or order and requires the recipient of the proposed assessment to be advised of the right to an informal conference. Paragraph (F) is new and sets requirements for informal assessment conferences. Paragraph (G)

is substantially revised and sets out requirements for requesting a hearing with the Reclamation Board of Review concerning civil penalties. Paragraphs (H) and (I) are revised to address appeal of the Board's decision and final payment of penalties. The Federal rules under 30 CFR Part 845 address civil penalties and assessment conferences. The Director finds that amendments to OCA 1501:13–14–03 are no less effective than the Federal regulations.

51. OCA 1501:13–14–04: Petitions for Award of Costs and Expenses

This section is revised by deleting language concerning formal review by the Chief and now addresses only award of costs and expenses. All formal review is now directed to the Reclamation Board of Review. Appeal of a decision by the Chief concerning award of costs and expenses is to be directed to the Reclamation Board of Review. The Director finds that revisions to OAC 1501:13–4–04 are no less effective than the Federal rules in 43 CFR 4.1290 through 4.1296.

52. OAC 1501:13–14–05: Informal Conferences

This is a new section and addresses requirements for requesting and conducting informal conferences on the application for permits, revisions, or renewals of permits. The proposed rule is nearly identical to the Federal rule in 30 CFR 773.12(c). The Director finds that the proposed revision to OAC 1501:13–14–05 is no less effective than the Federal rule.

53. OAC 1513–3–03: Appearance and Practice Before the Board

This section is revised to prohibit *ex parte* contacts between representatives of the parties appearing before the Board and the Board. This rule has been subsequently revised under another program amendment submitted February 2, 1987 by the Reclamation Board of Review and is pending review by OSMRE. This Ohio rule addresses the Federal requirement found in 43 CFR 4.832. The Ohio amendment is similar to the Federal requirements. The Director finds the revision is no less effective than the Federal standard.

54. OAC 1513–3–08: Temporary Relief

This section is revised to indicate that temporary relief shall not be granted when the relief sought is the issuance of a permit which has been denied by the Chief. This rule has been resubmitted under another program amendment submitted February 2, 1987 by the Reclamation Board of Review. There is no Federal counterpart to this rule. The Director finds the revision no less stringent than SMCRA.

55. Ohio Revised Code 1513.16: Reclamation Standards

Paragraphs (H)(2) and (3) are being amended to delete language whereby requests for bond release are presumed approved if the Chief does not notify the operator within the prescribed period that reclamation is not approved. This change is proposed to eliminate a problem of improper bond releases occurring due to an untimely decision by the Chief. Section 519(c) of SMCRA states that no land shall be fully released until all reclamation requirements of the Act are fully met. The Director finds that the Ohio amendment will prevent inadvertent release of bond in accordance with SMCRA and is approving this amendment.

56. Ohio Revised Code 1513.18: Reclamation Forfeiture and Defaulted Areas Funds

Paragraph (F) is being revised to delete language which allowed reclamation on forfeited sites to be delayed until the Attorney General has completed efforts to recover additional monies. Section 515(b)(16) of SMCRA requires reclamation to proceed as contemporaneously as possible and Section 509 requires bond to be adequate for reclamation to be performed by the regulatory authority in case of forfeiture. Deletion of the language by Ohio strengthens the forfeiture process and shortens potential delays of reclamation. The Director finds that the amendment is no less stringent than the requirements of SMCRA.

IV. Public Comments

As discussed above, the Director solicited public comments and provided opportunity for a public hearing on the proposed amendments. There were no requests to testify at a public hearing and so no hearing was held. One letter of comment was received, but requested only that the record be held open for Ohio to submit a modified version of the amendment.

Pursuant to section 503(b) of SMCRA, 20 CFR 732.17(h)(10)(i), 30 CFR 884.14(a)(2) and 30 CFR 884.15, comments were also solicited from various Federal agencies with an actual or potential interest in the Ohio program. The Environmental Protection Agency concurred in the amendments. A summary of other comments received and the Director's response to them appears below.

The U.S. Soil Conservation Service (SCS) agreed with Ohio that incremental bonding be retained and that Ohio's method of reviewing the entire area for bond release was preferable to a statistically representative sample of the whole. They also commented that they agree with Ohio's use of average county yields for cropland target yields and suggested an alternative if county average was not acceptable. SCS agrees with Ohio that less than three years of yield data is needed for a phase II release on prime farmland and at least one year of yield data is needed for a phase III release. SCS recommends that ground cover be at least 75 percent and for cropland purposes yields should produce 90 percent of the estimated yields for a phase II release. They requested that OAC 1501:13–9–15 paragraph (5)(d) add a statement that "a list of recommended reference crops is currently available in the local SCS Field Office Technical Guide." SCS further commented that OAC 1501:13–9–15 only require the Chief to approve average crop yields for prime farmland without SCS concurrence. Further comments requested referencing SCS Standard and Specification for "Land Reconstruction, Currently Mined Prime Farmland" found in each SCS Field Office Technical Guide in OAC 1501:13–13–03.

The Director has noted these comments and makes the following response. Incremental bonding has been disallowed by a U.S. District Court decision. See Finding 22 for additional discussion. Ohio has not submitted adequate information to show that their method of evaluation of revegetation success is as effective as the Federal standard. See Finding 41 for further discussion. Ohio's use of average county yields as target yields on cropland does not reflect yields of unmined soils in the area. Ohio's justification of use of county yields is that no other information is available. SCS indicates that they would recommend use of the SCS Field Office Technical Guide for each soil type in that county. The Federal rules at 30 CFR 823.15(b)(3) and 800.42(c)(2) require three years of yield data to verify prime farmland restoration prior to bond release. See Finding 41 for additional discussion. In response to the ground cover and yield requirements for phase II release, 30 CFR 800.40(c)(2) only requires that vegetation be established. The Ohio rule at OAC 1501:13–9–15(F)(3)(b) addresses establishment. The recommendation to reference SCS Technical Guides in the rules has been considered but is not required by OSMRE rules. Please refer

to the findings section for additional information on these areas.

V. Director's Decision

Based on the above findings, the Director is approving the proposed amendments submitted by Ohio on May 16, 1986, with additional materials submitted on December 1, 1986, with the exception of those provisions determined to be inconsistent with SMCRA, the Federal regulations, or court decisions concerning those regulations.

The Federal regulations at 30 CFR Part 935 codifying decisions concerning the Ohio program are amended to implement this decision. The final rule is being made effective immediately to expedite the State program amendment process and to encourage states to bring their programs into conformity with the Federal standards without undue delay. Consistency of State and Federal standards is required by SMCRA.

The Director is disapproving the following provisions of the proposed amendments and is requiring that Ohio submit amendments to address these provisions:

(1) As discussed in Finding 2, the definition of "cemetery", OAC 1501:13–1–02(M) in so far as it excludes private family burial grounds.

(2) As discussed in Finding 36, OAC 1501:13–9–09(E), insofar as it allows the certifying engineer to determine the levels of foundation investigation and laboratory testing, does not prohibit disposal of non-coal waste in a refuse pile or impoundment structure, nor does it prohibit excavation for a non-coal waste disposal site within eight feet of a coal outcrop or storage area.

(3) As discussed in Finding 41, OAC 1501:13–9–15, insofar as it does not include, nor does the Ohio program include, a statistically valid sampling technique for the evaluation of revegetation and the current method has not been justified to show that it has the equivalent of a 90 percent confidence level or is no less effective than the Federal standard.

(4) As discussed in Finding 41, OAC 1501:13–9–15(F)(4)(c), insofar as it does not require yields on restored cropland, which is not prime farmland, to be restored to production levels of unmined lands in the area being reclaimed.

(5) As discussed in Finding 41, OAC 1501:13–9–15(F)(5)(f), insofar as it does not require at least three years of yield information on restored prime farmland showing that crop production equals or exceeds the specified target yields prior to a Phase II bond release. Ohio is not to approve phase II bond releases without at least three years of yield data as required.

Effect of Director's Decision

Section 503 of SMCRA establishes that a State may not exercise jurisdiction under SMCRA unless the State program is approved by the Secretary. Similarly, the Secretary's regulations at 30 CFR 732.17(a) require that any alteration of an approved State program must be submitted to OSMRE as a program amendment. Thus, any changes to the program are not enforceable by the State until approved by the Director. The Federal regulations at 30 CFR 732.17(g) prohibit any unilateral changes to approved State programs. In his oversight of the Ohio program, the Director will recognize only the statutes, regulations, and other materials approved by him, together with any consistent implementing policies, directives and other materials, and will require the enforcement by Ohio of only such provisions.

VI. Additional Determinations

1. *Compliance with the National Environmental Policy Act:* The Secretary has determined that pursuant to section 702(d) of SMCRA, 30 U.S.C. 1292(d), no environmental impact statement need be prepared on this rulemaking.

2. *Executive Order No. 12291 and the Regulatory Flexibility Act:* On August 28, 1981, the Office of Management and Budget (OMB) granted OSMRE an exemption from sections 3, 4, 7, and 8 of Executive Order 12291 for actions directly related to approval or conditional approval of State regulatory programs. Therefore, for this action, OSMRE is exempt from the requirement to prepare a Regulatory Impact Analysis and this action does not require regulatory review by OMB.

The Department of the Interior has determined that this rule will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This rule will not impose any new requirements; rather, it will ensure that existing requirements established by SMGRA and the Federal rules will be met by the State.

3. *Paper Reduction Act:* This rule does not contain information collection requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3507.

List of Subjects in 30 CFR Part 935

Coal mining, Intergovernmental relations, Surface mining, Undergound mining.

Dated: July 7, 1987.

James W. Workman,

Deputy Director, Operations and Technical Services, Office of Surface Mining Reclamation and Enforcement.

PART 935—OHIO

30 CFR Part 935 is amended as follows:

1. The authority citation for Part 935 continues to read as follows:

Authority: Pub. L. 95–87, Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1201 *et seq.*).

2. 30 CFR 935.15 is amended by adding new paragraph (bb) as follows:

§ 935.15 Approval of regulatory program amendments.

* * * * *

(bb) The following amendments submitted to OSMRE on May 16, 1986, with additional materials subsequently submitted on December 1, 1986, are approved effective upon promulgation of the revised rules and enactment of the statutory revisions by the State provided the rules and statute adopted and enacted are identical to those submitted to OSMRE. Revisions to the Ohio Administrative Code in Chapter 1501: 13–1–01, 13–1–02, 13–1–10, 13–1–13, 13–3–03, 13–3–04, 13–3–05, 13–3–06, 13–3–07, 13–4–01, 13–4–02, 13–4–03, 13–4–04, 13–4–05, 13–4–06, 13–4–08, 13–4–12, 13–4–13, 13–4–14, 13–5–01, 13–6–03, 13–7–01, 13–7–02, 13–7–03, 13–7–04, 13–7–05, 13–7–06, 13–7–07, 13–7–08, 13–8–01, 13–9–01, 13–9–04, 13–9–06, 13–9–07, 13–9–08, 13–9–09, 13–9–10, 13–9–11, 13–9–13, 13–9–14, 13–9–15, 13–10–01, 13–13–02, 13–13–03, 13–13–04, 13–13–05, 13–13–06, 13–14–01, 13–14–02, 13–14–03, 13–14–04, 13–14–05, 1513–3–03, 1513–3–08. Revisions to Ohio Revised Code Chapter 1513.16 and 1513.18.

3. 30 CFR 935.12 is amended by adding new paragraph (c) as follows:

§ 935.12 State program provisions disapproved.

* * * * *

(c) OAC 1501:13–1–02(M) is not approved to the extent that it excludes private family burial plots from the definition of cemetery.

(1) OAC 1501:13–9–09 is not approved to the extent that it allows the certifying engineer to determine the levels of foundation investigation and laboratory testing, and does not prohibit disposal of non-coal waste in a refuse pile or impoundment structure, and does not prohibit excavation for a non-coal waste disposal site within eight feet of a coal outcrop or storage area.

(2) OAC 1501:13–9–15(F)(4)(c) is not approved to the extent that it does not require yields on restored cropland, which is not prime farmland, to be restored to production levels representative of unmined lands in the area being reclaimed.

(3) OAC 1501:13–9–15(F)(5)(f) is not approved to the extent that it does not require at least three years of yield information on restored prime farmland showing that crop production equals or exceeds the specified target yields prior to a Phase II bond release. Ohio is not to approve phase II bond release on prime farmland without at least three years of yield information as required.

4. 30 CFR 935.16 is amended by adding new paragraphs (d), (e), (f), (g), and (h) as follows:

§ 935.16 Required program amendments.

* * * * *

(d) By October 15, 1987, Ohio shall amend its program at OAC 1501:13–1–02(M) to include private family burial plots under the definition of cemetery to be no less effective than 30 CFR 761.5.

(e) By October 15, 1987, Ohio shall amend its program at OAC 1501:13–9–09 to require foundation investigation and laboratory testing, to prohibit disposal of non-coal waste in a refuse pile or impoundment structure, and to prohibit excavation for a non-coal waste disposal site within eight feet of a coal outcrop or storage area.

(f) By October 15, 1987, Ohio shall amend its program to include a statistically valid technique for the evaluation of revegetation to augment its current method to be as effective as the Federal rules at 30 CFR 816.116(a).

(g) By October 15, 1987, Ohio shall amend its program at OAC 1501:13–9–15(F)(4)(c) to require yield on restored cropland, which is not prime farmland, to be restored to production levels representative of unmined lands in the area being reclaimed to be no less effective than 30 CFR 816.116(a)(2).

(h) By October 15, 1987, Ohio shall amend its program at OAC 1501:13–9–15(F)(5)(f) to require at least three years of yield information on restored prime farmland showing that crop production equals or exceeds the specified target yields prior to a phase II bond release. In the interim, Ohio is not to approve release of phase II bond without at least three years of yield data as required.

[FR Doc. 87–16243 Filed 7–16–87; 8:45 am]
BILLING CODE 4310–05–M

30 CFR Part 946

Approval of Amendment to the Virginia Permanent Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSMRE), Interior.

ACTION: Final rule.

SUMMARY: OSMRE is announcing the approval of a proposed amendment to the Virginia permanent regulatory program (hereinafter referred to as the Virginia program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). As permitted by recently revised Federal regulations, the amendments would restore the phrase "to the extent required under State law" to the regulations governing subsidence control plan requirements and subsidence protection with respect to structures and facilities.

EFFECTIVE DATE: July 17, 1987.

FOR FURTHER INFORMATION CONTACT: Mr. William R. Thomas, Director, Big Stone Gap Field Office, Office of Surface Mining Reclamation and Enforcement, P.O. Box 626, Room 214, Powell Valley Square Shopping Center, Route 23, Big Stone Gap, Virginia 24219; Telephone: (703) 523–4303.

SUPPLEMENTARY INFORMATION:

I. Background

The Secretary of the Interior approved the Virginia program on December 15, 1981. Information pertinent to the general background and revisions to the proposed permanent program submission, as well as the Secretary's findings, the disposition of comments and a detailed explanation of the conditions of approval, can be found in the December 15, 1981 **Federal Register** (46 FR 61085–61115). Subsequent actions concerning the conditions of approval and proposed amendments are identified at 30 CFR 946.12, 946.13 and 946.15.

II. Submission of Amendment

By letter dated March 20, 1987 (Administrative Record No. VA–597), Virginia submitted a proposed amendment to sections 480–03–19.784.20(f)(2) and 480–03–19.817.121(c)(2) of its Coal Surface Mining Reclamation Regulations. Section 480–03–19.784.20(f)(2) requires that subsidence control plans for underground mines include a description of the measures to be taken to mitigate or remedy any subsidence-related material damage to structures or facilities. Section 480–03–19.817.121(c)(2) requires that the permittee of an underground mine either correct any material subsidence-caused damage to structures or facilities or compensate the owner of such structures or facilities for the full amount of any diminution in value resulting from subsidence. The amendment alters the damage correction provisions of both rules by restoring the phrase "to the extent required under State law", which, as codified at 30 CFR 946.12(b)(3), was disapproved in the rulemaking announcing the Director's decision on the revised set of Coal Surface Mining Reclamation Regulations submitted by Virginia by letter of November 8, 1985 (51 FR 42548–42555, November 25, 1986).

As explained in Finding 9 of the November 25, 1986 **Federal Register** notice (51 FR 42551), the Director disapproved this phrase because, on February 21, 1985, the Secretary suspended an identical phrase contained in the corresponding Federal regulations at 30 CFR 817.121(c)(2) to comply with the decision of the U.S. District Court for the District of Columbia in *In re: Permanent Surface Mining Regulation Litigation II* (Civil Action No. 79–1144, October 1, 1984). The court remanded this provision, which specified that an operator need be responsible for subsidence damage to structures only to the extent required by State law, for failure to provide adequate notice and opportunity to comment in accordance with the Administrative Procedure Act.

On July 8, 1985, OSMRE reproposed 30 CFR 817.121(c)(2) as promulgated on July 1, 1983. In the same notice, OSMRE also requested comment on proposed revisions to 30 CFR 784.20. On February 17, 1987, after considering all public comments, OSMRE promulgated a revised version of 30 CFR 784.20 and repromulgated 30 CFR 817.121(c)(2) as it existed prior to the February 21, 1985 suspension notice (52 FR 4860–4868). Under these rules, operator responsibility for subsidence damage to structures or facilities will be determined by the applicable provisions of State law. Therefore, Virginia requested that the Director remove his disapproval of similar provisions in the Commonwealth's regulations.

The Director announced receipt of the proposed amendment in the April 22, 1987 **Federal Register** (52 FR 13252–13253) and, in the same notice, opened the public comment period and provided opportunity for a public hearing on its substantive adequacy. The comment period closed on May 22, 1987; a summary of the comments received and their disposition appears in the section of this notice entitled "Public

Comment". Since no one requested an opportunity to testify, the public hearing scheduled for May 18, 1987 was cancelled.

III. Director's Findings

After a thorough review pursuant to SMCRA and the Federal regulations at 30 CFR 732.15 and 732.17, the Director finds that the proposed amendments, as submitted on March 20, 1987, are no less stringent than the requirements of SMCRA and no less effective than the corresponding Federal regulations. As discussed in the section of this notice entitled "Submission of Amendment", the modifications to sections 480–03–19.784.20(f)(2) and 480–03–19.817.121(c)(2) of the Virginia regulations are substantively identical to the corresponding Federal regulations at 30 CFR 784.20(g)(2) and 817.121(c)(2), respectively, as revised on February 17, 1987.

IV. Public Comment

As discussed in the section of this notice entitled "Submission of Amendment", the Director solicited public comment and provided an opportunity for a public hearing on the proposed amendment. Consolidation Coal Company and the Joint National Coal Association/American Mining Congress Committee on Surface Mining Regulations submitted letters in support of the proposed amendment. No other public comments were received, and no public hearing was requested or held.

Pursuant to section 503(b) of SMCRA and 30 CFR 732.17(h)(10)(i), comments were also solicited from various Federal agencies with an actual or potential interest in the Virginia program. Acknowledgements with no comments were received from the Bureau of Land Management and the Annapolis Field Office of the Fish and Wildlife Service. The Environmental Protection Agency stated that section 480–03–19.817.121(d) provided inadequate protection to water resources. While this comment lies outside the scope of this rulemaking since the cited regulation is not the subject of this amendment, the Director notes that the Virginia provisions are identical to and thus no less effective than the corresponding Federal provisions at 30 CFR 817.121(d). No responses were received from the other agencies solicited.

V. Director's Decision

Based on the above findings, the Director is approving the proposed amendment and removing the disapproval previously placed on its provisions. However, the Director notes that the Federal regulations on which the Virginia amendment is based are the subject of a pending lawsuit *(National Wildlife Federation v. Hodel,* Civil Action No. 87–1051, D.D.C., filed April 15, 1987) and that, depending on the outcome of that litigation, Virginia may need to further amend these rules in the future.

The Federal rules at 30 CFR Part 946 codifying decisions concerning the Virginia program are being amended to implement this decision. This final rule is being made effective immediately to expedite the State program amendment process and to encourage States to conform their programs with the Federal standards without undue delay. Consistency of State and Federal standards is required by SMCRA.

VI. Procedural Determinations

1. *Compliance with the National Environmental Policy Act:* The Secretary has determined that, pursuant to section 702(d) of SMCRA, 30 U.S.C. 1292(d), no environmental impact statement need be prepared on this rulemaking.

2. *Executive Order No. 12291 and the Regulatory Flexibility Act:* On August 28, 1981, the Office of Management and Budget (OMB) granted OSMRE an exemption from sections 3, 4, 7 and 8 of Executive Order 12291 for actions directly related to approval or conditional approval of State regulatory programs. Therefore, this action is exempt from preparation of a Regulatory Impact Analysis and regulatory review by OMB.

The Department of the Interior has determined that this rule will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This rule will not impose any new requirements; rather, it will ensure that existing requirements established by SMCRA and the Federal rules will be met by the State.

3. *Paperwork Reduction Act:* This rule does not contain information collection requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3507.

List of Subjects in 30 CFR Part 946

Coal mining, Intergovernmental relations, Surface mining, Underground mining.

Dated: July 9, 1987.

James W. Workman,

Deputy Director, Operations and Technical Services.

PART 946—VIRGINIA

30 CFR Part 946 is amended as follows:

1. The authority citation for Part 946 continues to read as follows:

Authority: Pub. L. 95–87, Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1201 *et seq.*).

§ 946.12 [Amended]

2. In § 946.12, paragraph (b)(3) is removed.

3. In § 946.15, a new paragraph (s) is added to read as follows:

§ 946.15 Approval of regulatory program amendments.

* * * * *

(s) The following amendment to the Virginia permanent regulatory program, as submitted by letter of March 20, 1987, is approved effective July 17, 1987: Addition of the phrase "to the extent required under State law" to sections 480–03–19.784.20(f)(2) and 480–03–19.817.121(c)(2) of the Virginia Coal Surface Mining Reclamation Regulations.

[FR Doc. 87–16242 Filed 7–16–87; 8:45 am]

BILLING CODE 4310–05–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[A–1–FRL–3230–1; Docket No. A–87–05]

Approval and Promulgation of Implementation Plans; Vermont; Visibility in Federal Class I Areas; Lye Brook Wilderness

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving parts and taking no action on other parts of State Implementation Plan (SIP) revisions submitted by the State of Vermont pursuant to section 169A of the Clean Air Act. These revisions set forth a plan to address manmade visibility impairment in the Lye Brook Wilderness, a mandatory Class I federal area. EPA is approving those parts of the revisions which fulfill the requirements of EPA's existing visibility regulations concerning plume blight, i.e., visibility impairment that can be traced to a single source or small group of sources using simple monitoring techniques. EPA is taking no action on those parts of the revisions concerning visibility impairment attributable to regional haze caused by pollutants that may be transported and transformed in the atmosphere over long distances. EPA is also taking no action on Vermont's request to extend

applicability of its plan to additional areas outside of the Lye Brook Wilderness. Although it was not part of Vermont's visibility protection plan, EPA is denying today Vermont's accompanying request to disapprove the SIPs of eight states, and denying its request to add four states to the list of states which EPA has required to develop visibility protection plans.

EFFECTIVE DATE: This action will be effective August 17, 1987.

ADDRESSES: Copies of the documents relevant to this action are available for public inspection during normal business hours at the JFK Federal Building, Room 2311, Boston, MA 02203; Public Information Reference Unit, EPA Library, 401 M Street SW., Washington, DC 20460; and the Vermont Agency of Environmental Conservation, Air Pollution Control Division, Building 3 South, 103 South Main Street, Waterbury, VT 05676.

FOR FURTHER INFORMATION CONTACT: Susan Kulstad, (617) 565–3226; FTS 835–3226.

SUPPLEMENTARY INFORMATION: On December 2, 1986, EPA published a Notice of Proposed Rulemaking for revisions to the Vermont State Implementation Plan (SIP) that would provide for visibility protection in the Lye Brook Wilderness. 51 FR 43389. The proposed rulemaking responded to revisions to the Vermont SIP submitted by the Governor of Vermont on April 22, 1986.

EPA proposed to approve those provisions of Vermont's submission which fulfill the requirements of 40 CFR Part 51, Subpart P (§ 51.300 et seq.), concerning visibility impairment that can be traced to a single source or small group of sources using simple monitoring techniques. These so-called "plume blight" provisions, submitted by Vermont, which EPA is today approving as satisfying its visibility protection regulations, are: (1) The new source review procedures, excluding those that address sulfate standards; (2) the showing that best available retrofit technology (BART) is unnecessary for existing Vermont stationary sources; (3) the long-term strategy, excluding the 48-state emissions reduction plan; and (4) the monitoring program.

EPA proposed to take no action on two portions of Vermont's submission pertaining to the control of regional haze caused by pollutants that may be transported and transformed in the atmosphere over long distances. These two portions involve the establishment of ambient sulfate standards, and the portion of Vermont's long-term strategy outlining a phased emissions reduction plan to achieve a uniform statewide average sulfur dioxide (SO_2) emission rate and added nitrogen oxides (NO_x) controls among 48 states. Additionally, EPA proposed to take no action on a third portion of Vermont's submittal which extends applicability of the plan to additional "sensitive areas."

Vermont included in its submission modeling results which identify eight states—Ohio, Pennsylvania, West Virginia, Kentucky, Tennessee, Illinois, Indiana, and Michigan—whose emissions significantly contribute to impairment of visibility in the Lye Brook Wilderness. Although not part of the state's visibility protection plan, Vermont asked EPA to disapprove immediately the SIPs of these eight states because they do not contain adequate provisions to prohibit emissions which interfere with Vermont's visibility. Vermont also asked EPA to add four states—Ohio, Pennsylvania, Illinois, and Indiana—to the list of those states EPA has required to develop visibility protection plans. To date, EPA has not listed these four states because they do not contain mandatory Class I federal areas. EPA is today affirming its decision to not make SIP calls and to not list additional states until EPA promulgates regulations to address interstate regional haze impairment.

EPA received eight sets of comments representing the views of fifteen organizations and states in response to the proposed rulemaking. None of the commenters took issue with EPA's proposal to approve those portions of Vermont's program which satisfy the requirements of EPA's existing visibility regulations. Only in the context of disagreeing with EPA's proposal to take no action on portions of Vermont's program and instead, advocating that EPA approve the state's entire program, did commenters address EPA's proposed disposition on the broader applicability of Vermont's plan to protect additional "sensitive areas." The other provisions concerning ambient sulfate standards and a 48-state emissions reduction plan, for which EPA proposed no action, as well as EPA's accompanying interpretation of the Clean Air Act ("the Act") and its regulations, received extensive comment, both favorable and unfavorable. Extended discussion of the specific measures contained in Vermont's program and the rationale for EPA's proposed action on each is presented in the Notice of Proposed Rulemaking, and so will not be restated here.

In proposing no action on the regional haze provisions of Vermont's plan, EPA acknowledged that Vermont's visibility impairment is predominantly due to out-of-state sulfur emissions, but noted that its visibility regulations, promulgated on December 2, 1980 (45 FR 80084 and codified at 40 CFR 51.300 *et seq.*), pursuant to section 169A of the Act, 42 U.S.C. 7491, deferred the regulation of widespread, regionally homogenous haze from a multitude of sources which impairs visibility over a large area (known as "regional haze") to future rulemaking. The preamble to the 1980 regulations stated in relevant part, "... Future phases will extend the visibility program by addressing more complex problems such as regional haze and urban plumes. We will propose and promulgate future phases when improvement in monitoring techniques provide more data on source-specific levels of visibility impairment, regional scale models become refined, and our scientific knowledge about the relationships between emitted air pollutants and visibility impairment improves." 45 FR 80086.

The State of Vermont is not required by section 110 of the Act, 42 U.S.C. 7410, to address regional haze until such time as EPA decides to promulgate a national regional haze program. Section 110(a)(3) of the Act requires EPA to approve any measure a state submits as a SIP revision if the measure meets the requirements of section 110(a)(2). Section 110(a)(2)(J) requires each SIP to "meet the requirements of * * * Part C (relating to prevention of significant deterioration of air quality and visibility protection) * * *."

In this instance, EPA maintained that regional haze measures are neither consistent nor inconsistent with the requirements of Part C and hence section 110(a)(2)(J), since they are outside the scope of EPA's existing regulations implementing Part C until EPA promulgates a regional haze program. Therefore, EPA proposed no action on the regional haze measures, but solicited comment on its decision. EPA noted, however, that Vermont can as a matter of state law apply and enforce these measures within its boundaries under its revised state regulations even though EPA does not make them federal rules, because section 116 of the Act, 42 U.S.C. 7416, allows states to adopt standards more stringent than the federal requirements.

Response to Comments

Specific comments received by EPA on the December 2, 1986, proposed rulemaking can be found in Docket A–87–05, Items F–N. All comments have been consolidated according to the

issues raised, as follows: (A) No action on regional haze measures; (B) Regulation of regional haze under section 169A of the Act and EPA's visibility protection regulations; (C) Reasonable progress toward achieving the national visibility goal; (D) Ambient sulfate standards; (E) Emissions reduction plan; (F) SIPs for other states; and (G) Technical uncertainty in regional haze regulation. The significant issues raised by the commenters and EPA's responses are summarized below.

A. No Action on Regional Haze Measures

The State of Vermont (Vermont); joint comments from the Conservation Law Foundation, Environmental Defense Fund, Natural Resources Defense Council, Sierra Club, and States of Connecticut, Maine, Massachusetts, New Jersey, and New York (CLF *et al.*); and the Eastern Regional Office of the U.S. Forest Service (USFS) all comment that under sections 110 (a)(2) and (a)(3) of the Act EPA has no choice but to approve or disapprove all elements of the Vermont submittal, rather than take no action on certain provisions as EPA proposed. Comments received from the Utility Air Regulatory Group (UARG), the Mining and Reclamation Council of America (MARC), and the State of Ohio agree with EPA's proposal to take no action on the regional haze measures provided for in Vermont's plan.

Comments supporting approval or disapproval of each element of Vermont's plan contend that requirements for state plans established by the Act at section 169A(b)(2) are sufficient for EPA to decide whether or not the regional haze measures are adequate, pursuant to section 110(a)(2) of the Act. Several of the commenters contend that if the SIP revision meets the requirements of section 169A, EPA must, at a minimum, approve that revision under section 110. These commenters argue that section 169A mandates visibility protection and requires, at subsection 169A(b)(2), state plans which contain emission limits, schedules, and any other measures which are necessary to make reasonable progress toward visibility improvement.

Nor, they argue, can EPA refrain from approving Vermont's measures because it "has no criteria against which to judge the adequacy of regional haze measures such as ambient sulfate standards," 51 FR 43391. The commenters maintain that EPA has a well-established administrative practice of approving SIP revisions which make progress toward statutory objectives even though the measures by themselves may be insufficient to meet the Act's requirements in full, citing as an example, EPA's conditional approval of certain 1982 ozone and carbon monoxide control measures in nonattainment areas in California, 49 FR 30300, 30304 (July 30, 1984).

Noting that section 169A(a)(4) required the promulgation of regulations not later than 24 months after its August 7, 1977 enactment date to assure reasonable progress toward meeting the national visibility goal of preventing any future, and remedying any existing, manmade visibility impairment in mandatory federal Class I areas, and to comply with other requirements of section 169A of the Act, these commenters contend that the absence of EPA regulations today may not form the basis for inaction under section 110. CLF *et al.* stated that EPA should approve or disapprove each measure of Vermont's plan, and if the agency disapproves any measure, EPA should promulgate an alternative provision for Vermont. The USFS comments that actions beyond the scope of what is required and not affecting SIPs of other states should be approved under section 116 of the Act, which assures states their right as a matter of state law to adopt and enforce measures that are more stringent than federal requirements.

Citing some court decisions, CLF *et al.* further comments that even in the absence of implementing regulations EPA is "compelled" to approve Vermont's plan in its entirety by virtue of EPA's "inherent authority" to fashion policy for specific cases, especially where, as here, the action sought is highly dependent on facts specific to the case.

In support of EPA's proposal to take no action on the regional haze measures of Vermont's plan, UARG comments that approving Vermont's regional haze measures under section 116 of the Act would not create any obligations or rights because under section 113, 42 U.S.C. 7413, only "applicable implementation plans" are federally enforceable, an "applicable implementation plan" is one approved by EPA which "implements" the requirements of section 110 of the Act, and the Vermont regional haze measures do not "implement" federal requirements. Therefore, a decision to take no action avoids confusion on the status of Vermont's regional haze measures under federal law. Several commenters noted that absent a federal requirement, Vermont has no right to interstate relief to achieve Vermont's local air quality goals, citing *Connecticut* v. *EPA*, 656 F.2d 902, 909–10 (2d Cir. 1981). These commenters assert that solving complex interstate allocation problems in a workable and equitable manner requires national policymaking, and that until these problems are addressed through federal rulemaking or legislation, the regional haze measures in Vermont's plan cannot be federally enforced.

EPA response: EPA continues to believe that federal rulemaking is necessary before EPA can require and enforce regional haze measures. EPA has not promulgated regulations for a national visibility protection program to address regional haze, and, for the reasons given in the proposal, it cannot adopt the Vermont program as the national regional haze program. Hence, EPA has no basis on which to evaluate Vermont's plan and the state is not required by section 110 to address regional haze impairment at this time. Therefore, EPA believes that it lacks authority to approve Vermont's regional haze measures as part of the Vermont SIP under the Act.

In pointing to EPA's conditional approval of certain ozone and carbon monoxide (CO) measures in California as precedent for approval of Vermont's regional haze measures, CLF *et al.* fails to recognize critical differences in the two situations. In particular, the Act gives California the job of allocating control burdens among its own sources for the purposes of attaining and maintaining NAAQS. Thus, California is the entity which chooses, at least in the first instance, between all of the possible patterns of regulation of NAAQS pollutants within its own boundaries. If California makes a choice, EPA must defer to it, so long as the choice is consistent with timely attainment and maintenance. The potential ozone and CO measures that California submitted not only presented a partial choice among possible control regimes, they also strengthened the SIP on balance and hence EPA approved them. In contrast, the Act does not give Vermont the job of allocating control burdens among sources in other states for any purposes, including that of protecting visibility. Instead, the Act gives EPA that task, pursuant to national rulemaking. Thus, it is beside the point that the Vermont scheme may promote visibility protection, because it is only one choice among many and EPA has not decided which allocation scheme, if any, is the most appropriate.

Another key distinction is that the cited approval of "halfway measures" for California was made against a background of certainty as to both the need to reduce ambient concentrations of carbon monoxide and ozone and the

efficacy of the measures in question in moving toward that objective. Here, in contrast, EPA is confronted with some doubt regarding the need for a sulfate standard to protect visibility in the Lye Brook Wilderness, and great uncertainty regarding the propriety of Vermont's plan in achieving that goal.

In addition, EPA believes it would not be appropriate to disapprove these regional haze measures. As to the ambient sulfate standard and emissions reduction plan, EPA presently has no criteria for judging the adequacy of those measures, and will not until a program addressing regional haze is in place at the federal level. While EPA could defer action on these two measures until such time as the agency decides to promulgate a regional haze program, both the timing and content of such a program are unclear at this time. The control requirement specified in section 169A, best available retrofit technology (BART), is only applicable to a limited number of source categories and to sources of a certain age, which may limit its effectiveness in regulating sources which cause or contribute to regional haze. EPA observed, in its 1979 Report to Congress on visibility and its 1985 Visibility Task Force Report, that using section 169A of the Act to effect improvements in eastern regional visibility would be difficult. Rather, EPA is actively considering a fine particulate secondary national ambient air quality standard (NAAQS) under section 109 of the Act for regional haze control. (See 52 FR 24670, July 1, 1987.)

In view of the uncertainties about the regulatory framework for EPA's regional haze program, EPA believes taking no action will allow Vermont an opportunity to reassess the advisability of its ambient sulfate standards and emissions reduction plan as potential SIP measures when EPA completes decisionmaking regarding a regional haze program. Also, while EPA has the authority to disapprove these two measures because they are not approvable at the present time, taking no action will avoid confusion about the status of those provisions under federal law, avoid the appearance of a premature judgment as to their ultimate approvability, and prevent confusion regarding their present enforceability as a matter of state law.

In asserting that EPA has a nondiscretionary duty under section 110 of the Act to approve or disapprove the visibility submittal, Vermont cited *Kennecott Copper Corp.* v. *Costle*, 572 F.2d 1349, 1354–55 (9th Cir. 1978), and *Citizens for a Better Environment* v. *Costle*, 515 F. Supp. 264, 271 (N.D. Ill. 1981). However, the central thrust of those cases is that EPA must *dispose of* prospective SIP revisions either by accepting or rejecting them as additions to the SIP. In this case, EPA today approves those portions of the Vermont SIP submittal which are required under EPA's current visibility rules in 40 CFR Part 51, Subpart P. By taking "no action" on the other SIP measures in question EPA has disposed of them as well, in as much as the deliberate effect of the action is to keep the measures out of the Federally enforceable SIP. "No action" constitutes a rejection of the measures. Thus, today's notice constitutes final action on the entire Vermont submission under section 110(a)(3) for purposes of judicial review in the court of appeals under section 307(b) of the Act, 42 U.S.C. 7607(b).

The term "approval" in sections 110(a)(2) and (3) of the Act plainly refers only to the option of acceptance. In contrast, the term "disapproval" in those sections is ambiguous. The common sense of the term is rejection on the grounds of inconsistency with the requirements of section 110(a). But, as the Vermont measures illustrate, a rejection can be appropriate for another reason, namely, that the measures in question are outside the scope of any of the requirements in section 110(a) and hence are neither consistent nor inconsistent with them. EPA has decided to resolve this ambiguity by labeling determinations of inconsistency as "disapprovals" and treating the other determinations relating to scope as "no actions." This choice has no practical or legal significance beyond the fact that it helps to clarify the basis of EPA's actions. For instance, whatever label EPA places on its actions here, that action is still a refusal to make the regional haze measures part of the SIP.

EPA is declining to approve under section 116 of the Act Vermont's regional haze measures to the extent that they do not affect the SIPs of other states. There is no indication that Vermont wanted EPA to selectively approve into the SIP only the locally effective aspects of the regional haze measures. To the contrary, Vermont appears to have designed these measures to solely address an interstate problem. And, in fact, there is no significant practical value in approving the measures and thereby rendering them Federally enforceable. In these circumstances, it would not be appropriate for EPA to approve the measures to the extent that they have merely local effect.

As for CLF *et al.'s* argument that legal precedents compel EPA to act to approve Vermont's entire plan by virtue of its "inherent authority to fashion policy for specific cases," EPA believes that the cases cited by CLF *et al.* in fact stand for quite a different proposition, that federal agencies have broad *discretion* to fashion general or case-specific responses to administrative problems. Here, all concerned agree that the regional haze problem the Vermont plan seeks to address is not unique to the Lye Brook Wilderness.

In addition, Vermont's proposed solution—a multistate emissions reduction plan—has obvious and significant effects far beyond Vermont's borders. Thus, as stated elsewhere, EPA believes that SIP action addressing the impairment in Vermont's Class I area must await promulgation and implementation of EPA regulations which take due account of the broad scope of both the regional haze problem and the range of potential solutions.

The Environmental Defense Fund (EDF) submitted separate supplemental comments which in part assert that approval or disapproval of provisions of Vermont's plan is mandated under the terms of a settlement agreement approved by court order on April 20, 1984. In December, 1982, environmental groups, including EDF and the National Parks and Conservation Association, filed a citizen's suit in the United States District Court for the Northern District of California alleging that EPA had failed to perform a nondiscretionary duty under section 110(c) of the Act to promulgate visibility plans for the states that had failed to submit SIPs to EPA (*EDF* v. *Thomas*, No. C82–6850 RPA). EPA and the plaintiffs negotiated a settlement agreement which was approved by court order on April 20, 1984, and amended on September 9, 1986, that requires EPA publication of the final rulemaking on Vermont's plan within seven months of the date of publication of EPA's proposed rulemaking on the plan. For more information on details of the settlement provisions, see EPA's announcement of the agreement at 49 FR 20647 (May 16, 1984).

However, that agreement requires EPA action on state measures intending to satisfy the requirements of EPA's existing visibility requirements, 40 CFR Part 51, Subpart P, whereas, as EPA discussed in its proposed rulemaking, the measures in question address regional haze and therefore are beyond the scope of Subpart P and the settlement agreement. Further, today's notice does constitute dispositive final action on the entire Vermont plan for purposes of the settlement agreement.

B. Regulation of Regional Haze Under Section 169A of the Act and EPA's Visibility Protection Regulations

1. Section 169A of the Act

CLF *et al.* and Vermont comment that section 169A of the Act by itself mandates state visibility protection plans which must contain emission limits, schedules, and any other measures which are necessary to make reasonable progress toward visibility improvement. Section 169A(b)(2) of the Act. These commenters acknowledge that section 169A of the Act requires EPA to issue regulations, under section 169A (a)(4) and (b), but assert that "EPA's regulations are not an independent source of visibility requirements." Rather, these commenters assert that section 169A(b)(2) establishes requirements for state plans and EPA's regulatory program.

These commenters, along with USFS, observe that section 169A contains no limitation of visibility programs to only "plume blight," nor any provision for a phased program approach. They further argue that section 169A makes clear that Congress intended reasonable progress to be made toward remedying any existing manmade visibility impairment in Class I areas. EDF commented that nothing in section 169A of the Act suggests that there is only one solution to any visibility impairment problem, or that the state plan must identify the optimal solution.

The comments of UARG, MARC, and the State of Ohio support EPA's interpretation that section 169A of the Act directs the states to abate visibility in accordance with regulations promulgated by the Administrator, under section 169A(a)(4), rather than directly imposing any obligations on the states. UARG and MARC assert that Vermont seeks to preempt EPA's efforts to decide the timing and validity of regional haze regulation, and comment that such preemption would short-circuit EPA's ongoing development of the scientific and technical background necessary for the development of a national policy on regional haze. MARC further comments that regional haze measures should be adopted only as a result of full scale notice and rulemaking that addresses regional visibility impairment from a national perspective.

EPA Response: EPA still believes that section 169A is not self-executing, but rather must be implemented by EPA regulations. Therefore, EPA is affirming its interpretation of section 169A as discussed in the proposed rulemaking.

2. Constraints of EPA's Existing Visibility Regulations

Several commenters question whether or not EPA's existing visibility requirements in all cases limit application to only plume type impairment. CLF *et al.*, USFS, and Vermont variously commented that EPA's visibility regulations at 40 CFR Part 51, Subpart P, are not exclusive to only plume-type impairment in: (a) requiring that every SIP must include a long-term (10–15 years) strategy for making reasonable progress toward "preventing any future, and remedying any existing, impairment of visibility in mandatory Class I federal areas," 40 CFR 51.300(a), 51.306(a)(1); (b) requiring that SIPs include "measures * * * as may be necessary to make reasonable progress toward the national goal," 40 CFR 51.302(c)(2); (c) defining "visibility impairment" and "significant impairment" at 40 CFR 51.301; (d) requiring that States coordinate with federal land managers, 40 CFR 51.302(b); or (e) requiring visibility monitoring, 40 CFR 51.305, for which EPA's own proposed national monitoring network calls for a single site to characterize visibility in all six New England Class I areas. In this regard, CLF *et al.* contends that the referenced regulatory language makes clear that EPA did not restrict the 1980 visibility rules to plume-type impairment, and thus EPA cannot rely on preamble language to demonstrate that EPA intended to defer measures addressing regional haze.

To support its position that EPA's existing regulatory program is not limited to impairment caused by plume blight, Vermont also notes preamble language in EPA's notice of proposed rulemaking for the existing regulations, 45 FR 34762 (May 22, 1980), which states, "Because of the limited applicability of BART the development of long-term strategies will be central to making reasonable progress * * *" and, in spite of the limits imposed by the phased approach, "* * * the long-term strategy can, however, begin to address the more complex problems such as regional haze."

Other commenters, however, maintain that the regulation of regional haze is specifically deferred. UARG refers to the preamble to EPA's final rulemaking on its visibility protection program for Class I areas, 45 FR 80065–80086, 80088 (December 2, 1980), and, citing several judicial opinions, observes that to ascertain EPA's intent to control only plume blight, the preamble is a valuable and instructive guide. UARG highlights the following language in the 1980 proposed rulemaking on EPA's regulations which explains that regional haze measures would not be required: "Even though we are calling these proposed regulations 'Phase I of the visibility protection program,' the basic structure of the regulations * * * will remain constant for all phases * * *." 45 FR 34764. Additionally, UARG points to the statement that the long-term strategy would "be necessarily somewhat limited by the phased approach to the visibility program," although such strategies "can * * * begin to address the more complex problems such as regional haze," but then only through, for example, pre-existing programs of emission controls. 45 FR 34777. UARG further cites an advance notice which EPA published prior to promulgation of the visibility protection program, as describing EPA's concept of a "Phased Program," whereby the "regulations and guidelines, while encompassing the full range of Clean Air Act requirements, should to the extent possible permit States to focus initially on the most clearly defined cases of existing impairment and on strategies to prevent future impairment, and also allow for evaluation of broader control strategies as scientific understanding of urban plumes, regional haze, * * * improves." 44 FR 69119 (1979). Also, for clarification on EPA's intention, UARG notes that EPA's listing of 32 States deficient for failing to include adequate long-term strategies in their SIPs made clear that its rules "only address a type of visibility impairment which results from a single source or small group of sources known as reasonably attributable impairment or plume blight," 51 FR 3047 (January 23, 1986), and that SIPs are required to "include a long-term strategy for each * * * Class I area that may be affected by sources within the State." 51 FR 3048.

EPA Response: EPA agrees with UARG that preamble language is an appropriate source for ascertaining the intent of EPA's visibility regulations, and that the regulation of regional haze was specifically deferred. EPA outlined its visibility protection program in the preamble to its 1980 final rulemaking, under the heading "The Program: A Phased Approach to the Problem," and stated, "Recognizing the need to initiate protection as soon as possible, while also realizing that certain scientific and technical limitations do exist, we are today promulgating, essentially as proposed, a phased approach to visibility protection. * * * Phase I of this program will * * * [r]equire control of impairment that can be traced to a single existing stationary facility or

small group of existing facilities. * * * Information derived from modeling and monitoring can, in some cases, aid the states in development and implementation of the visibility program. In the first phase, the states are required to consider available modeling and monitoring information. The use of such information will be at the discretion of the state, and the states are not required to establish monitoring networks or perform modeling analyses. Future phases will extend the visibility program by addressing more complex problems such as regional haze and urban plumes." 45 FR 80085–80086.

Explaining "The Program—In Detail," EPA observed in its discussion of BART requirements, "* * * We believe that while pollutants may cause or contribute to visibility impairment, the pollutants of primary concern under this Phase I program are particulate matter and NO_x. Emissions of SO_2 primarily contribute to regional haze which is beyond the scope of this Phase I program. Therefore, we expect very few, if any, BART analyses for SO_2 in this phase of the program. It should, however, be noted that we expect that the Phase II program will result in control of pollutants associated with regional haze and urban plumes which affect mandatory Class I Federal areas. We therefore expect that sources would be analyzed, at that time, for all pollutants causing or contributing to these types of visibility impairment." 45 FR 80086–80087. It is just such regional control of SO_2 emissions that EPA understands is addressed by Vermont's regional haze measures.

In the preamble to that same rulemaking, EPA described the regulatory impact of its Phase I program, stating, "The immediate principal benefit of these regulations will be (1) the reduction or elimination of impacts reasonably attributable to specific sources, and (2) further definition of procedures for the review of new sources. * * * The phased approach of these regulations will limit the amount of resources the States will have to expend on revising their SIPs." 45 FR 80088. While EPA recognizes that some states may wish to examine strategies for remedying impairments which are regional in nature, as, for example, the State of Washington has done to address the cumulative effect of prescription burning within that state, EPA's current regulations do not require states to address such complex problems in their SIPs. The regional haze provisions of Vermont's plan are national in scope; they have interstate implications that cannot be addressed under EPA's existing visibility protection regulations.

3. Interstate Effect

UARG cited EPA's denial of the State of Maine's petition under the interstate pollution abatement provisions of section 126 of the Act, 42 U.S.C. 7426, as a precedent for an EPA affirmation that its existing visibility program defers the regulation of regional haze. UARG pointed to the statement in EPA's proposed denial of the petition that "* * * the visibility impairment of which Maine complains [i.e., regional haze] simply is not the subject of 'measures required to be included in an applicable implementation plan' " for visibility protection within the meaning of section 110(a)(2)(E) of the Act, 42 U.S.C. 7401(a)(2)(E). 49 FR 34866 (Sept. 4, 1984).

EPA response: EPA agrees that its reasoning remains consistent, and that regional haze measures are not required to be in an applicable SIP at this time.

C. Reasonable Progress Toward Achieving the National Visibility Goal

Vermont notes EPA's acknowledgment in 1980 that source specific plume-type impairment is nonexistent or nearly nonexistent in any Class I area, and asserts that EPA's failure to address regional haze constitutes a *de facto* EPA definition that "reasonable progress" means "no progress." Several commenters expressed concern that assuring reasonable progress toward the national visibility goal of remedying any existing, and preventing any future, impairment is a nondiscretionary requirement of section 169A of the Act, and that nowhere in the Act is reasonable progress limited to the problem of plume blight. Vermont commented that since EPA has required the states to achieve reasonable progress but without ever defining it, the states carry the burden of defining reasonable progress on an area-by-area basis and implementing programs to achieve it within their jurisdictions. CLF *et al.* contends that EPA has failed to demonstrate that achieving reasonable progress as required by section 169A, by tracing and treating the sources of visibility impairment in the Lye Brook Wilderness, is impossible.

However, MARC contends that EPA's implementation of its Phase I regulations, together with its continuing research efforts regarding future phases, clearly constitutes reasonable progress as contemplated by Congress.

EPA response: Although EPA recognized, when promulgating the 1980 visibility regulations pursuant to section 169A of the Act, that they would have limited affect on existing sources (45 FR 80088, col. 3), it does not agree that the 1980 regulations represent "no progress" toward the national goal. As EPA stated in the Report to Congress on Visibility (page 10), the highest priority for a visibility protection program is the evaluation of the impacts of new sources on visibility in Class I areas. In addition to the BART requirements, the existing regulations establish procedures to ensure the review of new source impacts near all Class I areas, and allow states to evaluate strategies for preventing future and remedying existing impairment from in-state sources not subject to BART, such as from forestry and agricultural practices, construction activities, and small sources which may not meet the source size requirements of BART. Although the regulatory impact was expected to be greatest in the western United States, the regulations apply in all 36 states with Class I areas, and do represent reasonable progress on a national scale. Because the types of sources which impair, or may impair, visibility due to plume blight vary greatly across the country, EPA believes it appropriate that states carry the responsibility for defining reasonable progress, and implementing programs to achieve it, within their jurisdictions.

In any event, these complaints about the content of the 1980 regulations are immaterial. The only issue in the rulemaking here is whether the Vermont regional haze measures are required by the Act. As discussed above, they are not, because section 169A of the Act is not self-executing and EPA did not require regional haze measures in its 1980 regulations.

D. Ambient Sulfate Standards

Vermont comments that the seasonal ambient sulfate standard which its submittal provides for is more appropriate for the Lye Brook Wilderness than a national standard promulgated by EPA would be. Vermont offers, as an example, that a fine particulate matter standard reasonable to make progress in the Lye Brook Wilderness might be difficult to attain in West Virginia, while conversely, one reasonable for West Virginia would make little or no progress in Vermont. Nonetheless, Vermont asserts that as long as EPA develops a fine particulate matter standard to address regional haze, which is set at a level sufficient to achieve some measure of progress in eastern Class I areas, approval of Vermont's seasonal standard would not interfere with an EPA one.

EPA Response: EPA, in both its 1979 Report to Congress, EPA–450/5–79–008, and 1985 Visibility Task Force Report, noted that regional standards may well be more appropriate than a national standard to protect visibility. This is especially true in the instance of differences in relative humidity and naturally occurring particulate matter in eastern versus western states. EPA is currently taking comment on its plans to develop a welfare-based national ambient air quality standard (NAAQS) to protect visibility. (See EPA's advance notice of proposed rulemaking on a fine particulate matter standard at 52 FR 24670, July 1, 1987.) However, while EPA's effort to solicit comments on the feasibility and desirability of developing such a standard is underway, EPA cannot evaluate as a part of today's action whether Vermont's standard would be consistent with a national standard. Therefore, EPA is affirming its proposed decision to take no action on Vermont's ambient sulfate standards.

Vermont suggests that its programs for protecting against regional haze, of which the seasonal standard is a part, would be consistent with any regime based on a national fine particle NAAQS which EPA might adopt, so long as that regime were progressive. It seems likely, however, that the two regimes ultimately would differ significantly in their demands on specific states and sources. Thus, these demands could conflict, in many instances, even if the programs and the demands were both progressive. The purpose of the requirement for EPA rulemaking in section 169A is not only to produce progress in protecting visibility, but also to establish a rational and unitary system of control requirements concerning many states and sources. Conflict, confusion, and inefficiency would probably result from the course of action Vermont suggests.

E. Emissions Reduction Plan

CLF *et al.* contests EPA's position in the proposed rulemaking that Vermont's emissions reduction plan lacks the precision and scope necessary to form the basis of a regional haze impairment program under section 169A of the Act. Instead, this commenter finds that Vermont has discussed its assumptions made in the plan, presented its criteria for assessing impairment, modeling, and selecting abatement techniques, and has explained the policy reasons for rejecting an approach whereby control burdens would be apportioned according to the degree of contribution. EDF comments that EPA's inaction is without any redeeming value, and while "Vermont's program would dictate a single solution (average statewide emission rates by certain deadlines) to a problem that has a vast array of potentially acceptable solutions," nothing in the statute suggests that the state's proposal must identify the optimal solution. Vermont contends that section 169A of the Act neither requires the guidelines which EPA must provide to the states to be "extensive" nor sufficiently detailed to "allocate the necessary control burdens among the relevant sources." 51 FR 43392.

However, MARC comments that giving Vermont's plan interstate effect would be bad public policy, and that regional haze regulations should only be adopted as a result of full scale notice and rulemaking to obtain a national perspective. MARC holds that Vermont's plan fails to adequately address the technical and policy issues which arise from requiring substantial emission reductions in large areas of the country. MARC suggests that issues like the allocation of pollution abatement burdens, associated costs, and the resolution of significant interstate policy disputes are not in the purview of an individual state.

EPA Response: EPA is affirming its proposal to take no action on Vermont's emissions reduction plan, because section 169A(b) of the Act clearly requires the agency to promulgate regulations which provide guidelines to the states on visibility monitoring methods, modeling methods, and methods for making reasonable progress toward the national visibility goal. In 1980, EPA issued guidance and regulations for the current Phase I visibility protection program. But, EPA does not believe that these existing guidance documents or regulations are, or were intended to be, sufficiently detailed to provide the states with adequate guidelines for the regulation of regional haze. EPA believes that alternative potential solutions must be considered by the agency and be subject to rulemaking at the national level before it can approve or reject such a far reaching regulatory program as that called for in Vermont's plan.

F. SIPs for Other States

Although not part of Vermont's visibility protection plan, the State asked EPA to disapprove immediately the SIPs of eight states—Ohio, Pennsylvania, West Virginia, Kentucky, Tennessee, Illinois, Indiana, and Michigan—which Vermont identified in its plan as having emissions that cause or contribute to impairment of visibility in the Lye Brook Wilderness. Further, Vermont asked EPA to add four states—Ohio, Pennsylvania, Illinois, and Indiana—to the list of those states EPA has required to develop visibility protection plans. EPA responded in its proposal that it would make no SIP calls to address regional haze impairment until such time as it completes its development of a national regional haze visibility protection program. Vermont asserts that in the preamble to the 1980 regulations, EPA did not distinguish between plume blight and regional haze in discussing its decision that 36 states would be listed in its regulations as being required to develop visibility protection SIPs. In explaining why only the 36 states containing Class I areas were listed, EPA stated, "We did not identify, nor did any commenters identify any State that did not contain a mandatory Class I Federal area, but which could contain a source the emissions from which could reasonably be anticipated to cause or contribute to any impairment of visibility in any mandatory Class I Federal area." 45 FR 80086. Vermont contends that EPA must add the four identified states to its list because of Vermont's demonstration that emissions from these four states may reasonably be anticipated to cause or contribute to visibility impairment in the Lye Brook Wilderness. Vermont comments that highly sophisticated tools are not necessary to make SIP calls in states whose emissions contribute to impairment. Vermont maintains that it is not necessary to know the exact contribution to impairment at each hour from each location in each Class I area from each source in a given state to be able to determine that the emissions from that state may reasonably be anticipated to contribute to any impairment in any Class I area.

UARG comments that EPA's regulations do not authorize it to apply the visibility rules to states other than those 36 listed states which contain Class I areas. UARG notes the supplemental statement in EPA's 1980 rulemaking in which the agency specifically stated that, "the Administrator has determined it would be appropriate to propose and solicit comment before promulgating any change in the States affected by these rules." 45 FR 80094.

EPA Response: EPA is affirming its proposal by denying, at the present time, Vermont's request to add four states to the list of those now required to develop visibility program requirements and disapprove the SIPs of eight states which Vermont believes are contributing to the impairment in the Lye Brook Wilderness. EPA promulgated the list of 36 states which were required to

develop Phase I visibility SIPs in the context of its decision to require protection against only plume blight. To the extent the list may exclude states that are contributing to regional haze, the original decision to do so was the logical outgrowth of the narrow focus of the 1980 regulations. Hence, it would not be appropriate to change this list of states without notice and comment rulemaking at the national level. In addition, EPA does not believe it has the authority to make SIP calls for regional haze in the eight identified states as explained in the notice of proposed rulemaking.

G. Technical Uncertainty in the Regulation of Regional Haze

Several commenters expressed sentiment that the tools for developing a visibility program to address regional haze are now available, and accessible to EPA, if not already in EPA's hands. CLF *et al.* contends that the numerical imprecision inherent in long-range air transport modeling is not significant in view of the nearly unanimous scientific agreement as to the source of high ambient sulfate concentrations in the Northeastern states. CLF *et al.* cites the National Commission on Air Quality's report, *To Breathe Clean Air* (March, 1981), which states, "* * * Model estimates and reliable field observations are expected to agree within a factor of two on an annual basis."

Vermont maintains its analysis demonstrates the impairment in the Lye Brook Wilderness is not an incomprehensibly complex mixture of pollutants, but is instead clearly and predominantly a function of a single pollutant, sulfates. Vermont cites several court decisions in commenting that EPA may still proceed with a regulatory program even when on the "frontiers of scientific knowledge."

Also citing judicial opinions to support its position, CLF *et al.* comments that the Act does not allow EPA to delay action until the field of transport modeling has reached ultimate perfection. Rather, CLF *et al.* asserts, Congress commanded EPA to do the best it can to effectuate the mandates of the statutes using available information and tools. According to CLF *et al.*, EPA bears an "especially heavy burden of justification" where, as here, it maintains that scientific uncertainties make timely regulatory action completely impossible.

The North Atlantic Regional Office of the National Park Service (NPS), Vermont, and EDF comment that progress in advancing the modeling of regional haze impacts has occurred since EPA promulgated its visibility regulations in 1980, to a stage where techniques are currently available and accessible to EPA that are reasonably accurate in identifying major source types and regions responsible for visibility impairment. Vermont comments that it relied on several of the widely published state-of-the-art methods listed in an attachment to the comments submitted by NPS, entitled "Development and Application of Air Quality and Visibility Modeling Tools by the National Park Service" (Oct. 6, 1986). NPS believes that Vermont's analysis is technically sound and results in findings that are consistent with past studies of NPS and EPA's Interagency Visibility Task Force.

UARG comments that Vermont's regional haze measures would, in effect, cut short the EPA policy-making process which, with the work of EPA's Interagency Visibility Task Force, is now underway. UARG notes the task force finding that "there has not been a comprehensive assessment of regional haze in the East. * * *" 1985 Task Force Report, Appendix E at 8. Additionally, UARG cited several petitions brought pursuant to section 126 of the Act concerning interstate air pollution, actions concerning international pollution provisions in section 115 of the Act, 42 U.S.C. 7415, and court decisions pertaining to long range transport and the acid deposition phenomenon in which EPA has repeatedly maintained that air quality simulation models currently available are not adequate for definitive regulatory action, and new models that have been proposed or are being developed have not been evaluated sufficiently.

UARG also comments that EPA's statement, that Vermont has demonstrated its visibility impairment is caused by regional haze and is attributable predominantly to out-of-state sulfur emissions, is not consistent with current scientific evidence. UARG suggests that EPA should make clear that there is no quantitative relationship between the emissions targeted by Vermont for controls and visibility impairment experienced in Vermont.

EPA Response: The issues raised by the commenters here more directly address the technical justification for EPA's deferral of implementing regulations, a matter which is not presented for decision in today's notice. As explained earlier in section B.1. above, under the heading "Section 169A of the Act," EPA believes the statutory requirements of section 169A are only implemented through promulgation of federal regulations. Thus, even if the agency had criteria to judge the adequacy of Vermont's regional haze measures, it could not do so today because of the lack of regional haze regulations.

Although EPA recognizes that modeling techniques have improved since its visibility protection regulations were promulgated, considerable additional work remains to be done. Moreover, there is no regulatory framework for a regional haze program, so EPA cannot respond to comments such as those made by Vermont, CLF *et al.*, and NPS about the range of techniques and models which may be appropriate for use in development of a program addressing regional haze.

The Visibility Task Force's 1985 report listed research needs to develop a regional haze program that included the characterization of current regional visibility conditions and pollutant/visibility relationships in representative regions, the development of improved monitoring techniques, and studies on the value of visibility. Developmental work currently underway to meet some of the needs for formulating a national program to address regional haze includes: Installation of an eastern regional interim visibility monitoring network; specifications for visibility monitoring methods; research to develop long range transport models for assessment of acid rain and visibility impacts; and publication of an advance notice of proposed rulemaking on a fine particulate matter standard in response to recommendations made in 1985 by the Visibility Task Force (52 FR 24670, July 1, 1987). Because of the activities which remain to be done before EPA can develop a sound regional haze program, EPA cannot yet commit to a schedule for promulgation of the regional haze program.

In response to UARG's comments concerning Vermont's demonstration, that there is no quantitative relationship between out of state sulfur emissions and regional haze, EPA observes that UARG's conclusion is not supported by UARG's own technical comments. Both Vermont and UARG provided scientific analyses showing some identifiable relationships between out of state sulfur and visibility impairment in Vermont. UARG's technical comments provide a rough quantification of the possible improvement in visibility based on sulfur dioxide emission controls in the Midwest. These estimates were considerably lower than those provided by Vermont, and differed in the relative and total contributions of various states' emissions to the problem. However, there is no need to resolve these differences given EPA's action today.

Sensitive Areas

Vermont's visibility protection plan designates all areas in the state which have an elevation greater than 2,500 feet mean sea level as "sensitive areas." Vermont's regulations and plan would apply the visibility protection requirements to all "sensitive areas" in the state. EPA proposed to take no action on Vermont's broader application to "sensitive areas," because EPA lacks the authority to regulate such areas that are not mandatory Class I federal areas. No comments were received which were specific to EPA's proposal regarding "sensitive areas." Therefore, EPA is affirming its decision to take no action on this portion of Vermont's plan.

Final Rule

EPA is approving the following provisions of Vermont's visibility protection plan: (1) The new source review procedures, excluding the sulfate standards; (2) the showing that BART is unnecessary for existing Vermont stationary sources; (3) the long-term strategy, excluding the 48-state emissions reduction plan; and (4) the monitoring program. EPA is taking no action on all provisions concerning ambient sulfate standards, on that portion of Vermont's long-term strategy outlining a phased emissions reduction plan to achieve a uniform statewide average SO_2 emission rate and added NO_x controls among 48 states, and on broader applicability of the plan to additional "sensitive areas." Although it was not part of Vermont's visibility protection plan, EPA is also denying today Vermont's accompanying request to disapprove the SIPs of eight states, and denying its request to add four states to the list of states which EPA has required to develop visibility protection plans.

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

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by September 15, 1987. This action may not be challenged later in proceedings to enforce its requirements (see 307(b)(2)).

List of Subjects in 40 CFR Part 52

Air pollution control, Incorporation by reference, Nitrogen dioxide, Particulate matter, Sulfur dioxide.

Note: Incorporation by reference of the State Implementation Plan for the State of Vermont was approved by the Director of the Federal Register on July 1, 1982.

Dated: July 2, 1987.

Lee M. Thomas,

Administrator.

PART 52—[AMENDED]

Subpart UU of Part 52 of Chapter I, Title 40 of the Code of Federal Regulations is amended as follows:

Subpart UU—Vermont

1. The authority citation for Part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7642.

2. Section 52.2370, is amended by adding paragraph (c)(19) as follows:

§ 52.2370 Identification of plan.

* * * * *

(c) * * *

(19) A plan to protect visibility in the Lye Brook Wilderness, a mandatory Class I federal area, from impairment caused by plume blight and to monitor visibility, in fulfillment of the requirements of 40 CFR Part 51, Subpart P. Submitted on April 15, 1986, the plan approves, only as they apply to mandatory Class I federal areas, revisions to Vermont Regulations 5–101 (3), (14), (21), (59), and (76); 5–501(4); and 5–502 (4)(d) and (4)(e).

(i) *Incorporation by Reference.* (A) Amendments to Environmental Protection Regulations Chapter 5, Air Pollution Control, Subchapter I. Definitions, 5–101 at subsections (3), (14), (21), (59), and (76), filed in its adopted form on September 2, 1986.

(B) Amendments to Environmental Protection Regulations Chapter 5, Air Pollution Control, Subchapter V. Review of New Air Contaminant Sources, 5–501 at subsection (4) requiring responsiveness to comments and any analyses submitted by any Federal Land Manager, filed in its adopted form on September 2, 1986.

(C) Amendments to Environmental Protection Regulations Chapter 5, Air Pollution Control, Subchapter V. Review of New Air Contaminant Sources, 5–502 at subsection (4)(d) requiring a demonstration of no adverse impact on visibility in any Class I federal area; and at subsection (4)(e) which reletters the former subsection (4)(d), filed in its adopted form on September 2, 1986.

(ii) *Additional material.* (A) Narrative submittal consisting of two volumes entitled, "Implementation Plan for the Protection of Visibility in the State of Vermont" and "Appendices" describing procedures, notifications, and technical evaluations to fulfill the visibility protection requirements of 40 CFR Part 51, Subpart P.

3. Table 52.2381 of § 52.2381 is amended by adding the following entries:

§ 52.2381 EPA-Approved Vermont State Regulations.

* * * * *

Subchapter I Definitions

TABLE 52.2381—EPA-APPROVED REGULATIONS

State citation, title and subject	Date adopted by State	Date approved by EPA	Federal Register Citation	Section 52.2370	Comments and unapproved sections
Section 5-101 Definitions					
	9/17/86	7/17/87	[FR citation from published date].	(c)(19)	Related to visibility in Class I areas. 5-101(3), (14), (21), (59), and (76) approved.
Subchapter V—Review of New Air Contaminant Sources					
Section 5-501 Review of construction or modification of air contaminant sources.					
	9/17/86	7/17/87	[FR citation from published date].	(c)(19)	Related to visibility in Class I areas. 5-501(4) approved.
Section 5-502 Major stationary sources and major modifications.					
	9/17/86	7/17/87	[FR citation from published date].	(c)(19)	Related to visibility in Class I areas. 5-502 (4)(d) and (4)(e) approved.

[FR Doc. 87-15671 Filed 7-16-87; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Part 799

[OPTS-42002F; FRL-3233-8]

Fluoroalkenes; Final Test Rule Correction

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; correction.

SUMMARY: This document corrects a final test rule on fluoroalkenes published in the **Federal Register** of June 8, 1987. This action is necessary to insert an inadvertently omitted page in the preamble.

FOR FURTHER INFORMATION CONTACT: By mail: John A. Richards, Chief, Federal Register Staff (TS-788B), Office of Pesticides and Toxic Substances, Environmental Protection Agency, 401 M St. SW., Washington, DC 20460.

Office location and telephone number: Rm. G-009A, 401 M St. SW., (202-382-3415).

SUPPLEMENTARY INFORMATION: EPA issued a final rule, FR Doc. 87-12828, published in the **Federal Register** of June 8, 1987 (52 FR 21516), to require certain health effects testing for vinyl fluoride (VF; CAS No. 75-02-5), vinylidene fluoride (VDF; CAS No. 75-38-7), hexafluoropropene (HFP; CAS No. 116-15-4), and tetrafluoroethene (TFE; CAS No. 116-14-3) (collectively as fluoroalkenes), in accordance with section 4(a)(1) of the Toxic Substances Control Act.

In unit V.A., a page of the preamble was inadvertently omitted and is corrected by inserting the material in the following text between the words "letters" and "II", appearing at page 21525, third column, fourth line.

* * * * *

* * * **Federal Register** notice will be issued after the review, either affirming or proposing to rescind the Agency's oncogenicity requirement for TFE.

To assess the potential for the fluoroalkenes to cause gene mutations, the Agency had proposed mutagenicity testing in the *Salmonella* reverse mutation assay for TFE. EPA now has adequate data on TFE in this test as discussed in Unit II.B., and is, therefore, withdrawing its proposed requirement for the *Salmonella* assay for TFE. EPA is, however, requiring that mutagenicity testing for cells in culture be conducted for both TFE and HFP on subclones of CHO cells as specified in § 798.5300 and as modified in § 799.1700(c)(1)(i)(B)(*2*). However, as discussed in Unit II.B., the requirement for testing TFE in the cells in culture assay does not extend to the "without activation" portion of that test. All other requirements apply. If the cells in culture test is positive for TFE or HFP, then a *Drosophila* sex-linked recessive lethal (SLRL) assay shall be conducted as specified in § 798.5275 and as modified in § 799.1700(c)(1)(i)(C)(*2*) for that chemical. If the cells in the culture test is negative then no further gene mutation testing will be required for that chemical. Based on positive results from the testing of VDF in the *Salmonella* assay, as discussed in the proposed rule, and the positive cells in culture assay for VF, as discussed in Unit * * *

* * * * *

List of Subjects in 40 CFR Part 799

Hazardous substances, Chemicals, Recordkeeping and reporting requirements.

Dated: July 7, 1987.

J. Merenda,

Director, Existing Chemical Assessment Division.

[FR Doc. 87-16186 Filed 7-16-87; 8:45 am]

BILLING CODE 6560-50-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[Circular No. 2598; AA-230-07-6310-02]

43 CFR Part 5440

Conduct of Sales; Qualification of Bidders

AGENCY: Bureau of Land Management, Interior.

ACTION: Final rulemaking.

SUMMARY: This final rulemaking amends the provision of the existing regulations in 43 CFR Part 5440, Conduct of Sales, dealing with qualifications of bidders. The Department of the Interior has determined that it is necessary to amend the existing regulations concerning qualifications of bidders by defining more precisely when bidders are not qualified, and by making these amendments apply retroactively to all cases still pending before the Department.

EFFECTIVE DATE: August 17, 1987.

ADDRESS: Any suggestions or inquiries should be sent to: Director (140), Department of the Interior, Bureau of Land Management, Room 5555 MIB, 1800 'C' Street NW., Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Gary Ryan (202) 653-8864.

SUPPLEMENTARY INFORMATION: A proposed rulemaking to amend provisions of the existing regulations in 43 CFR Part 5400, Sale of Forest Products; General, and Part 5440, Conduct of Sales, was published in the **Federal Register** on July 18, 1985 (50 FR 29324). The proposed rulemaking provided the public a comment period of 60 days. A 30 day extension was granted on September 26, 1985 (50 FR 39024). The Department of the Interior received 2 comments from the public. The letters were from a timber association and a law firm. Because of the length of time that has passed since publication of the proposed rulemaking, the Department has decided to repropose the rulemaking, with a further opportunity

for public comment. This reproposal will be published in the **Federal Register** shortly. However, because the Department has determined that § 5441.1(c) of the current regulations does not sufficiently provide for due process, this section is revised today in this final rulemaking, effective August 17, 1987 and applies retroactively to all cases still pending before the Department, taking into account comments received on the July 18, 1985, rulemaking. Section 5441.1(c) and a discussion of comments received on it will also be included in the reproposed rulemaking amending Parts 5400 and 5440.

Legal analysis within the Department has led to the conclusion that the current § 5441.1(c) violates the constitutional due process requirement by imposing a penalty arbitrarily and without providing the affected party an opportunity to be heard and present mitigating facts. The Bureau of Land Management has been reluctant to enforce the current regulation, and has been advised by the Office of the Solicitor that enforcement would likely result in prejudicial litigation for violation of due process.

During recent months, other interested parties have challenged this failure to enforce § 5441.1(c) by appealing several timber sales in Oregon, even when parties that have defaulted on earlier contracts were not present during the sale. The result has been that numerous contracts have not been awarded, and remain suspended until the debarment issues are resolved. Therefore, to avoid significant economic hardship to the timber industry generally in the northwestern United States caused by this delay, to resolve fairly and equitably the interests of competing entities and balance its effects on them, this rulemaking will be applied retroactively to all cases still pending before the Department of the Interior when it becomes effective, as well as to cases arising subsequently. It must be emphasized that although the current § 5441.1(c) has been in effect since 1982, not until the past few months has there been occasion to apply it. This rulemaking cures a deficiency in the current regulations, and does so equitably. Although a defaulting company may be allowed to bid at sales, if such company is declared the high bidder the contract will not be awarded until a final decision on debarment is made.

The Department of the Interior, through the Bureau of Land Management (BLM), currently provides in 43 CFR 5441.1(c) that a person who has defaulted under a contract to purchase timber from the agency may not bid on any subsequent timber purchase contract. In the July 18, 1985, proposed rulemaking, the Department provided the authorized officer with discretion not to debar one who has defaulted. In the rulemaking to be reproposed, this provision will be further amended and expanded in a separate § 5441.1–4 on procedures for debarment. In response to a comment on the July 18, 1985, proposed rulemaking, § 5441.1(c) has been replaced with a new paragraph (c) provided that debarred purchasers are prohibited from bidding on timber purchase contracts, but that purchasers being considered for debarment may continue to bid although contracts would not be awarded until final debarment determination. Purchasers who have defaulted but are not being considered for debarment may continue to bid and be awarded contracts in accordance with Subpart 5450.

This new § 5441.1(c) is an integral part of the provisions in the rulemaking on debarment that will be reproposed, and in fact will be included in that reproposed rulemaking. The Department has ruled that the existing § 5441.1(c) is illegal because it does not provide for due process. Therefore, although the new provision may not appear to function properly standing alone, it is necessary to publish it as a substitute provision immediately in the form of a final rulemaking in order to remove and replace the present provision. Public comments received on the reproposed rulemaking that address the issue of whether debarment candidates should continue to bid on contracts will be considered, and further changes may be made in this provision in the subsequent final rulemaking.

The principal author of this final rulemaking is Gary Ryan, Division of Forestry, assisted by the staff of the Division of Legislation and Regulatory Management.

It is hereby determined that this final rulemaking does not constitute a major Federal action significantly affecting the quality of the human environment, and that no detailed statement pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)) is required.

The Department of the Interior has determined that this document is not a major rule under Executive Order 12291 and will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.). Its effect is the same regardless of the size of the regulated entity, and will not be greater than $100,000,000 annually on the national economy.

The rulemaking does not contain information collection requirements which require approval by the Office of Management and Budget under 5 CFR 1320.7 *et seq.*

List of Subjects in 43 CFR Part 5440

Forest and forest products, Government contracts, Public lands.

Under the authority of section 5 of the Act of August 28, 1937 (43 U.S.C. 1181e), and the Act of July 31, 1947, as amended (30 U.S.C. 601 *et seq.*), Subchapter E, Chapter II of Title 43 of the Code of Federal Regulations is amended as set forth below:

April 30, 1987.

James E. Cason,

Deputy Assistant Secretary of the Interior.

PART 5440—[AMENDED]

1. The authority citation for Part 5440 continues to read as follows:

Authority: Sec. 5, 50 Stat. 875, 61 Stat. 631, as amended, 69 Stat. 367; 43 U.S.C. 1181e, 30 U.S.C. 601 *et seq.*

2. Section 5441.1(c) is revised to read as follows:

§ 5441.1 Qualification of bidders.

* * * * *

(c)(1) A purchaser who is under review for debarment may continue to bid on timber purchase contracts until a final debarment determination has been made by the debarring official. However, contracts will not be awarded during the review period.

(2) Debarred purchasers are prohibited from bidding on timber purchase contracts.

[FR Doc. 87–16236 Filed 7–16–87; 8:45 am]

BILLING CODE 4310–84–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 67

Final Flood Elevation Determinations; New York et al.

AGENCY: Federal Emergency Management Agency.

ACTION: Final rule.

SUMMARY: Final base (100-year) flood elevations are determined for the communities listed below.

The base (100-year) flood elevations are the basis for the floodplain management measures that the community is required to either adopt or show evidence of being already in effect

in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

EFFECTIVE DATE: The date of issuance of the Flood Insurance Rate Map (FIRM) showing base (100-year) flood elevations, for the community. This date may be obtained by contacting the office where the maps are available for inspection indicated on the table below.

ADDRESSES: See table below.

FOR FURTHER INFORMATION CONTACT: John L. Matticks, Chief, Risk Studies Division, Federal Insurance Administration, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2767.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency gives notice of the final determinations of flood elevations for each community listed. Proposed base flood elevations or proposed modified base flood elevations have been published in the **Federal Register** for each community listed.

This final rule is issued in accordance with Section 110 of the Flood Disaster Protection Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90–448)), 42 U.S.C. 4001–4128, and 44 CFR Part 67. An opportunity for the community or individuals to appeal proposed determination to or through the community for a period of ninety (90) days has been provided.

The Agency has developed criteria for flood plain management in flood-prone areas in accordance with 44 CFR Part 60.

Pursuant to the provisions of 5 U.S.C. 605(b), the Administrator, to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies for reasons set out in the proposed rule that the final flood elevation determinations, if promulgated, will not have a significant economic impact on a substantial number of small entities. Also, this rule is not a major rule under terms of Executive Order 12291, so no regulatory analyses have been prepared. It does not involve any collection of information for purposes of the Paperwork Reduction Act.

List of Subjects in 44 CFR Part 67

Flood insurance, Flood plains.

The authority citation for Part 67 continues to read as follows:

Authority: 42 U.S.C. 4001 et seq., Reorganization Plan No. 3 of 1978, E.O. 12127.

Interested lessees and owners of real property are encouraged to review the proof Flood Insurance Study and Flood Insurance Rate Map available at the address cited below for each community.

The modified base (100-year) flood elevations are finalized in the communities listed below. Elevations at selected locations in each community are shown. Any appeals of the proposed base flood elevations which were received have been resolved by the Agency.

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
NEW YORK	
Westport (town), Essex County (FEMA Docket No. 6902)	
Lake Champlain: Entire shoreline within community	*102
Maps available for inspection at the Town Clerk's Office, 24 Sisco Street, Westport, New York.	
NORTH DAKOTA	
Mandan (city), Morton County (FEMA Docket No. 6703)	
Missouri River: 900 feet upstream from centerline of Burlington Northern Railroad Bridge	*1,636
Heart River:—With Consideration of Levees: 50 feet upstream from State Highway 6 (10th Avenue SW) bridge	*1,656.
Heart River—Without Consideration of Levees: At the intersection of 3rd Street SW and State Highway 6 (10th Avenue SW)	*1,650
Maps available for review at the City Engineer's Office, 205 2nd Avenue, NW, Mandan, North Dakota.	
Morton County (unincorporated areas) (FEMA Docket No. 6703)	
Missouri River: At the confluence with the Heart River	*1,634
Heart River: 50 feet upstream from center of Burlington Northern Railroad Bridge	*1,668
At intersection of Dead Heart Slough and an Unnamed Road approximately 300 feet South of the Burlington Northern Railroad along the Channel of Dead Heart Slough	*1,663
Maps available for review at the County Engineer's Office, 205 2nd Avenue, NW, Mandan, North Dakota.	
PENNSYLVANIA	
Applewold (borough), Armstrong County (FEMA Docket No. 6902)	
Allegheny River:	
Approximately 1.1 miles downstream of Kittanning Highway bridge	*793
Approximately 660 feet downstream of Kittanning Highway bridge	*794
Maps available for inspection at the Borough Office, 8 Hickory Street, Kittanning, Pennsylvania.	

The base (100-year) flood elevations are finalized in the communities listed below. Elevations at selected locations in each community are shown. No appeal was made during the 90-day period and the proposed base flood elevations have not been changed.

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
ALASKA	
Anchorage (municipality) (FEMA Docket No. 6906)	
Fish Creek:	
100 feet upstream of the Alaska Railroad	*27
At downstream face of McRae Rd	*43
70 feet downstream of Minnesota Dr	*76
130 feet upstream of New Seward Highway	*115
At upstream face of Tudor Rd	*132
280 feet downstream of Providence Ave	*137
South Fork Chester Creek:	
20 feet upstream of Northern Lights Blvd	*111
200 feet upstream of Providence Ave	*136
At confluence with South Branch of South Fork Chester Creek	*180
South Branch of South Fork Chester Creek:	
At confluence with South Fork Chester Creek	*180
325 feet downstream of intersection of Muldoon Rd. & Debarr Ave.	*246
3,000 feet upstream of Muldoon Rd	*281
Middle Branch of South Fork Chester Creek:	
At upstream face of Muldoon Rd	*250
950 feet upstream of Muldoon Rd	*252
800 feet upstream of Valley St	*263
Little Campbell Creek:	
At confluence with Campbell Creek	*78
At upstream face of Nathan Dr	*82
At confluence with North Fork Little Campbell Creek	*89
North Fork Little Campbell Creek:	
At confluence with Little Campbell Creek	*89
At upstream face of New Seward Highway	*116
At confluence with North Branch of North Fork Little Campbell Creek	*136
North Branch of North Fork Little Campbell Creek:	
At confluence with North Fork Little Campbell Creek	*136
At upstream face of Lake Otis Parkway	*147
At upstream face of Spruce Street	*167
South Branch of North Fork Little Campbell Creek:	
At confluence with North Fork Little Campbell Creek	*135
At downstream face of Spruce Rd	*186
At downstream face of Abbott Loop Rd	*208
South Fork Little Campbell Creek:	
At confluence with Little Campbell Creek	*89
At upstream face of New Seward Highway	*121
50 feet downstream of Abbott Rd	*232
South Fork Little Campbell Creek Split Flow 2:	
At confluence with South Fork Little Campbell Creek	*121
At confluence with North Fork Little Campbell Creek Split Flow 2	*134
170 feet upstream of Diamond Drive Extended	*173
South Fork Little Campbell Creek Split Flow 2:	
At confluence with South Fork Little Campbell Creek Split Flow 1	*134
580 feet upstream of confluence with South Fork Little Campbell Creek Split Flow 1	*138
Maps are available for review at the Public Works Department, Engineering Section, Anchorage, Alaska.	
ARIZONA	
Bullhead City (city), Mohave County (FEMA Docket No. 6903)	
Colorado River:	
Approximately 1.6 miles downstream of Puerta Vista	*491
Approximately 1,500 feet upstream of Puerta Vista	*494
Approximately 1,800 feet downstream of Hancock Road	*500
Approximately 500 feet downstream of Park Lane	*504
Approximately at 7th Street	*509
Maps are available for inspection at City Hall, Office of Planning and Development, 1355 Ramar, Bullhead City, Arizona.	

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
Cottonwood (town), Yavapai County (FEMA Docket No. 6905)	
Railroad Wash:	
Approximately 300 feet downstream of Main Street	*3,304
Just upstream of Cochise Street	*3,333
Approximately 225 feet downstream of 6th Street	*3,390
Approximately 50 feet downstream of Beach Street	*3,435
Approximately 375 feet upstream of U.S. 89A—State 279	*3,475
Silver Springs Gulch:	
At the eastern corporate limits (just upstream of Verde River)	*3,291
Approximately 760 feet upstream of S. Main Street	*3,360
Approximately 360 feet downstream of State Hwy. 279	*3,420
Approximately 900 feet upstream of South 6th Street	*3,500
Just downstream of the western corporate limits	*3,605
Maps are available for inspection at the Town Hall, Planning Department, 827 North Main Street, Cottonwood, Arizona.	
Greenlee County (unincorporated areas) (FEMA Docket No. 6903)	
Gila River:	
3,000 feet downstream of confluence with Canyon Creek	*3,620
400 feet upstream of confluence with Incom ling River East	*3,644
8,400 feet upstream of confluence with Rainville Wash	*3,674
Maps are available for review at the Board of Supervisors Office, 5th and Leonard Streets, Clifton, Arizona	
Marana (town), Pima County (FEMA Docket No. 6903)	
East Embankment Southern Pacific Railroad:	
On the northern extension of San Dario Road (also the Marana corporate limits); 600 feet due north of the Southern Pacific Railroad	*1,979
At Avra Street, 300 feet southeast of intersection with Tortolita Street	*1,990
On Tangerine Road, 1,400 feet east of the intersection of Tangerine Road extended due west and the Southern Pacific Railroad	*2,044
Tortolita Alluvial Fans:	
1,500 feet north of a point on Tangerine Road that is 1,000 feet east of the intersection of Tangerine Road extended due west and the Southern Pacific Railroad	#1
At intersection of Adonis Road and Warfield Circle	#2
Maps are available for review at the Planning and Zoning Department, 12775 N. Sanders Road, Marana, Arizona.	
ARKANSAS	
Gould (city), Lincoln County (FEMA Docket No. 6903)	
Canal 19 (Boeuf River):	
Star Avenue west of 2nd Street	*165
Entire length of McKinley Avenue	*165
480 feet east of Missouri Pacific Railroad crossing of most north corporate limit	*165
Along O. D. Nickols Street approximately .2 mile from intersection with West Jefferson Avenue	*165
Maps available for inspection at the City Hall, Highway 65 North, Gould, Arkansas.	
Piggott (city), Clay County (FEMA Docket No. 6903)	
Sugar Creek:	
At downstream corporate limits	*282
At downstream side of South Front Avenue	*298
At upstream side of West Main Street	*303
At most upstream corporate limits	*317
Tributary 1:	
At confluence with Sugar Creek	*300
At upstream side of South 12th Avenue	*309
Tributary 4:	
At confluence with Tributary 1	*309
At downstream side of City Street	*314
At upstream side of 18th Avenue	*324
Approximately .24 mile upstream of 18th Avenue	*334
Tributary 2:	
At confluence with Tributary 1	*305
At upstream side of West Jackson Street	*318
At upstream corporate limits	*329
Tributary 3:	
At confluence with Tributary 1	*309
At upstream side of Dogwood Drive	*316
Approximately 190 feet upstream of Wiley Street	*328
Tributary 4A:	
At confluence with Tributary 4	*319
At upstream corporate limits	*323
Tributary 5:	
At confluence with Sugar Creek	*305
Approximately 752 feet downstream of North 12th Avenue	*320
Approximately 70 feet upstream of North 12th Avenue	*335
Club Drain:	
At confluence with Sugar Creek	*306
At upstream corporate limits	*314
Maps available for inspection at the City Hall/Police Department, Piggott, Arkansas.	
Van Buren (city), Crawford County (FEMA Docket No. 6903)	
Arkansas River:	
At downstream corporate limits	*410
At upstream corporate limits	*415
Flat Rock Creek:	
Approximately 0.8 mile downstream of downstream corporate limits	*395
Upstream side of most downstream crossing of Interstate Route 540 (southbound)	*410
Upstream side of U.S. Route 64–71 (westbound)	*430
Approximately 900 feet upstream of Rudy Road	*476
Town Branch:	
At downstream corporate limits	*398
At downstream side of Chestnut Street	*413
Approximately 740 feet upstream of North 20th Street	*425
Approximately 650 feet upstream of Alma Boulevard	*444
Town Branch Overflow:	
At confluence with Flat Rock Creek	*396
At point of Overflow from Town Branch	*401
Lee Creek:	
Upstream side of Interstate Route 40 (westbound)	*413
Approximately 1,160 feet upstream of Rena Road	*415
Maps available for inspection at the City Hall, 1000 East Main, Van Buren, Arkansas.	
Van Buren County (FEMA Docket No. 6902)	
Middle Fork Little Red River:	
At river mile 4.5	*520
At river mile 9.05	*551
South Fork Little Red River:	
At river mile 26.9	*534
At river mile 29.09	*541
Choctaw Creek:	
At river mile 1.015	*493
At river mile 3.6	*541
At river mile 5.44	*614
Weaver Creek:	
At confluence with Middle Fork Little Red River	*522
Upstream side of State Route 16	*529
At river mile 2.77	*552
Scotland Branch:	
At river mile 0.76	*626
At river mile 1.6	*663
At river mile 1.98	*685
Scroggins Creek:	
At river mile 0.77	*621
At river mile 3.2	*711
At river mile 5.48	*779
East Fork Point Remove Creek:	
At river mile 3.855	*702
At river mile 4.50	*756
At river mile 5.50	*833
At river mile 6.20	*878
Beardy Branch:	
At river mile 1.02	*662
At river mile 1.89	*714
Big Branch:	
At river mile 0.62	*492
At river mile 1.74	*561
Joneed Creek:	
At confluence with Scotland Branch	*672
At river mile 0.3	*688
Beardy Branch Tributary:	
At confluence with Beardy Branch	*714
At river mile 0.6	*768
Maps available for inspection at the County Courthouse, Clinton, Arkansas.	
CALIFORNIA	
Antioch (city), Contra Costa County (FEMA Docket No. 6903)	
East Antioch Creek:	
Atchison, Topeka and Santa Fe Railroad	*7
Lake Alhambra, 300 feet above West Lake Drive	*9
East 18th Street	*13
2,100 feet upstream of East 18th Street	*20
600 feet downstream of Willow Avenue	*36
800 feet downstream of Hillcrest Avenue	*128
2,850 feet upstream of Hillcrest Avenue	*136
Cavallo Drain: 400 feet above East 18th Street	None
Los Medanos Wasteway:	
At confluence with San Joaquin River	*7
1,000 feet downstream of West l0th Street	*16
1,100 feet upstream of West l0th Street	*25
West Antioch Creek:	
Atchison, Topeka and Santa Fe Railroad	*7
850 feet upstream of Atchison, Topeka and Santa Fe Railroad	*10
20 feet downstream of 4th Street	*12
Maps available for inspection at City Hall, Third and H Streets, Antioch, California.	
Clearlake (city), Lake County (FEMA Docket No. 6903)	
Burns Valley Creek:	
At confluence with Clear Lake	*1,331
50 feet upstream of Lakeshore Drive	*1,334
850 feet upstream of State Highway 53	*1,406
Burns Valley Creek Overflow:	
At confluence with Clear Lake	*1,331
25 feet upstream of Olympia Drive	*1,353
320 feet upstream of Old State Highway 53	*1,377
Molesworth Creek:	
At confluence with Clear Lake	*1,331
At Old State Highway 53	*1,347
1,050 feet upstream of State Highway 53	*1,412
Cache Creek:	
At Clear Lake Dam	*1,331
At confluence with Herndon Creek	*1,331
At Outlet of Clear Lake	*1,331
Maps are available for review at the Clearlake City Hall, 14360 Lakeshore, Clearlake, California 95422.	
Imperial Beach (city), San Diego County (FEMA Docket No. 6906)	
Tijuana River:	
2,150 feet upstream from profile base line confluence with Oneonta Slough	*6
At Sunset Avenue approximately 6,700 feet west of 19th Street	*11
At Sunset Avenue approximately 2,700 feet west of 19th Street	*15
Pacific Ocean:	
At intersection of Beach Avenue and 1st Street	*6
200 feet west of intersection of Cortez Avenue and 1st Streets	*6
1,050 feet south of a point 150 feet west of intersection of Encanto Avenue and 1st Street	*10

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
At center of Boulevard Avenue, 700 feet west along the street from its intersection with 10th Street	*6
Maps are available for inspection at the Planning and Community Development Department, 825 Imperial Beach Boulevard, Imperial Beach, California.	
Lassen County (unincorporated areas) (FEMA Docket No. 6902)	
Susan River:	
520 feet upstream of Southern Pacific Railroad bridge (downstream limit of detailed study)	*4,142
Upstream face of State Highway 36 bridge	*4,147
Downstream face of Riverside Drive bridge	*4,165
1,100 feet downstream of Southern Pacific Railroad bridge (upstream limit of detailed study)	*4,231
Downstream face of Southern Pacific Railroad bridge (upstream limit of detailed study)	*4,251
Piute Creek:	
70 feet upstream of City of Susanville corporate limits	*4,252
650 feet downstream of Paul Bunyan Logging Road	*4,257
Downstream face of Paul Bunyan Logging Road	*4,263
Maps are available for inspection at the Lassen County Department of Public Works, Room 105, Courthouse Annex, Susanville, California.	
Loomis (town), Placer County (FEMA Docket No. 6906)	
Secret Ravine:	
Most downstream location within town limits	*321
Immediately upstream of Brace Road	*341
Immediately upstream of Horseshoe Ravine	*354
Confluence with Secret Ravine Tributary	*355
Most upstream location within corporate limits	*363
Secret Ravine Tributary:	
Confluence with Secret Ravine	*355
Immediately upstream of U.S. Route 80	*368
640 feet upstream of U.S. Route 80	*376
Upstream limit of detailed study (approximately 390 feet upstream of Kings Road)	*397
Antelope Creek:	
Most downstream location within corporate limits	*285
Immediately upstream of Delmar Avenue	*296
200 feet upstream of Sierra College Boulevard	*313
Confluence with Antelope Creek Tributary	*340
Most upstream location within corporate limits	*353
Antelope Creek Tributary:	
Confluence with Antelope Creek	*340
Immediately upstream of confluence with Antelope Creek	*342
860 feet above confluence with Antelope Creek	*347
640 feet downstream of corporate limit	*353
Most upstream location within corporate limits	*359
Maps are available for inspection at Loomis Town Hall, 6140 Horseshoe Bar Road, Loomis, California.	
Madera County (unincorporated areas) (FEMA Docket No. 6902)	
San Joaquin River: 4,120 feet downstream of centerline of Avenue 7½	*143
San Joaquin River: 280 feet downstream of center of North Fork Road Bridge	*309
San Joaquin River Branch: 1,170 feet downstream of divergence with San Joaquin River	*285
Cottonwood Creek: At downstream edge of Avenue 11	*265
Cottonwood Creek: 1,170 feet downstream of Atchison, Topeka and Santa Fe Railroad Bridge	*281
Cottonwood Creek (Sheet Flow): At junction of Road 20 and Avenue 8	#1
Cottonwood Creek (Ponding): At junction of Road 28½ and Avenue 13	*267
Cottonwood Creek (Ponding): At junction of Road 30½ and Avenue 10½	*271
Madera Ranchos North: At downstream edge of Avenue 12	*296
Madera Ranchos North: At upstream edge of Road 35	*319
Madera Ranchos North (Sheet Flow): At junction of Road 34 and Avenue 12	#1
Madera Ranchos South: 1,230 feet due south of junction of Road 35½ and Avenue 12	*324
Madera Ranchos South: At upstream edge of Wayward Drive	*339
Madera Ranchos South (Sheet Flow): At junction of Road 33½ and Avenue 11	#1
Dry Creek: 1,550 feet downstream of Avenue 20	*272
Dry Creek (Sheet Flow): At junction of Road 19 and Avenue 16½	#1
Dry Creek (Ponding): At north side of creek at Atchison, Topeka and Santa Fe Railroad	*250
Dry Creek (Ponding): At south side of creek at Atchison, Topeka and Santa Fe Railroad	*251
Schmidt Creek: At upstream edge of Avenue 18	*270
Schmidt Creek: 100 feet downstream of edge of State Highway 99	*255
Schmidt Creek: At junction of Sharon Boulevard and Balwin Street	#1
Schmidt Creek Tributary: At upstream edge of Road 26	*277
Maps are available for review at the Department of Engineering and General Services, 135 West Yosemite Avenue, Madera, California.	
Rio Vista (city), Sacramento County (FEMA Docket No. 6902)	
Sacramento River: At the intersection of River Road and the second Private Road located upstream of Industrial Creek	*8
Maps are available for inspection at the City Clerk's Office, City Hall, 1 Main Street, Rio Vista, California.	
COLORADO	
Castle Rock (town) Douglas County (FEMA Docket No 6906)	
Cherry Creek:	
Approximately 3,200 feet downstream of County Road	*6,022
Approximately 1,200 feet upstream of County Road, at corporate limits	*6,030
At center of County Road	*6,039
East Plum Creek (Downstream of Confluence With Hangmans Gulch):	
100 feet downstream from confluence with Haskins Gulch	*5,952
At confluenc with Tributary D	*6,014
Approximately 2,150 feet upstream of unnamed road in Section 34, Township 7 South	*6,076
East Plum Creek (Upstream of U.S. Highway 85):	
30 feet upstream of U.S. Highway 85	*6,214
Approximately 1,650 feet west from a point on Plum Creek Boulevard 150 feet north of intersection with Mount Royal Drive	*6,250
Approximately 1,700 feet upstream from a point approximately 1,650 feet west of intersection of Mount Royal Drive and Plum Creek Boulevard	*6,266
Approximately 1,500 feet downstream of Douglas Lane	*6,281
Approximately 700 feet downstream of Douglas Lane	*6,289
Approximately 350 feet downstream of Douglas Lane	*6,292
Maps are available for review at the Planning Department, 318 4th Street, Castle Rock, Colorado.	
Douglas County (unincorporated areas) (FEMA Docket No. 6906)	
East Plum Creek (Downstream of Confluence with Hangmans Gulch:	
Approximately 3,700 feet upstream of State Highway 67	*5,805
At Confluence with 6400 Tributary	*5,893
Approximately 1,300 feet upstream of confluence with Tributary A	*5,984
Approximately 550 feet upstream of unnamed road in Section 34, Township 7 South	*6,063
Approximately 850 feet downstream of confluence with Hangmans Gulch	*6,093
At confluence with Hangmans Gulch	*6,100
East Plum Creek (Upstream of U.S. Highway 85):	
Approximately 1,800 feet west from a point on Plum Creek Boulevard approximately 620 feet north of intersection with Mount Royal Drive	*6,246
Approximately 2,300 feet downstream of Douglas Lane	*6,276
Approximately 1,675 feet downstream of Douglas Lane	*6,280
Approximately 350 feet downstream of Douglas Lane	*6,292
Approximately 100 feet downstream of confluence with Section 34 Tributary	*6,350
Approximately 4,800 feet downstream of Interstate Highway 250	*6,567
Sellers Gulch (South of Castle Rock):	
At dirt road in Range 67 West, Section 13	*6,317
Approximately 400 feet downstream of unnamed road in Range 66 West, Section 19	*6,411
Approximately 50 feet upstream of unnamed road in Range 66, West, Section 19	*6,417
Maps are available for review at the Douglas County Department of Highways, 301 South Lewis, Castle Rock, Colorado.	
Larkspur (town), Douglas County (FEMA Docket No. 6906)	
East Plum Creek: At center of Perry Park Avenue	*6662
Maps are available for review at the Town Clerk's Office, Town Hall, Larkspur, Colorado.	
Longmont (city), Boulder County (FEMA Docket No. 6903)	
Dry Creek No. 1:	
At confluence with St. Vrain Creek	*4,939
At upstream face of Bowen Street	*4,959
At upstream face of Hover Road	*4,990
Lefthand Creek:	
At confluence with St. Vrain Creek	*4,926
200 feet upstream of South Bowen Street	*4,964
690 feet upstream of Pike Road	*4,978
St. Vrain Creek:	
At downstream face of N. 119th Street	*4,916
At upstream face of Sunset Street	*4,969
80 feet upstream of Airport Road	*5,022
Spring Gulch:	
At confluence with St. Vrain Creek	*4,929
At upstream face of East Longs Peak Avenue	*4,976
At downstream face of East 15th Avenue	*5003
Maps are available for review at the City Engineering Office, Civic Center Complex, 3rd and Kimbark Streets, Longmont, Colorado.	
Parker (town), Douglas County (FEMA Docket No. 6906)	
Cherry Creek: 50 feet downstream of centerline of West Parker Road	*5,811
Sulphur Gulch: 150 feet upstream of centerline of Pikes Peak Drive	*5,857
Tallman Gulch: 50 feet upstream of centerline of Seibert Circle	*5,925
Maps are available for review at the Parker Town Hall, 19319 East Main Street, Parker, Colorado.	
DELAWARE	
Elsmere (town) New Castle County (FEMA Docket No. 6906)	
Little Mill Creek:	
Approximately 760 feet downstream of Old Dupont Road	*44
Upstream side of Old Dupont Road	*63
At confluence of Chestnut Run	*77
Silverbrook Run:	
At confluence with Little Mill Creek	*44
Downstream side of New Road	*88
At upstream corporate limits	*98
Chestnut Run:	
At confluence with Litrle Mill Creek	*77
Upstream side of Jefferson Avenue	*90
At upstream corporate limits	*92
Derrickson Run:	
At confluence with Little Mill Creek	*65
Upstream side of State Route 2 (Wilmington Avenue)	*80

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
Approximately 1,225 feet upstream of Junction Street	*102
Maps available for inspection at the Town Office, 11 Poplar Avenue, Elsmere, Pennsylvania.	
FLORIDA	
Unincorporated Areas of Dade County (FEMA Docket No. 6906)	
Atlantic Ocean:	
About 1,200 feet east of intersection of Harbour Way and Park Drive	*7
About 3,000 feet northeast of intersection of East Drive and Caribbean Road	*7
About 4,000 feet northwest of Sands Cut	*9
About 400 feet east of intersection of State Road 826 and State Road A1A	*10
About 1,100 feet east of intersection of Collins Avenue and 34th Street	*11
About 2,000 feet north of Sands Cut	*12
Intracoastal Waterway:	
About 1.5 miles northwest of U.S. Route 1 bridge over Glades Canal	*2
At intersection of Arthur Vining Davis Parkway and Southwest 122nd Avenue	*3
At intersection of Oleta Drive and Northeast 182nd Drive	*6
About 1,450 feet south of intersection of Tiger Tail Avenue and Ematilla Street	*16
About 2,250 feet south of intersection of Southwest 147th Street and Southwest 63rd Street	*18
About 0.95 mile east of intersection of Southwest 97th Avenue and Southwest 264th Street	*18
Maps available for inspection at the Department of Environmental Resources, Miami, Florida.	
Escambia County (unincorporated areas), (FEMA Docket 6903)	
Pine Barren Creek:	
Just downstream of Louisville and Nashville Railroad	*34
Just upstream of Wiggins Bridge	*56
Thompson Bayou:	
About 1.8 miles upstream of mouth	*9
About 2.4 miles upstream of mouth	*26
Elevenmile Creek:	
About 1.1 miles downstream of confluence of Hurst Branch	*7
About 1.2 miles upstream of confluence of Eightmile Creek	*24
Escambia River:	
At confluence of Governors Bayou	*9
About 6.4 miles upstream of confluence of Pine Barren Creek	*35
Escambia Bay:	
About 500 feet southeast of intersection of U.S. Route 90 and Louisville and Nashville Railroad	*7
At mouth of Escambia River	*13
Perdido Bay:	
Along shoreline of Tarklin Bayou	*4
Along Perdido River just downstream of U.S. Route 90	*6
Along eastern shoreline of Perdido Bay from just west of intersection of U.S. Route 98 and Santa Maria Drive to about 1.4 miles west of mouth of Elevenmile Creek	*10
Pensacola Bay:	
At shoreline about 2,000 feet east of Chevalier Field	*6
Along western shoreline of Pensacola Bay from about 2,200 feet north east of Sherman Inlet to about 1,400 feet south-southeast of intersection of Hovey Road and San Carlos Road	*10
Gulf of Mexico:	
About 600 feet north of intersection of Perdido Key Drive and Old River Road	*5
At Red Fish Point	*9
Along shoreline of Gulf of Mexico from western county boundary to State Road 292	*15
Along shoreline of Gulf of Mexico from State Road 292 to about 500 feet east of east end of Johnson Branch Road	*15
Along shoreline of Gulf of Mexico from about 2.1 miles east of east end of Johnson Beach Road to about 2,000 feet east of Spanish Point	*17
Santa Rosa Sound:	
Along southern shoreline of Santa Rosa Sound from Big Sabine Point to the eastern county boundary	*6
Shallow Flooding (overflow from Gulf of Mexico due to wave overtopping of dunes):	
Along northside of Perdido Key Drive from western county boundary to 500 feet south of Gongorra Drive	#1
Along Johnson Beach Road from Perdido Key Drive to 4,000 feet east	#1
About 1,800 feet southeast of State Road 56 bridge over Sherman Cove	#1
At Fort McRae	#1
About 500 feet east of west end of Fort Pickens Road	#1
About 1,500 feet north of Fort Pickens Road at point 1.5 miles east of west end	#1
Along north side of State Road 399 from Big Sabine Point to about 6.0 miles east	#1
Along north side of State Road 399 from east county boundary to about 1.0 mile west	#1
About 550 feet north of shoreline and 1.4 miles west of eastern county boundary	#1
About 600 feet north of shoreline at eastern county boundary	#1
Maps available for inspection at the Building Inspection Department, City Hall, 1190 Leonard Street, Pensacola, Florida.	
City of Pensacola, Escambia County (FEMA Docket No. 6903)	
Pensacola Bay:	
Just upstream of State Road 292 bridge over Chico Bayo	*6
Just upstream of Louisville and Nashville Railroad bridge over Bayou Texar	*6
Along western shoreline of Pensacola Bay from mouth of Chico Bay to Emanuel Point	*9
Escambia Bay:	
Along western shoreline of Escambia Bay from Gull Point to northern corporate limits	*7
Along western shoreline of Escambia Bay from New Hope Road to Gull Point	*9
Along western shoreline of Escambia Bay from Emual Point to New Hope Road	*9
Maps available for inspection at the Building Inspection Department, City Building, Pensacola, Florida.	
Pensacola Beach—Santa Rosa Island Authority, Escambia County (FEMA Docket No. 6903)	
Santa Rosa Sound:	
Along shoreline of Santa Rosa Sound from about 1,000 feet east of western corporate limits to State Road 399	*6
Along shoreline of Santa Rosa Sound from State Road 399 to eastern corporate limits	*6
Gulf of Mexico:	
Along shoreline of Santa Rosa Sound from western corporate limits to about 1,000 feet east	*9
Along northern shoreline of Gulf of Mexico from western corporate limits to Sound Drive	*15
Shallow Flooding (Overflow from Gulf of Mexico due to wave overtopping of dunes):	
Along Fort Pickens Road from 3,300 feet east of Sabine Drive to Via de Luna	#1
Along Via de Luna from Fort Pickins Road to Avenida 18	#1
About 400 feet north of Ariola Drive from Avenida 18 to Avenida 23	#1
Along Via de Luna from Avenida 23 to eastern corporate limits	#1
Maps available for inspection at the Offices of Santa Rosa Island Authority, Via Del Luna Road, Pensacola Beach, Florida.	
GEORGIA	
Hogansville (city), Troup County (FEMA Docket No. 6730)	
Yellowjacket Creek:	
About 1,150 feet downstream of State Route 54	*676
About 0.9 mile upstream of State Route 54	*682
Hogansville Branch:	
At mouth	*682
About 2,750 feet upstream of mouth	*696
Maps available for inspection at the Building Inspection Department, City Hall, Hogansville, Georgia.	
Savannah (city), Chatham County (FEMA Docket No. 6696)	
Pipe Makers Canal:	
Just downstream of Dean Forest Road	*13
About 900 feet upstream of Timber Bridge	*16
Dundee Canal:	
Just upstream of Seaboard Coast Line Railroad (railroad is 2.5 miles upstream of mouth)	*15
Just downstream of Seaboard Coast Line Railroad (railroad is 3.6 miles upstream of mouth)	*15
Springfield Canal:	
Just upstream of Interstate 16	*12
Just upstream of Douglas Street	*15
Springfield Canal Tributary A:	
At mouth	*12
Just upstream of U.S. Route 17 South	*14
Casey Canal:	
Just upstream of confluence with Haneys Creek	*13
About 700 feet upstream of Duffy Street	*14
Harmon Canal:	
Just upstream of Edgewater Road	*12
Just downstream of Montgomery Cross Road	*15
Wilshire Canal:	
Just upstream of Abercorn Street	*12
Just downstream of Mercy Boulevard	*21
Wilshire Canal Tributary A:	
At mouth	*12
Just downstream of Briarcliff Circle	*20
Wilshire Canal Tributary A-1:	
At mouth	*16
Just upstream of Abercorn Street	*20
Atlantic Ocean:	
About 1,000 feet northwest of Alternate U.S. Route 17 over Savannah River	*12
At intersection of Tompkins Road and South Tompkins Road	*12
About 0.5 mile upstream of State Route 359 over Little Ogeechee River	*12
At mouth of Breakfast Creek	*14
Western half of Ella Island	*18
Maps available for inspection at the City Engineer's Office, City Hall, Savannah, Georgia.	
HAWAII	
Honolulu (city and county) (FEMA Docket No. 6902)	
Kalihi Stream:	
600 feet upstream of centerline of Dillingham Boulevard	*15
200 feet upstream of center of H-1 Freeway Bridge	*53
100 feet upstream of centerline of North School Street	*99
Kahauiki Stream:	
650 feet downstream of centerline of Mokumoa Street	*7
50 feet upstream of centerline of Government Road	*10
700 feet upstream of centerline of Government Road	*10
Moanalua Stream: (Lower)	
200 feet downstream of center of Nimitz Highway Bridge	*4
400 feet upstream of centerline of Kamehameha Highway	*5
150 feet downstream of centerline of Moana Lua Road	*12
Nuuanu Stream:	
60 feet upstream from center of North School Street	*18

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
60 feet upstream from center on Nuuanu Avenue Bridge	*80
550 feet upstream of centerline of Judd Street	*180
Malaekahana Stream:	
1,220 feet downstream of centerline of Kamehameha Highway Bridge	*9
125 feet downstream of centerline of Kamehameha Highway Bridge	*13
350 feet upstream of centerline of Cane Haul Road	*39
Waikele Stream:	
2,700 feet downstream from center of Waikele Road/Hula Street Bridge	*2
400 feet upstream of center of Waipahu Street Bridge	*35
100 feet downstream from center of H-1 Highway Bridge	*41
Honoululi Stream:	
520 feet downstream of center of Access Road	*4
60 feet upstream of centerline of New Fort Weaver Road Bridge	*14
At downstream edge of Farrington Highway Bridge	*77
Unnamed Stream:	
550 feet upstream of center of Waialua Beach Road	*8
130 feet upstream from center of Highway Bridge	*22
710 feet upstream from center of Farrington Highway Bridge	*24
Kaalaea Stream:	
200 feet downstream from center of Kahekili Highway Stream	*5
65 feet upstream from center of Kamehameha Highway Bridge	*10
300 feet upstream from center of Pulama Road	*106
Waihee Stream:	
390 feet upstream of confluence with Kahaluu Pond	*14
100 feet upstream from center of Ahilama Road Bridge	*46
2,950 feet downstream of Forest Reserve Boundary	*108
Waihee Stream Tributary:	
310 feet downstream of center of Ahilama Road Bridge	*23
5 feet upstream from center of Ahilama Road Bridge	*28
40 feet upstream of center of Ahilama Road Bridge	*29
Waolani Stream:	
50 feet upstream of centerline of North School Street	*18
45 feet upstream from center of Kaukini Street Bridge	*62
75 feet downstream from centerline of Kawananakoa Place	*183
Aiea Stream:	
20 feet downstream of centerline of Moana Lua Road Bridge	*30
80 feet upstream of centerline of Ulune Street Bridge	*74
50 feet downstream of centerline of Kaulainahee Place	*197
Kalauao Stream:	
1,000 feet downstream of centerline of Kamehameha Highway Bridge	*2
50 feet upstream of centerline of Moana Lua Road	*25
440 feet upstream of centerline of Access Road	*48
Haiamoa Stream:	
220 feet downstream of centerline of Kahekili Highway	*4
175 feet upstream from center of Kamehameha Highway Bridge	*6
40 feet upstream of centerline of Ahilama Road	*18
Kahaluu Stream:	
400 feet upstream of confluence with Ahuimanu Stream	*25
130 feet downstream of center of Melekula Road Bridge	*154
20 feet downstream of center of Melekula Road	*159
Ahuimanu Stream:	
200 feet upstream of centerline of Ahaolelo Road	*7
At downstream edge of Kahekili Highway Bridge	*42
1,400 feet downstream of center of Hui Iwa Street Bridge	*68
Ahuimanu Stream Tributary:	
680 feet upstream of confluence with Ahuimanu Stream	*48
At upstream edge of Ahuimanu Street Bridge	*60
50 feet upstream of Alawiki Road Bridge	*77
Kawainui Stream:	
150 feet downstream of center of Wanaao Road Bridge	*4
100 feet upstream from center of Hamakua Drive Bridge	*6
320 feet upstream of Kaiwa Road Bridge Center	*6
Makaleha Stream:	
250 feet downstream of center of Farrington Highway Bridge	*20
500 feet downstream from center of Cane Haul Road	*20
1,200 feet downstream from confluence with Wilson Ditch	*112
Maps available for inspection at the Department of Land Utilization, 650 South King Street, Honolulu, Hawaii.	

ILLINOIS

Kirkland (village), De Kalb County (FEMA Docket No. 6903)

South Branch Kishwaukee River:	
About 1,400 feet downstream of 6th Street	*761
Just downstream of Pearl Street	*765
Maps available for inspection at the Village Hall, Main Street, Kirkland, Illinois.	

Long Creek (village), Macon County (FEMA Docket No. 6903)

Long Creek:	
About 300 feet upstream of confluence with Big Creek	*630
Just downstream of U.S. Route 36	*647
Maps available for inspection at Village Hall, 700 Block, Route 36, Long Creek, Illinois.	

Maple Park (village), Kane County (FEMA Docket No. 6903)

Union Ditch No. 2:	
Just upstream of County Line Road	*851
About 1,700 feet upstream of County Line Road	*853
Maps available for inspection at the Village Hall, 302 Willow, P.O. Box 220, Maple Park, Illinois.	

INDIANA

Bedford (city), Lawrence County (FEMA Docket No. 6903)

Leatherwood Creek:	
At mouth	*510
About 0.7 mile upstream of U.S. Route 50	*543
South Fork Leatherwood Creek:	
At mouth	*538
About 0.4 miles upstream of mouth	*542
Maps available for inspection at the Planning Office, City Hall, 1102 16th Street, Bedford, Indiana.	

Henry County (unincorporated areas), (FEMA Docket No. 6903)

Big Blue River:	
At southern county boundary	*893
About 0.6 mile upstream of 750 South Road	*911
Just upstream of 125 West Road	*960
Just downstream of 300 North Road	*986
Buck Creek:	
At mouth	*902
About 0.6 mile upstream of 575 West Road	*927
Montgomery Creek:	
At southern county boundary	*895
About 1.4 miles upstream of U.S. Route 40	*926
Sugar Creek:	
About 0.5 mile downstream of 750 North Road	*951
About 0.9 mile upstream of 700 North Road	*988
Maps available for inspection at the County Surveyor's Office, County Courthouse, New Castle, Indiana.	

Knightstown (town), Henry County (FEMA Docket No. 6903)

Big Blue River:	
About 1,500 feet downstream of Conrail	*894
About 2,400 feet upstream of U.S. Route 40	*901
Montgomery Creek:	
Just upstream of County Line Road	*896
About 1,950 feet upstream of U.S. Route 40	*908
Maps available for inspection at the Town Hall, 26 S. Washington Street, Knightstown, Indiana.	

New Castle (city), Henry County (FEMA Docket No. 6903)

Big Blue River:	
Just downstream of abandoned bridge	*970
Just upstream of Conrail	*975
Maps available for inspection at the Town Hall, 312 South Main Street, New Castle, Indiana.	

IOWA

Clear Lake (city), Cerro Gordo County (FEMA Docket No. 6903)

Willow Creek:	
About 800 feet downstream of U.S. Highway 18	*1,195
About 1,700 feet upstream of U.S. Highway 18	*1,197
Clear Creek:	
Just downstream of South 40th Street	*1,192
Just downstream of Interstate 35	*1,205
Just upstream of Interstate 35	*1,210
Just downstream of outlet structure	*1,228
Maps available for inspection at City Engineer's Office, 1420 2nd Avenue, S., Clear Lake, Iowa.	

Des Moines (city), Polk County (FEMA Docket No. 6906)

Des Moines River:	
About 3.6 miles downstream of Chicago, Rock Island and Pacific Railroad	*785
About 3,500 feet upstream of Euclid Avenue	*804
Raccoon River:	
At mouth	*795
Just downstream of Southwest 63rd Street	*813
Frink Creek:	
At mouth	*806
About 850 feet upstream of Chicago and North Western Railroad	*822
Walnut Creek:	
At mouth	*807
Just upstream of Chicago, Rock Island and Pacific Railroad	*807
Just downstream of North Valley Drive	*812
About 2,600 feet upstream of Southwest 63rd Street	*824
Maps available for inspection at the City Engineer's Office, City Hall, East 1st & Locus Street, Des Moines, Iowa.	

Sabula (city), Jackson County (FEMA Docket No. 6906)

Mississippi River: Within community	*595
Maps available for inspection at the City Hall, Sabula, Iowa.	

KENTUCKY

Gallatin County (unincorporated areas) (FEMA Docket No. 6903)

Ohio River:	
About 3.5 miles downstream of Markland Dam	*472
About 13.9 miles upstream of Markland Dam	*480
Maps available for inspection at the County Courthouse, Warsaw, Kentucky.	

Oldham County (unincorporated areas) (FEMA Docket No. 6903)

Ohio River:	
At downstream county boundary	*453
At upstream county boundary	*457
Maps available for inspection at the County Courthouse, La Grange, Kentucky.	

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
Warsaw (city), Gallatin County (FEMA Docket No. 6903)	
Ohio River:	
About 250 feet northwest of intersection of High Street and Fifth Street	*474
About 200 feet north of intersection of Weldon Lane and High School Court	*475
Maps available for inspection at the City Hall, 101 West Market Street, Warsaw, Kentucky.	
LOUISIANA	
Clarence (village), Natchitoches Parish (FEMA Docket No. 6906)	
Bourbeaux Bayou: Intersection of Lee Street and Greenville Street	*118
Maps available for inspection at the Town Hall, Clarence, Louisiana.	
Natchez (village), Natchitoches Parish (FEMA Docket No. 6906)	
Bayou Natchez:	
At downstream corporate limits	*107
At upstream corporate limits	*107
Maps available for inspection at the Village Hall, Natchez, Louisiana.	
Natchitoches (city), Natchitoches Parish (FEMA Docket No. 6906)	
Bayou Ile Aux Vaches: Upstream corporate limits	*113
Bayou Jullen Tributary:	
At confluence with Bayou Julien	*108
Approximately 2,100 feet downstream of Field Road	*109
Approximately 1,400 feet downstream of Field Road	*111
Downstream side of Field Road	*112
Approximately 1,850 feet upstream of Field Road	*113
Old River:	
Downstream corporate limits	*110
Approximately 100 feet downstream of State Route 1	*110
Maps available for inspection at the City Hall, Natchitoches, Louisiana.	
Natchitoches Parish (FEMA Docket No. 6906)	
Cane River-Old River-Bayou Natchez:	
Approximately 1.8 miles downstream of State Route 1	*105
At upstream side of State Route 119	*106
At upstream side of State Route 120	*107
Approximately 7.1 miles above most upstream corporate limits of the Village of Natchez	*110
Bayou Derbonne:	
At confluence with Cane River	*106
At upstream side of Interstate Route 49	*107
Approximately 4.2 miles upstream of State Route 493	*107
Bayou Kisatchie:	
At confluence with Old River	*107
Approximately 1.7 miles upstream of Interstate Route 49	*107
Bourbeaux Bayou:	
Approximately .7 mile downstream of Clark Road	*117
Approximately 0.77 mile upstream of Clark Road	*118
Bayou Fausse:	
Approximately 100 feet above Red River Levee	*112
Approximately 125 feet upstream of Parish Route 1225	*112
Maps available for inspection at the Natchitoches Parish Police Jury Secretary's Office, Natchitoches, Louisiana.	
MAINE	
Greenbush (town), Penobscot County (FEMA Docket No. 6903)	
Penobscot River:	
Downstream corporate limits	*124
Approximately 400 feet downstream of south end of Birch Island	*126
Approximately 300 feet south of north end of Sugar Island	*130
At upstream corporate limits	*134
Olamon Stream:	
At Old Route 2 Bridge	*134
Approximately 130 feet upstream of Spring Bridge Road	*137
Maps available for inspection at the Planning Board, Costigan, Maine.	
Hampden (town), Penobscot County (FEMA Docket No. 6903)	
Penobscot River:	
At downstream County boundary	*12
At confluence of Souadabscook Stream	*14
At upstream corporate limits	*16
Sucker Brook:	
Downstream of Marina Road	*15
Upstream side of State Route 9 and alternate U.S. Route 1	*31
Upstream of Old County Road	*56
Souadabscook Stream:	
At confluence with Penobscot River	*14
Downstream side of U.S. Route 202	*32
Evergreen Drive extended to stream bank	*44
Downstream side of Papermill Road	*69
Upstream side of Emerson Mill Road	*99
Upstream side of Manning Mill Road	*118
100 feet downstream side of eastern most overpass of Interstate 95	*126
Upstream of western most overpass of Interstate 95	*129
Hammond Pond: Entire shoreline within community	*129
Hermon Pond: Entire shoreline within community	*129
Ben Annis Pond: Entire shoreline within community	*129
Maps available for inspection at the Code Enforcement Office, Town Office Building, 106 Main Road South, Hampden, Maine.	
Lincoln (town), Penobscot County (FEMA Docket No. 6906)	
Penobscot River:	
Approximately 1.0 mile downstream of the confluence of Mattamiscontis Stream	*175
Downstream side of Interstate Route 95 access bridge	*179
At confluence of Medunkeunk Stream	*181
Southern end of Hersey Island	*184
Approximately 0.95 mile upstream of Lincoln-Chester Bridge	*188
Mattanawcook Pond: Entire shoreline	*217
Upper Cold Stream Pond: Entire shoreline within community	*353
Center Pond: Entire shoreline within community	*269
Mill Pond: Entire shoreline within community	*200
Maps available for inspection at the Planning Board Vault, Lincoln, Maine.	
Medway (town), Penobscot County (FEMA Docket No. 6906)	
Penobscot River:	
Downstream corporate limits	*240
Downstream side of I-95	*244
Approximately .8 mile upstream of Interstate Route 95	*248
East Branch Penobscot River:	
Confluence with Penobscot River	*248
Upstream side of State Routes 157/11	*249
Downstream side of Hathaway Road (extended)	*252
Upstream corporate limits	*261
West Branch Penobscot River:	
Confluence with Penobscot River	*248
500 feet upstream of State Route 116	*250
Upstream corporate limits	*262
Maps available for inspection at the Town Office Vault, Medway, Maine.	
Topsham (town), Sagadahoc County (FEMA Docket No. 6906)	
Androscoggin River:	
At the Brunswick-Bath corporate limits extended	*10
Downstream side of Main Central Railroad (second crossing)	*51
At upstream corporate limits	*84
Cathance River:	
Approximately 1.0 mile downstream of Interstate 95	*96
Approximately 50 feet downstream of Interstate 95	*100
Merrymeeting Bay: Tidal flooding affecting northern tip of community	*9
Maps available for inspection at the Planning Board, 22 Elm Street, Topsham, Maine.	
Winslow (town), Kennebec County (FEMA Docket No. 6906)	
Kennebec River:	
At downstream corporate limits	*54
Downstream side of Bridge Street	*60
Upstream side of Two-Penny Bridge	*66
Approximately 875 feet downstream of Scott Paper Company Dam	*75
Upstream side of Scott Paper Company Dam	*88
At upstream corporate limits	*92
Sebasticook River: Entire length within community	*59
Maps available for inspection at the Department of Public Works, 16 Burton Avenue, Winslow, Maine.	
MASSACHUSETTS	
Wareham (town), Plymouth County (FEMA Docket No. 6903)	
Buzzards Bay:	
Intersection of Coolidge Street and Circle Drive	*17
Marks Cove at Wankinquoih Avenue, extended	*20
At Stony Point Dike	*20
Shoreline at Long Beach Road, extended	*22
Maps available for inspection at the Office of the Town Planner, Memorial Town Hall, 54 Marion Road, Wareham, Massachusetts.	
MICHIGAN	
Standish (township), Arenac County (FEMA Docket No. 6903)	
Saginaw Bay: Within community	*585
Maps available for inspection at the Township Hall, 2140 Palmer Road, Standish, Michigan.	
MISSISSIPPI	
Hancock County (unincorporated areas) (FEMA Docket No. 6903)	
Bayou Coco:	
About 1,700 feet upstream of Kiln-deLisle Road	*11
About 350 feet upstream of Joe Morgan Road	*25
Bayou LaTerre:	
About 400 feet upstream of Kiln-deLisle Road	*11
About 3.6 miles upstream of Firetower Road	*60
Rotten Bayou/Bayou Lasalle:	
About 400 feet upstream of Kiln-deLisle Road	*11
About 4.0 miles upstream of Kiln-deLisle Road	*67
Hickory Creek:	
About 2.6 miles downstream of State Highway 43	*50
At northern county boundary	*136
Necaise Creek:	
At mouth	*106
About 1.9 miles above mouth	*123
Anner Creek:	
At mouth	*97
About 2.5 miles above mouth	*125
Bayou Bacon:	
About 1,700 feet downstream of State Highway 43	*42
About 1.5 miles upstream of State Highway 603	*105
Catahoula Creek:	
About 1.6 miles downstream of State Highway 43	*55
Just downstream of northern county boundary	*143
Crane Creek:	
At mouth	*89
About 2.8 miles upstream of Crane Creek Road	*128
Orphan Creek:	

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
About 0.8 mile downstream of State Highway 43	*38
About 1.0 mile upstream of State Highway 603	*80
Shiloh Creek:	
At mouth	*82
About 3.5 miles above mouth	*120
White Cypress Creek:	
At mouth	*62
About 400 feet upstream of State Highway 603	*107
Wolf River:	
At eastern county boundary	*88
At northern county boundary	*100
Pearl River:	
About 2.8 miles downstream of Interstate 10	*9
About 5.8 miles upstream of Old Highway 11	*27
Mill Creek:	
About 1.0 mile downstream of county boundary	*59
At county boundary	*71
Maps available for inspection at the Hancock County Courthouse, Bay St. Louis, Mississippi.	
Jackson County (unincorporated areas), (FEMA Docket No. 6903)	
Escatawpa River:	
About 4.8 miles downstream of Interstate 10	* 9
About 6.4 miles upstream of confluence of Big Creek	*29
Lyons Creek:	
At confluence with Escatawpa River	*21
About 1.3 miles upstream of Orchard Road	*22
Bluff Creek:	
At confluence with West Pascagoula River	* 8
About 1.7 miles upstream of State Highway 57	*21
Black Creek:	
About 0.9 mile upstream of the confluence with Escatapwa River	*11
Just downstream of State Highway 613	*22
Perigal Creek:	
At confluence with Bayou Costapia	*25
Just downstream of Seaman Road	*41
Tchoutacabouffa River:	
About 0.9 mile downstream of the confluence of Little Bang Branch	*22
About 1,500 feet upstream of the confluence of Bayou Billie	*35
Maps available for inspection at the Jackson County Planning Commission, 600 Convent Avenue, Pascagoula, Mississippi.	
Moss Point (city), Jackson County (FEMA Docket No. 6903)	
Escatawa River:	
At confluence with Pascagoula River	* 7
About 4.5 miles upstream of Mississippi Export Railroad	*10
Maps available for inspection at the City Hall, 4412 Denny Street, Moss Point, Mississippi.	
Southaven (city), Desoto County (FEMA Docket No. 6906)	
Southaven Creek:	
About 2,300 feet downstream of Illinois Central Gulf Railroad	*254
About 1,000 feet upstream of Whitworth Road	*296
Rocky Creek:	
At mouth	*269
About 500 feet upstream of Swinnea Road	*315
Horn Lake Creek:	
About 2.0 miles downstream of Horn Lake Road	*234
At confluence of Rocky Creek	*269
Lateral A:	
At mouth	*244
About 1,000 feet upstream of Horn Lake Road	*247
Lateral E:	
About 800 feet downstream of Swinnea Road	*300
Just upstream of Swinnea Road	*301
Maps available for inspection at the City Hall, P.O. Box 425, Southaven, Mississippi.	

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
NEBRASKA	
Hooper (city), Dodge County (FEMA Docket No. 6903)	
Elkhorn River:	
About 3.1 miles downstream of Main Street	*1,221
About 1.4 miles upstream of Main Street	*1,232
Maps available for inspection at the City Hall, P.O. Box C, Hooper, Nebraska.	
NEW JERSEY	
Berkeley (township), Ocean County (FEMA Docket No. 6903)	
Atlantic Ocean:	
Intersection of 20th Avenue and Barnegat Avenue	*7
Intersection of Beach Lane and 6th Lane	*9
Entire Atlantic Coast Shoreline within Island Beach State Park	*13
Shoreline, 8th Lane extended	*13
Maps available for inspection at the Berkeley Township Municipal Building, Pinewold—Keswick Road, Berkeley, New Jersey.	
Bridgewater (township), Somerset County (FEMA Docket No. 6903)	
Raritan River:	
At downstream corporate limits	*36
Confluence of Peter's Brook	*47
Confluence of North Branch Raritan River	*62
North Branch Raritan River:	
At confluence with Raritan River	*62
At confluence of Chambers Brook	*80
Green Brook:	
Approximately 300 feet downstream of the downstream corporate limits	*36
At upstream corporate limits	*40
Middle Brook:	
At confluence with the Raritan River	*36
At confluence of West and East Branch Middle Brook	*106
East Branch Middle Brook:	
At confluence with Middle Brook	*106
Approximately 100 feet upstream of the upstream corporate limits	*206
West Branch Middle Brook:	
At confluence with Middle Brook	*106
Approximately 200 feet upstream of Chimney Rock Road (2nd crossing)	*125
Downstream side of Tullo Road	*231
At Mount Vernon Road	*282
Chambers Brook:	
At downstream corporate limits	*80
Downstream side of Country Club Road	*104
Upstream side of North Shore Drive	*226
Approximately 200 feet upstream of Brown Road	*286
Peter's Brook:	
At confluence with the Raritan River	*47
At confluence of Peter's Brook Tributary No. 1	*82
Approximately 1.1 miles upstream of Tolomini Road	*133
Cuckel's Brook:	
At confluence with the Raritan River	*38
Approximately 80 feet upstream of U.S. Route 22	*91
Ross Brook:	
At downstream corporate limits	*59
Approximately 0.4 mile upstream of Interstate Route 287	*86
Mac's Brook:	
At confluence with Peter's Brook	*55
Approximately 740 feet upstream of Woodlawn Avenue	*111
Peter's Brook Tributary No. 1:	
At confluence with Peter's Brook	*82
Approximately 800 feet upstream of Tolomini Road	*150
Raritan Water Power Canal Tributary:	
At confluence with Raritan Water Power Canal	*54
Upstream of Center Street	*79
Approximately 50 feet upstream of Sycamore Avenue	*106
River Brook:	
At confluence with North Branch Raritan River	*76

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
Approximately 100 feet upstream of Van Holton Road	*101
Maps available for inspection at the Municipal Building, 700 Garrett Road, Bridgewater, New Jersey.	
NEW MEXICO	
Pueblo of Zuni, McKinley and Valencia Counties (FEMA Docket No. 6903)	
Zuni River:	
Approximately 1.0 mile upstream of Reservation Route 40	*6,255
Approximately 0.9 mile downstream of A'TS'INA ONA NNE Street	*6,262
Approximately 0.4 mile downstream of A'TS'INA ONA NNE Street	*6,265
Upstream side of A'TS'INA ONA NNE Street	*6,274
Approximately 0.9 mile upstream of A'TS'INA ONA NNE Street	*6,282
Approximately 0.9 mile downstream of State Route 53	*6,286
Downstream side of State Route 53	*6,300
Upstream side of State Route 53	*6,306
Approximately 0.9 mile upstream of State Route 53	*6,317
Approximately 1.1 miles downstream of Black Rock Reservoir Dam	*6,324
Maps available for inspection at the Tribal Council Meeting Hall, Zuni, New Mexico.	
NEW YORK	
Champlain (town), Clinton County (FEMA Docket #6902)	
Lake Champlain: Entire shoreline within community	*102
Maps available for inspection at the Town Offices, Route 9, Champlain, New York.	
Cochecton (town), Sullivan County (FEMA Docket No. 6730)	
Delaware River:	
At downstream corporate limit	*715
At Skinners Falls Bridge	*723
At Newman Road/State Route 371	*734
Upstream corporate limit	*748
Maps available for inspection at the Town Clerk's Office, Lake Huntington, New York.	
Lansing (village), Tompkins County (FEMA Docket No. 6906)	
Cayuga Lake: Entire shoreline within community	*386
Maps available for inspection at the Village Offices, 2405 North Triphammer Road, Ithaca, New York.	
Putnam Valley (town), Putnam County (FEMA Docket No. 6903)	
Canopus Creek:	
At downstream corporate limits	*185
Approximately 450 feet upstream of Cimarron Road	*224
Upstream side of Canopus Hollow Road	*250
Approximately .8 mile upstream of Canopus Hollow Road	*320
Peekskill Hollow Creek:	
Approximately 1,100 feet downstream of Trolley Road	*99
Upstream side of Boys Camp Road	*170
At confluence of Shrub Oak Brook	*219
Approximately 1.6 miles upstream of County Route 22	*248
Shrup Oak Brook:	
At confluence with Peekskill Hollow Creek	*219
At upstream corporate limits	*391
Maps available for inspection at the Putnam Valley Town Hall, Oscawana Lake Road, Putnam Valley, New York.	

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
Rouses Point (village) Clinton County (FEMA Docket No. 6903)	
Lake Champlain: Entire shoreline within community	*102
Maps available for inspection at the Village Hall, 139 Lake Street, Rouses Point, New York.	
Sidney (town), Delaware County (FEMA Docket No. 6906)	
Susquehanna River:	
Approximately 140 feet downstream of the downstream corporate limits	*991
Approximately 200 feet upstream of Bridge Street	*1,014
Upstream side of Wells Bridge	*1,048
At upstream corporate limits	*1,053
Ouleout Creek:	
At confluence with Susquehanna River	*1,020
Upstream side of East Sidney Cemeterey Bridge	*1,076
Approximately 120 feet downstream of East Sidney Lake Dam	*1,103
At upstream corporate limits	*1,199
Maps available for inspection at the Town of Sidney Civic Center, Sidney, New York.	
Sidney (village), Delaware County (FEMA Docket No. 6906)	
Susquehanna River:	
Downstream corporate limits	*986
Upstream corporate limits	*991
Maps available for inspection at the Civic Center, Sidney, New York.	
Unadilla (town), Otsego County (FEMA Docket No. 6906)	
Susquehanna River:	
Downstream corporate limits	*985
Upstream side of Main Street	*989
Downstream side of Railroad Bridge	*993
Approximately 50 feet upstream of Village of Unadilla downstream corporate limits	*1,009
Village of Unadilla upstream corporate limits	*1,020
At confluence of Sand Hill Creek	*1,040
Upstream corporate limits	*1,049
Unadilla River:	
At confluence with Susquehanna River	*986
At confluence of Rogers Hollow	*992
Downstream side of Batterson Road	*1,016
Approximately 125 feet upstream of upstream corporate limits	*1,020
Maps available for inspection at the Town Hall, 44 Main Street, Unadilla, New York.	
Unadilla (village), Otsego County (FEMA Docket No. 6906)	
Susquehanna River:	
Downstream corporate limits	*1,009
Upstream side of Bridge Street	*1,014
Upstream corporate limits	*1,020
Maps available for inspection at the Unadilla Village Hall, Clerk's Office, 70 Main Street, Unadilla, New York.	
Watertown (city), Jefferson County (FEMA Docket No. 6903)	
Cold Creek:	
Upstream side of Hunt Street	*509
Downstream side of State Street	*514
Approximately 350 feet upstream of Gifford Street	*515
Kelsey Creek:	
Approximately 100 feet downstream of West Main Street	*382
Downstream side of Bradley Street	*394
Approximately 400 feet upstream of corporate limits	*399
Maps available for inspection at the City Hall, City Engineer's Office, Watertown, New York.	
Watertown (town), Jefferson County (FEMA Docket No. 6906)	
Cold Creek:	
Confluence with Black River	*496
Downstream side of most upstream Gifford Street crossing	*531
Maps available for inspection at the Town Municipal Building, 6873 Brookside Drive, Watertown, New York.	
NORTH CAROLINA	
Mars Hill (town), Madison County (FEMA Docket No. 6903)	
Gabriel Creek:	
Just upstream of Cascade Street	*2,183
About 1,150 feet upstream of Bailey Street	*2,256
Maps available for inspection at the Town Hall, P.O. Box 368, Mars Hill, North Carolina.	
Onslow County (unincorporated areas) (FEMA Docket No. 6906)	
Bachelor's Delight Swamp/Tributary:	
About 0.52 miles downstream of State Road 1308	*11
Just downstream of State Road 1388	*31
Blue Creek:	
About 1.3 miles downstream of State Road 24	*7
About 1.14 miles upstream of State Road 1213	*19
Brinson Creek:	
About 1,150 feet downstream of Norfolk Southern Railway	*5
About 2,000 feet upstream of U.S. Route 17	*11
Cowford Branch:	
About 85 feet downstream of State Road 24	*45
Just downstream of State Road 24	*46
About 460 feet upstream of State Road 24	*51
Half Moon Creek:	
Just downstream of State Road 1308	*12
About 2,600 feet upstream of State Road 1308	*14
Half Moon Creek Tributary:	
About 1,250 feet downstream of State Road 1324	*13
Just upstream of State Road 1324	*15
Jenkins Swamp:	
About 3,600 feet downstream of State Road 1308	*26
Just downstream of State Road 1003	*55
Mill Swamp:	
About 3,000 feet downstream of State Road 1308	*26
About 900 feet upstream of State Road 1301	*61
Mott Creek:	
At mouth	*3
About 1.7 miles upstream of mouth	*18
New River:	
About 1.4 miles downstream of confluence with Jenkins Swamp	*26
About 0.5 mile upstream of State Road 1235	*72
New River Tributary:	
At mouth	*51
Just downstream of State Road 1235	*75
North Branch at Lauradale Subdivision:	
About 3,500 feet upstream of mouth	*10
Just upstream of Ramsey Drive	*31
Northeast Creek/Wolf Swamp:	
About 1.5 miles downstream of confluence of Wolf Swamp	*14
Just upstream of Seaboard Coast Line Railroad	*23
Rocky Run:	
About 1,600 feet downstream of State Road 1413	*14
Just upstream of State Road 1413	*16
Scales Creek:	
Just upstream of Florence Road	*4
About 1.3 miles upstream of Florence Road	*8
South Branch at Lauradale Subdivision:	
About 760 feet above mouth	*12
About 1,440 feet above mouth	*14
Atlantic Ocean:	
South of intersection of State Road 210 and Intracoastal Waterway	*7
Along shoreline at Bogue Inlet	*17
Atlantic Ocean/Stump Sound:	
Along western shore of Permuda Island	*7
At shoreline south of Thomas Log Road	*9
Atlantic Ocean/New River:	
At confluence of Goose Creek and New River	*3
At mouth of New River	*16
Atlantic Ocean/Bogue Sound:	
At south end of State Road 1511	*10
Bogue Inlet mouth at Atlantic Ocean	*17
Atlantic Ocean/White Oak River:	
North end of State Road 1448 at White Oak River	*8
At east end of Town of Swansboro	*10
Maps available for inspection at the County Planning Office, 25 Pailman Street, Jacksonville, North Carolina.	
NORTH DAKOTA	
Alexander (city), McKenzie County (FEMA Docket No. 6903)	
Lonesome Creek:	
Above County Road Bridge at Section 6/7 in T150N, R101W, near downstream corporate limits	*2,130
Above Highway 85 Bridge	*2,150
At upstream corporate limits	*2,163
West Tributary:	
At confluence with Lonesome Creek	*2,151
Above Bruegger Street	*2,186
Above Fallon Street	*2,215
East Tributary:	
At confluence with Lonesome Creek	*2,151
Above Montana Street	*2,180
Above McKenzie County Route 20	*2,198
Old East Tributary:	
At confluence with Northwest Tributary at Simpson Avenue	*2,175
At Aramosa Street	*2,183
Northwest Tributary:	
At confluence with East Tributary	*2,168
At Ohio Avenue	*2,198
Above First Avenue	*2,212
Maps are available for inspection at the City Auditor's Office, City Hall, 214 Elkren Addition, Alexander, North Dakota.	
Bowman County (FEMA Docket No. 6903)	
Buffalo Creek:	
6,500 feet upstream from Bowman County boundary	*2,702
At bridge at S11/14, R99W, T130N	*2,716
At bridge at southern corporate limit of City of Gascoyne	*2,741
At western corporate limit of City of Gascoyne	*2,743
At upstream side of Highway 12 Bridge south of Gascoyne Lake	*2,750
At southeast corner of corporate limits of City of Scranton	*2,766
At western corporate limits of City of Scranton	*2,785
At upstream side of Highway 12 Bridge, 2½ miles west of City of Scranton	*2,829
At upstream side of Highway 12 Bridge, 4 miles west of City of Scranton	*2,854
At upstream side of bridge at S11/12, R102W, T131N	*2,871
At upstream side of bridge at S4/9, R102W, T131N	*2,900
In Section 5, R102W, T131N, 1,300 feet south of the north edge of the section	*2,914
Spring Creek:	
At downstream side of bridge at S1/6, R102W, T131N	*2,848
At upstream side of bridge at S34/35, R102W, T131N	*2,876
At upstream side of bridge at S21/28, R102W, T131N	*2,908
At upstream side of bridge at S17/20, R102W, T131N	*2,922
At upstream side of bridge at S8/17, R102W, T131N	*2,943
At upstream side of bridge at S2/3, R103W, T131N	*3,02
At upstream side of Highway 12 Bridge in Section 34, R103W, T131N	*3,047
1,200 feet west of bridge at S29/30, R103W, T132N	*3,104
Left Bank Tributary of Spring Creek:	

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
At confluence with Spring Creek	*2,862
At upstream side of bridge at S25/26, R102W, T131N	*2,912
At upstream side of bridge at S23/24, R102W, T131N	*2,924
At southern extraterritorial limit of City of Bowman	*2,934
At downstream side of Highway 85 Bridge south of City of Bowman	*2,936
West Drainage System of City of Bowman:	
At confluence with Left Bank Tributary of Spring Creek	*2,934
At Eleventh Street Bridge	*2,945
One-half mile west of Eleventh Street Bridge	*2,948
East Drainage System of City of Bowman:	
At confluence with West Drainage System at Sewage Ponds	*2,936
At upstream side of Third Avenue	*2,945
At upstream side of Highway 12	*2,951
At upstream side of Highway 85	*2,973
Maps are available for inspection at the Zoning Administrator's Office, Bowman County Courthouse, 104 West First Street, Bowman, North Dakota.	
Gascoyne (city), Bowman County (FEMA Docket No. 6903)	
Buffalo Creek:	
At western corporate limit	*2,742
At southern corporate limit	*2,741
Maps are available for inspection at the Zoning Administrator's Office, Bowman County Courthouse, 104 West First Street, Bowman, North Dakota.	
Normanna (township), Cass County (FEMA Docket No. 6902)	
Sheyenne River:	
300 feet downstream of FAS 639	*921
500 feet downstream of S2/11, T137N, R50W	*924
250 feet upstream of S14/23, T137N, R50W	*929
1,600 feet downstream of S26, T137N, R50W	*935
800 feet upstream of S34/35, T137N, R50W	*939
100 feet downstream of CSAH 46	*944
Maps available for inspection at the home of Mr. Harold Thrane, Normanna Township Chairman, Box 155, Kindred, North Dakota.	
Reiles Acres (city), Cass County (FEMA Docket No. 6906)	
Sheyenne River:	
North of County Route 20	*894
Within corporate limits	*895
Maps are available for inspection at City Auditor's Office, Fargo, North Dakota.	
Scranton (city), Bowman County (FEMA Docket No. 6903)	
Buffalo Creek:	
At northwestern corporate limit	*2,785
At last crossing of western corporate limit	*2,782
At southeastern corporate limit	*2,766
Maps available for inspection at the Zoning Administrator's Office, Bowman County Courthouse, 104 West First Street, Bowman, North Dakota.	
Watford City (city), McKenzie County (FEMA Docket No. 6906)	
Cherry Creek:	
At the upstream side of bridge at S7/18 R98W, T150N	*2,046
Upstream side of Highway 23 Bridge	*2,054
Upstream side of Highway 23 Bypass	*2,058
At the upstream extraterritorial limit	*2,062
Maps are available for inspection at Watford City Hall, 213 NE., Second Street, Watford City, North Dakota.	
OHIO	
Strasburg (village), Tuscarawas County (FEMA Docket No. 6903)	
Sugar Creek:	
About 1.9 miles downstream of County Road 99	*906
About 2,300 feet upstream of County Road 99	*921
Maps available for inspection at Municipal Building, 201 Second Street, Strasburg, Ohio.	
Sugar Creek (village), Tuscarawas County (FEMA Docket No. 6903)	
South Fork Sugar Creek:	
About 3,100 feet downstream of State Route 39	*987
About 2,200 feet upstream of East Main Street	*991
Maps available for inspection at the Clerk's Office, Municipal Building, Box 396, Sugar Creek, Ohio.	
Tuscarawas County (unincorporated areas), (FEMA Docket No. 6906)	
Tuscarawas River:	
At downstream county boundary	*792
Just downstream of U.S. Route 36	*828
Just downstream of confluence of Beaverdam Creek	*850
About 2.2 miles upstream of County Route 85	*877
Sugar Creek:	
At mouth	*868
About 300 feet upstream of State Route 21	*933
Brandywine Creek:	
At confluence with Sugar Creek	*874
Just downstream of Township Route 367	*919
South Fork Sugar Creek:	
Just downstream of County Road 75	*981
Just downstream of Township Road 350	*993
Beaverdam Creek:	
At mouth	*850
Just downstream of State Route 39	*908
Stillwater Creek:	
At mouth	*843
About 2,300 feet upstream of County Route 37	*855
Little Stillwater Creek:	
At mouth	*848
About 1.25 miles upstream of confluence of Irish Run	*857
Broad Run:	
At mouth	*901
Just downstream of State Route 516	*928
Maps available inspection at the Regional Planning Commission, County Office Building, New Philadelphia, Ohio.	
OKLAHOMA	
Chandler (city), Lincoln County (FEMA Docket No. 6906)	
Bell Cow Creek:	
Approximately 1,600 feet downstream of U.S. Route 66	*834
At Park Road	*841
Approximately 0.8 mile upstream of Park Road	*846
Chigger Creek:	
At confluence with Bell Cow Creek	*840
At 1st Street	*852
Approximately 160 feet upstream of Chigger Road	*868
Indian Creek:	
At Iowa Avenue	*849
Approximately 860 feet upstream of 8th Street	*898
Chuckaho Creek:	
Approximately 120 feet downstream of Section Road	*902
Approximately 0.9 mile upstream of Farm Pond Dam	*935
Maps available for inspection at 1001 Steele Avenue, Chandler, Oklahoma.	
McLoud (town), Pottawatomie County (FEMA Docket No. 6906)	
North Canadian River:	
Approximately .9 mile downstream of downstream corporate limits	*1,044
Downstream corporate limits	*1,045
Approximately 200 feet downstream of State Route 102	*1,052
Upstream side of State Route 102	*1,055
Approximately 200 feet upstream of upstream corporate limits	*1,058
Wynnewood Creek:	
At confluence with North Canadian River	*1,046
Approximately 140 feet downstream of State Route 102	*1,051
Downstream side of Chicago Rock Island and Pacific Railroad	*1,055
Approximately 100 feet downstream of Hinkley Avenue	*1,067
Upstream side of U.S. Route 270	*1,077
Maps available for inspection at the Town Hall, McLoud, Oklahoma.	
Rogers County (FEMA Docket No. 6902)	
Verdigris River:	
At downstream County boundary	*544
At upstream side of State Route 33 (upstream crossing)	*557
Upstream side of Interstate Route 44	*570
Approximately 0.57 mile upstream of State Route 266	*576
Bird Creek:	
At confluence with Verdigris River	*571
Upstream side of State Route 167	*576
At upstream County boundary	*584
Dog Creek:	
Approximately 1,300 feet downstream confluence of Cat Creek	*575
Approximately 200 feet upstream of State Route 20	*589
Approximately 700 feet upstream of Blue Starr Drive	*595
Cat Creek:	
At confluence with Dog Creek	*576
Upstream side of Missouri-Pacific Railroad	*614
Approximately 2.0 miles upstream of Industrial Boulevard	*642
Elm Creek:	
At downstream County boundary	*624
Upstream side of 161st East Avenue	*646
Approximately 2.2 miles upstream of 96th Street North	*677
Elm Creek Tributary:	
At confluence with Elm Creek	*650
Upstream side of 106th Street North	*669
Downstream side of 116th Street North	*704
East Creek:	
Approximately 740 feet upstream of confluence with Carney River	*596
Approximately 200 feet upstream of 146th Street North	*608
Downstream side of 126th Street North	*664
Maps available for inspection at the Metropolitan Planning Commission Office, 219 South Missouri, Claremore, Oklahoma.	
OREGON	
Bend (city), Jefferson County (FEMA Docket No. 6903)	
Deschutes River: At upstream face of Newport Avenue Bridge	*35
Maps are available for review at the Public Works Department, 710 Northwest Hill Street, Bend, Oregon.	
Canyon City (city), Grant County (FEMA Docket No. 6906)	
Canyon Creek:	
Approximately 920 feet downstream of the Inland Street Bridge	*3,139
Immediately upstream of the Inland Street Bridge	*3,145
Immediately upstream of the Nugget Street Bridge	*3,157
Immediately upstream of Main Street Bridge	*3,188
Approximately 240 feet upstream of the South Humboldt Bridge	*3,222
Maps are available for inspection at City Hall, 123 South Washington Street, Canyon City, Oregon.	

Source of flooding and location	#Depth in feet above ground. ‡Elevation in feet (NGVD)
Clackamas County (unincorporated areas) (FEMA Docket No. 6902)	
Abernethy Creek: At the intersection of Anchor Way and Redland Road	*45
Clackamas River: 260 feet downstream from the downstream face of State Highway 99	*44
Clackamas River: 700 feet west along Semple Road from 19th Avenue	*126
Clackamas River (without consideration of levee): 900 feet south of a point 460 feet east along State Highway 212/224 from Sieben Lane	*86
Clackamas River (without consideration of levee): 2,450 feet due east from the intersection of Eaden Road and Clads Court	*175
Clear Creek: 200 feet due west from the intersection of Barlow Trail Road and Lolo Road	*1,471
Dear Creek: At the upstream face of State Highway 213	*94
Eagle Creek: At the downstream face of State Highway 211/224	*278
Johnson Creek: At the downstream face of Linwood Avenue	*144
Kellogg Creek: At the downstream face of Rusk Road	*65
Milk Creek: 70 feet from the intersection of Union Mills Road and Dalmation Road	*250
Milk Creek: The intersection of Canby Mulino Road and Mundorf Road	#1
Molalla River: 270 feet due east of the intersection of McCown Road and Macksburge Road	*296
Mt. Scott Creek: At the upstream face of Lake Road at Mt. Scott Creek	*69
Mt. Scott Creek: 570 feet north from a point 1,160 feet east of the confluence with Kellogg Creek	#1
Nyberg Slough: 160 feet downstream of Nyberg Lane	*121
Oswego Canal: 1,000 feet north of a point 1,300 feet due east of the intersection of Dawn Avenue and Indian Springs Circle	*113
Oswego Canal: 300 feet north of a point 1,060 feet due east of the intersection of Dawn Avenue and Indian Springs Circle	*114
Oswego Canal: At the intersection of Childs Road and Indian Springs Circle	*115
Phillips Creek: At the downstream face of SE McBride Street	*154
Pudding River: At the upstream face of Southern Pacific Railroad	*100
Salmon River: At the intersection with Arrah Wanna Blvd	*1,253
Salmon River North Channel: 830 feet Northeast along Crystal Creek Road (extended) from the point where the road bends south toward Arrah Wanna Trail	*1,216
Sandy River: Just upstream from the upstream face of Lusted Road	*264
Sandy River: 80 feet downstream from the downstream face of Revenue Bridge	*459
Sandy River: At the upstream face of Chalet Place	*981
Still Creek: At the upstream face of Marion Road Bridge (Upper Bridge)	*1,730
Tualatin River: At the upstream face of Stafford Road	*118
Tualatin River: 800 feet south along Indian Springs Circle (extended) from Dawn Avenue	#2
Willamette River: 1,020 feet due north from the intersection of Riverforest Drive and Oakgrove Boulevard	*34
Willamette River: At the confluence with the Clackamas River	*44
Willamette River: 160 feet south from a point located 820 feet due west from the intersection of 35th Drive and River Front Terrace	*87
Willamette River: 30 feet west from a point located 80 feet north from the intersection of the west gage of Burlington Northern Railroad and Butteville Road	*91
Zig Zag River: 6,130 feet east along the center of Salmonberry Road from Old Smokey Road	*1,439
Maps are available for review at the Planning Department, 902 Abernethy Road, Oregon City, Oregon.	
Culver (city), Jefferson County (FEMA Docket No. 6903)	
Unnamed Stream: Intersection of D Street and 2nd Avenue	#1
Maps are available for review at the Culver City Hall, 200 First Street, Culver, Oregon 97741.	
Fairview (city), Multnomah County (FEMA Docket No. 6906)	
Fairview Creek: 40 feet upstream from center of Matney Street Bridge	*140
Multnomah Drainage District No. 1 (Ponding): At Fairview Lake	*14
Maps are available for review at the Fairview City Hall, 300 Harrison Street, Fairview, Oregon 97024.	
Lake Oswego (city), Clackamas County (FEMA Docket No. 6902)	
Lake Oswego: Along shoreline	*101
Oswego Canal: At the upstream face of Bryant Road crossing	*110
Springbrook Creek: At the downstream face of Iron Mountain Boulevard	*125
Springbrook Creek: At the downstream face of Twin Fir Road	*160
Tualatin River: 590 feet south from a point located 570 feet west from the intersection of River Run Drive and Trout Way	*120
Willamette River: 270 feet east from the intersection of Wilbur Street and Furnace Street	*34
Willamette River: 200 feet south from a point located 1,220 feet east from the intersection of Oak Street and Bullock Street	*35
Maps are available for review at the Planning & Engineering Department, 348 N. State Street, Lake Oswego, Oregon.	
Mount Vernon (city), Grant County (FEMA Docket No. 6906)	
John Day River:	
Approximately 790 feet downstream of the confluence with Beech Creek	*2,834
Immediately upstream of the Ingle Creek Road Bridge	*2,840
Approximately 1,400 feet upstream of the Ingle Creek Road Bridge	*2,845
Beech Creek:	
Approximately 150 feet upstream of the confluence with John Day River	*2,837
Approximately 100 feet upstream of the John Day Highway Bridge	*2,860
Approximately 100 feet downstream of the upstream corporate limits	*2,894
Maps are available for inspection at Mt. Vernon Firehouse, Mt. Vernon, Oregon.	
Rivergrove (city), Clackamas and Washington Counties (FEMA Docket No. 6902)	
Tualatin River: 130 feet southeast along Dogwood Avenue from Tualamere Avenue	*121
Tualatin River: 200 feet along Dogwood Avenue from Sycamore Avenue	#1
Maps are available for review at the Rivergrove City Recorders Office, 4640 Southwest Dogwood Drive, Lake Oswego, Oregon 97034.	
Vale (city), Malheur County (FEMA Docket No. 6903)	
Malheur River: 120 feet upstream of the center of U.S. Highway 20 and 26 eastbound lane	*2,240
Bully Creek: 450 feet upstream of the center of Main Street	*2,244
Willow Creek: 1,000 feet north of a point 100 feet west of the intersection of Railroad Avenue and 10th Street	*2,239
Maps are available for review at the City Hall, 252 B Street West, Vale, Oregon 97918.	
Weston (city), Umatilla County (FEMA Docket No. 6903)	
Pine Creek:	
1,100 feet above Union Pacific Railroad Bridge near downstream corporate limits	*1,773
At Depot Street	*1,800
100 feet above Water Street	*1,812
Above Main Street	*1,839
Above Broad Street	*1,863
At upstream corporate limits	*1,880
Maps are available for inspection at City Hall, 301 South Water Street, Weston, Oregon.	
PENNSYLVANIA	
Avondale (borough), Chester County (FEMA Docket No. 6906)	
East Branch White Clay Creek:	
Downstream corporate limits	*268
Upstream side CONRAIL tracks	*275
Upstream corporate limits	*280
Trout Run:	
Confluence with East Branch White Clay Creek	*269
Upstream side of Filicot Avenue	*276
Upstream corporate limits	*282
Indian Run:	
Confluence with East Branch of White Clay Creek	*270
At West State Street	*273
Approximately .3 mile upstream of West State Street	*275
Maps available for inspection at the Avondale Borough Building, Pomeroy Avenue, Avondale, Pennsylvania.	
Canaan (township), Wayne County (FEMA Docket No. 6906)	
Van Auken Creek:	
At downstream corporate limits	*1,159
Downstream side of Township Route 460	*1,202
Downstream side of Township Route 458	*1,218
Downstream side of Township Route 450	*1,248
Approximately 650 feet upstream of Township Route 450	*1,252
Maps available for inspection at the Township Secretary's house, R.D. 2, Box 48, Waymart, Pennsylvania.	
Carroll (township), Perry County (FEMA Docket #6903)	
Sherman Creek:	
Approximately 0.5 mile downstream of State Route 34	*441
Approximately 160 feet downstream of State Route 34	*444
At the confluence of Unnamed Tributary to Sherman Creek	*448
At confluence of Pisgah Run	*451
At Pisgah State Road	*455
Unnamed Tributary to Sherman Creek:	
At the confluence with Sherman Creek	*448
Downstream of 1st upstream Private Road	*450
Downstream of 2nd upstream Private Road	*455
Approximately 635 feet upstream of 2nd upstream Private Road	*460
Approximately 1,640 feet upstream of 2nd upstream Private Road	*470
Maps available for inspection at the Township Building, Shermans Dale, Pennsylvania.	
Ceres (township), McKean County (FEMA Docket No. 6906)	
Oswayo Creek:	
At downstream corporate limits	*1,437
Upstream side of State Route 44	*1,445
At upstream corporate limits	*1,471
Bell Run:	
At confluence with Oswayo Creek	*1,458
Approximately 250' upstream of State Route 44	*1,469
Approximately 2.2 miles upstream of State Route 44	*1,523
Kings Run:	

Source of flooding and location	#Depth in feet above ground. ²Elevation in feet (NGVD)
At confluence with Oswayo Creek	*1,442
Downstream side of Legislative Route 42029 (Barden Brook Road)	*1,468
Approximately 220' upstream of T-433 (Champlin Hollow Road)	*1,519
Maps available for inspection at the Ceres Township Building, Shinglehouse, Pennsylvania.	
Cooper (township), Montour County (FEMA Docket No. 6906)	
Susquehanna River:	
At the downstream corporate limits	*464
At the upstream corporate limits	*470
Maps available for inspection at the Township Secretary's house, R.D. 4, Box 270, Danville, Pennsylvania.	
Conewango (township), Warren County (FEMA Docket No. 6903)	
Allegheny River:	
Downstream corporate limits	*1,159
Upstream corporate limits	*1,174
Conewango Creek:	
Downstream corporate limits	*1,190
Upstream side of Hatch Run Road	*1,208
Upstream corporate limits	*1,215
Jackson Run:	
At confluence with Conewango Creek	*1,194
Approximately 100 feet upstream of Kirkwood Church Camp bridge	*1,237
Downstream side of Trailer Park bridge	*1,275
Approximately .43 mile upstream of Trailer Park bridge	*1,289
Maps available for inspection at the Conewango Township Office, Warren, Pennsylvania.	
Conneautville (borough), Crawford County (FEMA Docket No. 6903)	
Conneaut Creek:	
At downstream corporate limits	*928
At upstream side of Center Street	*940
Approximately .5 mile upstream of Jefferson Street	*946
Maps available for inspection at the Borough Office, Conneautville, Pennsylvania.	
Dyberry (township), Wayne County (FEMA Docket No. 6906)	
Dyberry Creek:	
At downstream corporate limits	*969
At downstream side of General Edgar Jadwin Dam	*981
Maps available for inspection at the Township Secretary's house, R.D. 1, Box 1264, Honesdale, Pennsylvania.	
East Earl (township), Lancaster County (FEMA Docket No. 6903)	
Conestoga River:	
At downstream corporate limits	*354
Approximately 200 feet upstream of State Route 625	*378
At upstream corporate limits	*403
Cedar Creek:	
At confluence with Conestoga River	*381
Approximately 90 feet upstream of T-805 (Frogtown Road)	*421
Approximately 1,360 feet upstream of U.S. Route 322	*493
Shirks Run:	
At confluence with Conestoga River	*358
Approximately 1,700 feet downstream of T-773 (Weaverland Road)	*382
Upstream side of T-773 (Weaverland Road)	*405
Upstream side of State Route 23	*436
Approximately 1,800 feet upstream of U.S. Route 322	*452
Mill Creek:	
Approximately 260 feet downstream of the downstream corporate limits	*459
Approximately 760 feet upstream of T-896 (Rancks Church Road)	*516
Maps available for inspection at the Township Building, East Earl, Pennsylvania.	
Foxburg (borough), Clarion County (FEMA Docket No. 6906)	
Allegheny River:	
At downstream corporate limits	*873
Upstream side of State Route 58	*874
Upstream corporate limits	*876
Maps available for inspection with Sherri Gardner, Palmer Avenue, Foxburg, Pennsylvania.	
Glade (township), Warren County (FEMA Docket No. 6903)	
Allegheny River:	
Downstream corporate limits	*1,188
At confluence with Hemlock Run	*1,200
Downstream side of Kinzua Dam	*1,208
Conewango Creek:	
Downstream corporate limits	*1,192
Approximately .77 mile downstream of Legislative Route 61049	*1,202
Upstream side of Legislative Route 61049	*1,208
Approximately .98 mile upstream of Legislative Route 61049	*1,212
Glade Run:	
Approximately .39 mile upstream of Allegheny River confluence	*1,205
Approximately .49 mile upstream of Allegheny River confluence	*1,210
Upstream side of Park Avenue downstream crossing	*1,229
Approximately .56 mile upstream of Park Avenue downstream crossing	*1,275
Approximately .30 mile downstream of Park Avenue upstream crossing	*1,305
Upstream side of Park Avenue upstream crossing	*1,338
Approximately .35 mile upstream of Park Avenue upstream crossing	*1,370
Approximately .61 mile upstream of Park Avenue upstream crossing	*1,420
Approximately 1.0 mile upstream of Park Avenue upstream crossing	*1,485
Maps available for inspection at the Glade Township Building, 99 Cobbham Park Road, Warren, Pennsylvania.	
Lewis (township), Union County (FEMA Docket No. 6906)	
Penns Creek:	
At downstream corporate limits	*543
Approximately .9 mile upstream of downstream corporate limit	*551
Approximately 100 feet downstream of Mill Dam	*562
At upstream corporate limits	*571
Maps available for inspection at the home of Kalen L. Walters, Secretary of the Township of Lewis, R.D. #1, Box 3804, Mifflinburg, Pennsylvania.	
Lynn (township), Lehigh County (FEMA Docket No. 6906)	
Ontelaunee Creek:	
Approximately 210 feet downstream of downstream corporate limits	*424
Downstream side of State Route 863	*465
Upstream side of Ulrich Road	*495
Approximately 0.2 mile upstream of Mosserville Road	*542
School Creek:	
At confluence with Ontelaunee Creek	*525
Approximately 280 feet upstream of second crossing of State Route 143	*565
Maps available for inspection at the Zoning Office, 32 Madison Street, New Tripoli, Pennsylvania	
Madison (township), Clarion County (FEMA Docket No. 6906)	
Allegheny River:	
At confluence of Redbank Creek	*836
At confluence of Catfish Run	*848
At upstream corporate limits	*854
Maps available for inspection at the Township Supervisor's home, R.D. 2, Rimersburg, Pennsylvania.	
Mayberry (township), Montour County (FEMA Docket No. 6906)	
Susquehanna River:	
At downstream corporate limits	*464
At upstream corporate limits	*467
Roaring Creek:	
At confluence with Susquehanna River	*467
Upstream side of Old Concrete Dam	*481
Approximately .57 mile upstream of Old Concrete Dam	*496
Approximately .83 mile downstream of upstream corporate limits	*511
At upstream corporate limits	*525
Approximately 200 feet upstream of corporate limits	*526
Maps available for inspection at the the home of Norma A. Bird, Secretary for the Township of Mayberry, Montour County, R.D. #5, Box 281, Danville, Pennsylvania.	
Modena (borough), Chester County (FEMA Docket No. 6906)	
West Branch Brandywine Creek:	
Approximately 90 feet downstream of downstream corporate limits	*270
Upstream side of Union Street	*277
Approximately 150 feet upstream of upstream corporate limits	*284
Maps available for inspection at the Borough Secretary's Office, Baker Street, Modena, Pennsylvania.	
Monroe (township), Juniata County (FEMA Docket No. 6906)	
Stony Run:	
Downstream corporate limits	*585
Approximately 615 feet upstream of Legislative Route 34011	*628
West Branch Mahantango Creek:	
Approximately 1.0 mile downstream of Legislative Route 34017	*540
Approximately 90 feet upstream of Legislative Route 34017	*559
Approximately 240 feet downstream of Legislative Route 34010	*618
Approximately 1,150 feet upstream of Church Road	*646
Approximately 280 feet upstream of Township Route 306	*665
Maps available for inspection at the Township Secretary's Office, Star Route, Richfield, Pennsylvania.	
Muncy (township), Lycoming County (FEMA Docket No. 6902)	
West Branch Susquehanna River:	
Downstream corporate limits	*506
Upstream corporate limits	*511
Maps available for inspection with Barbara Gildwell, Township Clerk, R.D. 2, Muncy, Pennsylvania.	
North Beaver (township), Lawrence County (FEMA Docket No. 6903)	
Mahoning River:	
At confluence of Beaver and Shenango Rivers	*776
Upstream side of CONRAIL (2nd upstream crossing)	*782
Approximately 1.5 miles upstream of CONRAIL (2nd upstream crossing)	*786
Maps available for inspection at the Township Building, North Beaver, Pennsylvania.	
Parker City (city), Armstrong County (FEMA Docket No. 6906)	
Allegheny River:	

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
At downstream corporate limits	*866
Approximately 2,250 feet upstream of downstream corporate limits	*867
Approximately 2,600 feet downstream of State Route 368	*868
At upstream corporate limits	*869
Maps available for inspection at the Parker City Secretary's home, Division Avenue, R.D. 2, Parker, Pennsylvania.	
Pillow (borough), Dauphin County (FEMA Docket No. 6906)	
Mahantango Creek:	
Downstream corporate limits	*471
Upstream corporate limits	*486
Maps available for inspection at Ted Keck's Residence, Borough Secretary, Mill Street, Pillow, Pennsylvania.	
Pine Grove (township), Warren County (FEMA Docket No. 6903)	
Conewango Creek:	
Downstream corporate limits	*1,212
Upstream side of CONRAIL bridge	*1,224
Downstream side of Hungry Hollow bridge	*1,233
Upstream side of U.S. Route 62 bridge	*1,241
Upstream corporate limits	*1,243
Akeley Run:	
At confluence with Conewango Creek	*1,228
Upstream side of Big Four Road bridge	*1,254
Approximately 1,900 feet downstream of Egypt Hollow Road	*1,280
Upstream side of Egypt Hollow Road	*1,303
Approximately .53 mile downstream of Hungry Hollow Road	*1,330
Downstream side of Hungry Hollow Road	*1,376
North Branch Akeley Run:	
At confluence with Conewango Creek	*1,229
Downstream side of CONRAIL	*1,233
Upstream side of Hungry Hollow Road	*1,247
Approximately 1 mile upstream of Hungry Hollow Road	*1,301
Approximately 2 miles upstream of Hungry Hollow Road	*1,363
Approximately 3 miles upstream of Hungry Hollow Road	*1,432
Approximately 4 miles upstream of Hungry Hollow Road	*1,508
Downstream side of State Route 588	*1,570
Maps available for inspection at the Pine Grove Township Building, Pine Grove, Pennsylvania.	
Polk (township), Monroe County (FEMA Docket No. 6906)	
Pohopoco Creek:	
At downstream corporate limits	*651
Approximately 300 feet upstream of Whitey Road	*654
At upstream side of U.S. Route 209	*672
At upstream side of Silver Spring Boulevard	*680
At downstream side of Green Hill Road	*685
Approximately .9 mile downstream of Mill Pond Road	*690
At upstream corporate limits	*704
Dotters Creek:	
At confluence with Pohopoco Creek	*676
At confluence of Middle Creek	*708
Approximately .4 mile upstream of State Route 534	*743
Approximately 200 feet upstream of Mertz Road	*846
At downstream side of Smith Road	*890
At upstream side of Hell Hollow Road	*937
Approximately .3 mile upstream of Hell Hollow Road	*957
Middle Creek:	
At confluence with Dotters Creek	*708
At upstream side of Whispering Pine Road	*759
At upstream side of Evergreen Road	*789
Approximately .5 mile upstream of Middle Creek Road	*820
Approximately 575 feet upstream of Dorshimer Road	*868
Weir Creek:	
At confluence with Pohopoco Creek	*693
At downstream side of Weir Mountain Road	*695
At upstream corporate limits	*696
Maps available for inspection at the Polk Township Building, Kreskeville, Pennsylvania.	
Schuylkill Haven (borough), Schuylkill County (FEMA Docket No. 6906)	
Schuylkill River:	
Downstream corporate limits	*506
Upstream side of first downstream CONRAIL crossing	*515
Upstream corporate limits	*525
Long Run Creek:	
Upstream side of South Berne Street	*509
Upstream corporate limits	*514
Berger Creek:	
Approximately 40 feet upstream of Dock Street	*520
Approximately 940 feet upstream of Haven Avenue	*544
Willow Creek:	
Downstream side of Coal Street Culvert	*520
Approximately 100 feet upstream of Willow Street	*529
Approximately 700 feet upstream of Koch Street	*566
At upstream corporate limits	*585
Maps available for inspection at the Borough Building, 39 Dock Street, Schuylkill Haven, Pennsylvania.	
Springboro (borough), Crawford County (FEMA Docket No. 6902)	
Conneaut Creek:	
At downstream corporate limits	*891
Upstream side of Beaver Street	*897
Upstream corporate limits	*905
Maps available for inspection at Borough Building, North Main Street, Springboro, Pennsylvania.	
Standing Stone (township), Bradford County (FEMA Docket No. 6906)	
Susquehanna River:	
Approximately 3,300 feet upstream of confluence of King Creek	*701
Approximately 400 feet upstream of corporate limits	*708
Maps available for inspection at the Township Secretary's Home, R.D. #3, Waytusing, Pennsylvania.	
St. Clair (township), Westmoreland County (FEMA Docket No. 6906)	
Tubmill Creek:	
At the downstream corporate limits	*1,121
Approximately 1,150 feet upstream of State Route 711	*1,140
Approximately 1.6 mile upstream of State Route 711	*1,205
Approximately 0.43 mile downstream of Tubmill Dam	*1,255
Downstream side of Tubmill Dam	*1,295
Conemaugh River:	
At the downstream corporate limits	*1,061
At the confluence of Shannon Run	*1,064
At the confluence of Baldwin Creek	*1,076
At Penelec Dam	*1,096
Approximately 2.2 mile upstream of State Routes 711 and 56	*1,120
At the upstream corporate limits	*1,137
Shannon Run:	
At confluence with Conemaugh River	*1,064
Approximately 1,190 feet upstream of State Route 711	*1,115
Approximately 0.9 mile upstream of State Route 711	*1,176
Baldwin Creek:	
At the confluence with Conemaugh River	*1,076
Approximately 0.50 mile upstream of State Route 711	*1,117
At the upstream side of Town Route 899	*1,149
Approximately 0.36 mile upstream of Town Route 899	*1,198
Approximately 0.21 mile upstream of Town Route 962	*1,256
Maps available for inspection at the Township Building, Seward, Pennsylvania.	
Texas (township), Wayne County (FEMA Docket No. 6906)	
Lackawaxen River:	
At downstream corporate limits	*927
Approximately 1.5 miles upstream of downstream corporate limits	*937
At confluence of Indian Orchard Brook	*939
Approximately .7 mile upstream of confluence with Holbert Creek	*947
At downstream Honesdale corporate limits	*952
At upstream Honesdale corporate limits	*983
Approximately .5 mile downstream of dam	*995
Approximately 100 feet upstream of dam	*1,034
At upstream side of Bear Swamp Road	*1,048
At upstream corporate limits	*1,076
Indian Orchard Brook:	
At confluence with Lackawaxen River	*939
At downstream side of U.S. Route 6	*956
At downstream side of State Route 652	*969
At upstream corporate limits	*981
Maps available for inspection at the Township Building, Willow Avenue, Honesdale, Pennsylvania.	
Ulster (township), Bradford County (FEMA Docket No. 6906)	
Susquehanna River:	
Downstream corporate limits	*729
Downstream side of L.R. 08073	*737
Upstream corporate limits	*750
Maps available for inspection at the Township Building, Ulster, Pennsylvania.	
Warren (borough), Warren County (FEMA Docket No. 6903)	
Allegheny River:	
At downstream corporate limits	*1,174
At the confluence of Conewango Creek	*1,182
At the upstream corporate limits	*1,188
Conewango Creek:	
At the confluence with Allegheny River	*1,182
At Third Avenue bridge	*1,186
At Wilson Street extended southwest to corporate limits	*1,191
Glade Run:	
At the confluence with Allegheny River	*1,186
At upstream side of the Pennsylvania Avenue bridge	*1,193
At the upstream corporate limits	*1,227
Shallow Flooding:	
At intersection of U.S. Route 6 and 62, and Struthers Street	*1,179
At intersection of Walnut Street and Allegheny Street	*1,179
An area having approximate boundaries of U.S. Route 6 and 62 (Warren Bypass) to the west and south, Walnut Street to the east, and CONRAIL to the north	*1,179
Maps available for inspection at the Borough Building, Warren, Pennsylvania.	
West Buffalo (township), Union County (FEMA Docket No. 6906)	
Buffalo Creek:	
At downstream corporate limits	*528
Upstream side of LR 59017	*538
At upstream corporate limits	*541
North Branch Buffalo Creek:	
At confluence with Buffalo Creek	*538
Downstream side of T-357	*570
Approximately 225 feet upstream of T-359	*599
Maps available for inspection at the home of Robert E. Valentine, Township Secretary, R.D. 3, Mifflinburg, Pennsylvania.	
West Vincent (township), Chester County (FEMA Docket No. 6906)	
Birch Run:	
Approximately 700 feet downstream of Flowing Springs Road	*291
Downstream side of Birchrun Road	*312

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
Upstream side of upstream dam	*335
500 feet upstream of upstream dam	*341
French Creek:	
Downstream corporate limits	*149
Approximately 240 feet downstream of French Creek Road	*176
Downstream side of Hollow Road	*209
Approximately 100 feet downstream of Saw Mill Road	*229
At upstream corporate limits	*249
Maps available for inspection at the Township Building, School House Lane, Chester Springs, Pennsylvania.	
Windham (township), Wyoming County (FEMA Docket #6903)	
Susquehanna River:	
At the downstream corporate limits	*648
At the upstream corporate limits	*663
Maps available for inspection at the Windham Township Building, Jenningsville, Pennsylvania.	
SOUTH CAROLINA	
Bennettsville (city), Marlboro County (FEMA Docket No. 6903)	
Crooked Creek:	
About 0.95 mile downstream of Edward Cottingham Boulevard	*123
Just downstream of Lake Wallace Dam	*135
Just upstream of Lake Wallace Dam	*146
About 0.9 mile upstream of Beauty Spot Road	*148
Maps available for inspection at the City Hall, P.O. Box 1036, Bennettsville, South Carolina.	
Nichols (town), Marion County (FEMA Docket No. 6730)	
Lumber River:	
About 1.9 miles downstream of Seaboard Coast Line Railroad	*54
About 0.8 mile upstream of Seaboard Coast Line Railroad	*56
Maps available for inspection at the Town Hall, Nichols, South Carolina.	
TENNESSEE	
Lauderdale County (unincorporated areas) (FEMA Docket No. 6906)	
Hyde Creek:	
At mouth	*317
Just downstream of Dam #19	*341
Just upstream of Dam #19	*354
Just downstream of Willie Paris Road	*365
Cane Creek:	
About 1.1 miles downstream of State Route 371	*254
Just downstream of U.S. Route 51	*323
Just upstream of U.S. Route 51	*331
Just downstream of Dam #15	*350
Just upstream of Dam #15	*360
Just downstream of State Route 19	*367
North Creek:	
Just downstream of Gum Flat Road	*272
Just downstream of Illinois Central Gulf Railroad	*294
Sumrow Creek:	
Just upstream of County Route 8218	*288
Just downstream of Smith Road	*324
Tisdale Creek:	
Just upstream of County Route 8216	*288
Just downstream of Heathcock Road	*325
Henning Creek:	
About 0.4 mile downstream of Lovelace Crossing Road	*257
Just downstream of State Route 209	*296
Mississippi River:	
About 0.5 mile downstream of confluence of Hatchie River	*249
About 1.0 mile upstream of confluence of Obion River	*269
Maps available for inspection at the County Courthouse, Ripley, Tennessee.	
TEXAS	
Bevil Oaks (city), Jefferson County (FEMA Docket No. 6903)	
Pine Island Bayou:	
At downstream corporate limits	*24
At upstream corporate limits	*30
Maps available for inspection at the City Hall, Bevil Oaks, Texas.	
Burnet (city), Burnet County (FEMA Docket No. 6903)	
Hamilton Creek:	
Approximately 740 feet downstream of the downstream corporate limits	*1,244
Upstream side of State Route 29	*1,276
Approximately 170 feet upstream of the upstream corporate limits	*1,327
Haynie Branch:	
At confluence with Hamilton Creek	*1,255
Upstream side of State Route 29	*1,306
Approximately 275 feet upstream of Geneva Drive	*1,385
Stream HC(B)-2:	
At confluence with Hamilton Creek	*1,281
Approximately 130 feet downstream of corporate limits	*1,321
Daugherty Branch:	
At confluence with Hamilton Creek	*1,283
Approximately 600 feet upstream of FM 963	*1,308
At corporate limits	*1,354
Stream HC(B)-3:	
At confluence with Hamilton Creek	*1,317
Approximately 75 feet upstream of corporate limits	*1,333
Maps available for inspection at 127 East Jackson Street, Burnet, Texas.	
Cleveland (city), Liberty County (FEMA Docket No. 6902)	
East Fork San Jacinto River:	
Approximately 2,470 feet downstream of State Route 105	*130
Upstream side of Atchison, Topeka, and Santa Fe Railway	*134
Reese Bayou:	
Downstream side of Atchison, Topeka, and Santa Fe Railway	*151
Approximately 400 feet upstream of southbound U.S. Route 59 bridge	*160
Maps available for inspection at 203 East Boothe Street, Cleveland, Texas.	
Copper Canyon (town), Denton County (FEMA Docket No. 6903)	
Lewisville Lake: Entire shoreline within community	*537
Maps available for inspection at the Town Hall, 400 Woodland Drive, Lewisville, Texas.	
Denton (city), Denton County (FEMA Docket No. 6903)	
Hickory Creek:	
At the most downstream corporate limits	*537
Approximately 2.0 miles upstream of Interstate 35 west southbound	*601
Bryant Branch:	
Approximately 1,000 feet downstream of FM 2181	*538
Approximately 550 feet upstream of Camp Lake Sharon Road	*575
Loving Branch: At Hickory Hill Road	*558
Fincher Branch:	
At Hickory Hill Road	*612
Approximately 300 feet upstream of Hickory Hill Road	*613
Fletcher Branch:	
Approximately 250 feet downstream of the most downstream corporate limits	*573
Approximately 0.8 mile upstream of Hobson Lane	*636
Stream HC-1:	
At the confluence with Hickory Creek	*573
Approximately 1,350 feet upstream of Roselawn Road	*624
Dry Fork Hickory Creek:	
Approximately 500 feet downstream of the most downstream corporate limits	*581
At the upstream side of Airport Road	*614
At the most upstream corporate limits	*661
Stream DF-1:	
At the confluence with Dry Fork Hickory Creek	*590
Approximately 1,900 feet upstream of Airport Road	*643
Stream DF-2:	
At the confluence of Dry Fork Hickory Creek	*623
Approximately 0.4 mile upstream of Lant Road	*668
Stream DF-3:	
At the confluence of Dry Fork Hickory Creek	*626
Approximately 110 feet upstream of Jim Crystal Road	*637
North Hickory Creek:	
Approximately 0.9 mile downstream of Jim Crystal Road	*622
Approximately 650 feet upstream of U.S. Route 380	*651
Pecan Creek Below SCS Dam No. 16:	
Approximately 0.4 mile downstream of the most downstream corporate limits	*543
Approximately 270 feet downstream of Ruddle Street	*601
Upstream side of Linden Street	*636
Approximately 1,550 feet upstream of Gay Street	*661
Pecan Creek Above SCS Dam No. 16:	
At the confluence with the Reservoir Above SCS Dam No. 16	*679
Approximately 50 feet upstream of Westgate Street	*705
Stream PEC-1:	
At Shady Shores Road	*555
Approximately 500 feet upstream of State School Road	*605
Approximately 1,620 feet upstream of the confluence of Stream PEC-1A	*636
Stream PEC-1A:	
At the confluence with Stream PEC-1	*626
Approximately 460 feet upstream of Lillian Miller Parkway	*657
Stream PEC-2:	
At the confluence with Pecan Creek Below SCS Dam No. 16	*585
Approximately 0.5 mile upstream of Spencer Road	*619
Stream PEC-3:	
At the confluence with Pecan Creek Below SCS Dam No. 16	*593
Approximately 100 feet upstream of Missouri-Kansas Texas Railroad	*625
Stream PEC-4:	
At the confluence with Pecan Creek Below SCS Dam No. 16	*603
Approximately 200 feet upstream of Mulberry Street	*644
Diversion PEC-4A:	
Approximately 1,180 feet downstream of Missouri-Kansas Texas Railroad	*611
At Missouri-Kansas Texas Railroad	*620
Diversion PEC-4B:	
At McKinney Street	*621
Approximately 50 feet upstream of Industrial Street	*627
Diversion PEC-4C:	
Approximately 150 feet upstream of the confluence with Pecan Creek Below SCS Dam No. 16	*611
At Missouri Pacific Railroad	*622
North Pecan Creek:	
At the confluence with Pecan Creek Below SCS Dam No. 16	*621
Approximately 60 feet upstream of Windsor Avenue	*669
Cooper Creek:	
Approximately 0.6 mile downstream of Trinity Road	*537
At Sherman Drive	*634
Approximately 150 feet upstream of Locust Street	*662
Stream CC-1:	
At the confluence with Cooper Creek	*577

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
Approximately 50 feet upstream of Old North Road	*604
Stream CC-2:	
At the confluence with Cooper Creek	*602
Approximately 60 feet upstream of Kings Row	*624
Elm Fork Trinity River:	
Approximately 730 feet downstream of the confluence of Clear Creek	*537
Approximately 540 feet upstream of the most upstream corporate limits	*538
Maps available for inspection at 215 East McKinney Street, Denton, Texas.	
Eastvale (town), Denton County (FEMA Docket No. 6903)	
Lewisville Lake: Entire shoreline affecting the community	*537
Maps available for inspection at City Hall, 326 West Lake Highlands, Eastvale, Texas.	
Ellis County (FEMA Docket No. 6903)	
Red Oak Creek:	
At confluence of Bear Creek	*354
At Neck Road	*374
Upstream side of Southern Pacific Railroad	*394
Upstream side of State Route 813 (1st upstream crossing)	*414
At Rutherford Road	*449
Upstream side of State Route 813 (2nd upstream crossing)	*476
Approximately 1.4 miles upstream of State Route 813 (2nd upstream crossing)	*490
Upstream side of Shawnee Road	*520
Upstream side of Hampton Road	*574
Upstream side of State Route 644	*604
Approximately 0.8 mile upstream of Bryson Road	*630
Approximately 2.8 miles upstream of Bryson Road	*665
Bear Creek:	
At confluence with Red Oak Creek	*354
Upstream side of State Route 660	*370
Upstream side of Southern Pacific Railroad	*409
Upstream side of State Route 983	*437
Upstream side of Batchler Road	*473
At Pratt Road	*500
Approximately 1.9 miles upstream of Pratt Road	*537
Long Branch:	
At confluence with Bear Creek	*406
At upstream side of State Route 983	*427
Approximately 0.65 mile upstream of State Route 664	*459
Brushy Creek:	
At confluence with Red Oak Creek	*382
Upstream of Hunsucker Road	*439
Upstream side of State Route 983	*500
Upstream side of State Route 2377	*542
Upstream side of Pierce Road	*579
Approximately 50 feet downstream of State Route 342	*606
Little Creek:	
At confluence with Red Oak Creek	*547
Upstream side of Hampton Road	*586
Approximately 1.3 miles upstream of State Route 664	*622
Grove Creek:	
At confluence with Red Oak Creek	*369
Upstream side of State Route 813 (1st upstream crossing)	*394
Upstream side of Southern Pacific Railroad	*416
At Boyce Road	*462
At State Route 570	*518
Upstream side of State Route 813 (2nd upstream crossing)	*557
At confluence of South Grove Creek	*585
Upstream side of U.S. Route 77	*616
Approximately 0.6 mile upstream of Gun Club Road	*637
South Grove Creek:	
At confluence with Grove Creek	*585
Upstream side of Missouri-Kansas-Texas Railroad	*614
Approximately 1.6 mile upstream of U.S. Route 77	*649
Trinity River:	
Approximately 1.6 miles upstream of U.S. Route 77	*362
Approximately 3.3 miles upstream of County boundary	*364
Shiloh Branch:	
At confluence with Red Oak Creek	*605
Upstream side of Stocktank Dam	*635
At upstream County boundary	*637
Maps available for inspection at the County Courthouse, Main Street, Waxahachie, Texas.	
First Colony Levee Improvement District, Fort Bend County (FEMA Docket No. 6906)	
Brazos River: On West side of levee along Steep Bank Creek	*69
Oyster Creek:	
At downstream corporate limits	*67
Approximately 950 feet upstream of Blair Road	*69
Maps available for inspection at VanSickle, Mickelson, and Klein, Inc., 7500 San Felipe, Suite 700, Houston, Texas.	
Fulshear (city), Fort Bend County (FEMA Docket No. 6903)	
Brazos River:	
Approximately 13.1 miles upstream of FM 723	*99
Approximately 13.3 miles upstream of FM 723	*99
Maps available for inspection at the City Hall, 6920 Katy-Fulshear Road, Fulshear, Texas.	
Haskell (city), Haskell County (FEMA Docket No. 6906)	
Rice Springs Branch:	
Downstream corporate limits	*1,559
Downstream side of Avenue H	*1,580
Upstream corporate limits	*1,593
Stream RS-1:	
Confluence with Rice Springs Branch	*1,562
Upstream side of North 2nd Street	*1,580
Maps available for inspection at City Hall, 307 North 1st Street, Haskell, Texas.	
Little Elm (town), Denton County (FEMA Docket No. 6906)	
Lewisville Lake: Entire shoreline affecting community	*537
Maps available for inspection at City Hall, Little Elm, Texas.	
Menard (city), Menard County (FEMA Docket No. 6903)	
San Saba River:	
At downstream corporate limits	*1,885
At upstream corporate limits	*1,892
Harris Hollow:	
At downstream corporate limits	*1,885
Approximately 180 feet downstream of U.S. Route 83	*1,910
At upstream corporate limits	*1,930
Maps available for inspection at the City Hall, Menard, Texas.	
Menard County (FEMA Docket No. 6903)	
The San Saba River:	
Approximately 1,500 feet downstream of McDougal Draw	*1,783
Approximately 200 feet upstream of FM 2092	*1,797
Approximately 1 mile downstream of the eastern City of Menard corporate limits	*1,876
Approximately 100 feet upstream of the eastern City of Menard corporate limits	*1,885
At the western City of Menard corporate limits	*1,892
Approximately 0.4 mile downstream of FM 2092	*1,933
Approximately 1,600 feet upstream of confluence of Sheen Draw	*2,025
Approximately 0.5 mile upstream of confluence of Cambell Draw	*2,073
Stream SS-3:	
Confluence with the San Saba River	*2,053
Approximately 0.8 mile upstream of confluence with The San Saba River	*2,076
Approximately 0.4 mile downstream of U.S. Route 190/State Route 29	*2,109
Approximately 100 feet upstream of U.S. Route 190/State Route 29	*2,151
Rattlesnake Draw:	
At confluence with The San Saba River	*2,047
Approximately 1,590 feet upstream of confluence of Stream RD-1	*2,075
Approximately 100 feet upstream of U.S. Route 190/State Route 29	*2,112
Stream RD-1:	
At confluence with Rattlesnake Draw	*2,051
At upstream side of dam	*2,081
Approximately 730 feet upstream of U.S. Route 190/State Route 29	*2,109
Maps available for inspection at the Menard County Courthouse, Menard, Texas.	
Mission Bend Municipal Utility District No. 1, Fort Bend and Harris Counties (FEMA Docket No. 6903)	
Tributary 29.16 to Brays Bayou (D132-00-00): Approximately 4,140 feet above confluence with Brays Bayou (D100-00-00)	*85
Maps available for inspection at Putney, Moffatt and Easley, 1303 Sherwood Forest, Houston, Texas 77095.	
Pecan Grove Municipal Utility District, Fort Bend County (FEMA Docket No. 6903)	
Oyster Creek:	
Downstream corporate limits	*81
Upstream corporate limits	*81
Maps available for inspection at 6335 Gulfton, Suite 200, Houston, Texas.	
Send comments to Mr. Bobby Jones, P.E., Administrative Officer for Pecan Grove Municipal Utility District, Jones and Carter, Inc., 6335 Gulfton, Suite 200, Houston, Texas 77081.	
Simonton (village), Fort Bend County (FEMA Docket No. 6903)	
Brazos River:	
Approximately 0.7 mile downstream of FM 1093	*109
Approximately 8.1 miles upstream of FM 1093	*112
Maps available for inspection at Berkman's Store, Simonton, Texas.	
Spearman (city), Hansford County (FEMA Docket No. 6903)	
Spearman Draw:	
At W. Eleventh Avenue (extended)	*3,098
Approximately 80 feet upstream of the most upstream corporate limits	*3,102
Maps available for inspection at the City Hall, Spearman, Texas.	
Tarrant County (FEMA Docket No. 6730)	
Ash Creek:	
Approximately 0.66 mile downstream of confluence of Paschal Branch	*657
At City of Azle corporate limits	*675
Bear Creek 1:	
Upstream side of corporate limits at South Lake City boundary	*577
Downstream side of corporate limits at South Lake City boundary	*592
Approximately 1,600 feet upstream of Keller corporate limits	*611
Approximately 480 feet upstream of Main Street, City of Keller	*687
Approximately .76 mile upstream of Alta Vista Road	*745
Approximately 600 feet upstream of Old Denton Road	*772
Briar Creek:	
Approximately 200 feet downstream of Liberty School Road	*657
Approximately 0.92 mile upstream of Liberty School Road	*680
Approximately 250 feet upstream of FM 730	*697
Buffalo Creek:	

Source of flooding and location	#Depth in feet above ground. ²Elevation in feet (NGVD)
At confluence with Henrietta Creek	*642
Upstream side of Interstate Route 35	*654
Upstream side of Harmon Road	*670
Approximately 1.3 miles upstream of Harmon Road	*690
Approximately 2.8 miles upstream of Harmon Road	*723
Chambers Creek:	
Approximately 250 feet upstream of downstream corporate limits	*581
At upstream corporate limits	*593
Deer Creek:	
At confluence with Village Creek	*632
Upstream side of Forest Hill-Everman Road	*643
Elm Branch:	
At confluence with Village Creek	*596
Approximately 1,600 feet downstream of Shelby Road	*640
At upstream corporate limits	*670
Henrietta Creek:	
Approximately 100 feet downstream of White Chapel Road	*636
At downstream Haslet corporate limits	*657
At upstream Haslet corporate limits	*685
Approximately 0.45 mile upstream of Keller-Haslet Road	*712
Big Fossil Creek:	
At Fort Worth corporate limits	*728
Approximately 60 feet upstream of Fort Worth corporate limits	*729
Stream BFC-4:	
At downstream County boundary	*732
Approximately 200 feet upstream of upstream County boundary	*736
Low Branch:	
At downstream corporate limits	*615
Approximately 860 feet upstream of downstream corporate limits	*618
Marys Creek:	
Approximately 1,350 feet downstream of confluence of Marys Tributary 2	*676
Upstream side of FM 2871	*701
Approximately 1,300 feet upstream of U.S. Route 80 (westbound)	*725
Approximately 0.51 mile upstream of Fort Worth corporate limits	*742
North Branch of Deer Creek:	
Downstream of downstream corporate limits	*765
Approximately 120 feet upstream of downstream corporate limits	*766
Paschal Branch:	
At downstream County boundary	*676
Approximately 60 feet upstream of Azle Road	*690
South Fork of Deer Creek:	
At downstream County boundary	*775
Approximately 0.8 mile upstream of downstream County boundary	*796
South Fork of North Branch of Deer Creek:	
At downstream County boundary	*768
Approximately 0.3 mile upstream of downstream County boundary	*778
South Marys Creek:	
At confluence with Marys Creek	*710
Upstream side of Diamond Bar Trail	*731
Upstream side of Link Meadow Drive	*780
Approximately 300 feet upstream of County boundary	*825
Stream BB-6:	
At confluence with Bear Creek 1	*577
At upstream County boundary	*577
Stream BFC-2A:	
At downstream County boundary	*657
Approximately 425 feet upstream of downstream County boundary	*659
Stream CF-5:	
At downstream County boundary	*681
Approximately 150 feet upstream of upstream County boundary	*703
Boaz Creek:	
At downstream County boundary	*667
Approximately 880 feet upstream of confluence with Walnut Creek 2	*674
Stream HEN-1:	
At downstream County boundary	*667
Approximately 0.24 mile upstream of County boundary	*672
Stream HEN-2:	
Upstream side of Atchison, Topeka, and Santa Fe Railway	*703
Approximately 0.43 mile upstream of Atchison, Topeka, and Santa Fe Railway	*707
Stream HEN-2A:	
At downstream County boundary	*735
Approximately 430 feet upstream of downstream County boundary	*738
Stream MSC-3:	
At downstream County boundary	*738
Approximately 1,160 feet upstream of downstream County boundary	*748
Stream SC-7:	
At downstream County boundary	*760
Approximately 500 feet upstream of upstream County boundary	*770
Stream VC-3:	
At downstream County boundary	*570
Approximately 170 feet upstream of upstream County boundary	*587
Stream VC-4:	
Approximately 400 feet downstream of downstream County boundary	*601
Approximately 1,600 feet upstream of confluence of Stream VC-4A	*618
Stream VC-5:	
At confluence with Village Creek	*603
Upstream side of Rendon Road	*627
Upstream side of Race Street	*656
Stream VC-6:	
At confluence with Village Creek	*628
Approximately 200 feet upstream of upstream County boundary	*649
Stream VC-7:	
At confluence with Village Creek	*637
Approximately 1 mile upstream of Forest Hill-Everman Road	*663
Stream WB-1:	
At downstream County boundary	*666
Approximately 45 feet upstream of downstream County boundary	*666
North Creek:	
At downstream County boundary	*684
At upstream County boundary	*692
Sycamore Creek:	
At downstream County boundary	*759
Upstream side of North Crowley Cleburne Road	*774
Village Creek:	
At downstream County boundary	*566
At confluence of Elm Branch	*596
At confluence of Stream VC-6	*628
Approximately 1,400 feet upstream of most upstream County boundary	*670
Walnut Creek 1:	
Confluence with Eagle Mountain Lake	*657
At most upstream County boundary	*668
Walnut Creek 2:	
Approximately 1,050 feet downstream of Texas and Pacific Railroad	*670
Approximately 0.94 mile upstream of Texas and Pacific Railroad	*701
Walnut Creek 3:	
At downstream County boundary	*537
At upstream County boundary	*538
Approximately 550 feet upstream of upstream County boundary	*610
West Fork Trinity River:	
Approximately 2,500 feet downstream of confluence of Boyd Branch	*461
Approximately 5.0 miles upstream of confluence of Boyd Branch	*467
At confluence of Stream WF-7	*602
At Eagle Mountain Dam	*653
Willow Branch:	
Approximately 225 feet downstream of downstream County boundary	*600
Approximately 0.64 mile upstream of Private Road	*624
Whites Branch:	
Approximately 2.2 miles upstream of confluence with Big Fossil Creek	*583
Approximately 2.3 miles upstream of confluence with Big Fossil Creek	*586
Eagle Mountain Lake: Entire shoreline within the County	*657
Grapevine Lake: Entire shoreline within the County	*564
Benbrook Lake: Entire shoreline within the County	*715

Maps available for inspection at 100 East Weatherford, Fort Worth, Texas.

Uvalde County (FEMA Docket No. 6902)

Cooks Slough:	
At U.S. Route 83	*888
Approximately 0.70 mile upstream of U.S. Route 90	*905
Downstream side of County Route 1052	*916
Approximately 0.7 mile upstream of County Route 1052	*919
Leona River:	
Approximately 1.1 mile downstream of most downstream County boundary	*877
At second upstream crossing of approximately 3.3 miles downstream of Southern Pacific Railroad	*887
At Southern Pacific Railroad	*912
Taylor Slough:	
Approximately 120 feet downstream of County boundary	*907
At Leona Road	*917
Approximately 0.63 mile upstream of Leona Road	*930
Taylor Slough Tributary:	
At confluence with Taylor Slough	*919
Approximately 0.42 mile upstream of confluence with Taylor Slough	*933

Maps available for inspection at the Uvalde County Courthouse, Uvalde, Texas.

Victoria (city), Victoria County (FEMA Docket No. 6903)

Guadalupe River:	
Approximately 2.6 miles downstream of Ben Jordan Street (extended)	*51
At the confluence of West Outfall	*62
Approximately 0.9 mile upstream of the confluence of Spring Creek	*71
Jim Branch Outfall:	
At downstream corporate limits	*51
Upstream side of Pleasant Green Drive	*71
Approximately 150 feet downstream of North Street	*80
West Outfall:	
At confluence with the Guadalupe River	*62
Downstream side of U.S. Route 84	*70
Approximately 100 feet upstream of Navarro Street	*80
Whispering Creek:	
At confluence with Spring Creek	*78
Upstream side of Whispering Creek Drive	*95
Approximately 1,850 feet upstream of upstream corporate limits	*117
North Outfall:	
At confluence with Spring Creek	*80
At confluence with Whispering Creek	*96
U.S. Route 77 Outfall:	
At confluence with North Outfall	*95
Downstream side of U.S. Route 77	102
Lone Tree Creek:	
At downstream corporate limits	*87
Downstream side of John Stockbauer Road	*106
East Branch of Lone Tree Creek:	
At confluence with Lone Tree Creek	*94
Approximately 50 feet downstream of the upstream corporate limits	*99

Maps available for inspection at 100 West Juan Linn Street, Victoria, Texas.

Victoria County (FEMA Docket No. 6906)

Guadalupe River:	
Approximately 890 feet downstream of the confluence of Coleto Creek	*42
Approximately 600 feet upstream of State Route 175	*48
Upstream side of U.S. Route 59	*60
Approximately 1,100 feet upstream of the confluence of Wright Creek	*78
Approximately 400 feet upstream of FM 447	*103
Coleto Creek:	
At the confluence with the Guadalupe River	*42
Upstream side of FM 446	*66

Source of flooding and location	#Depth in feet above ground. ^Elevation in feet (NGVD)
Approximately 1.0 mile upstream of U.S. Route 59	*90
Crescent Valley Creek:	
At the confluence with Spring Bayou	*42
Approximately 950 feet upstream of the Missouri-Pacific Railroad	*43
Dry Creek:	
At the confluence with the Guadalupe River	*43
Approximately 400 feet upstream of U.S. Route 77	*57
Approximately 600 feet upstream of Old Goliad Road	*74
At Coletoville Road	*121
Jim Branch Outfall:	
At the confluence with Cypress Bayou	*51
At the downstream county boundary	*51
Spring Creek:	
Approximately 0.8 mile downstream of the downstream county boundary	*89
Approximately 300 feet upstream of U.S. Route 87	*122
Approximately 1,900 feet upstream of the Southern-Pacific Railroad	*131
Whispering Creek:	
Approximately 0.4 mile downstream of the county boundary	*113
Approximately 500 feet downstream of Salem Road (extended)	*119
Lone Tree Creek:	
Approximately 100 feet downstream of FM 1686	*62
Upstream side of Wood Hi Road	*76
At the county boundary	*87
Garcitas Creek:	
Approximately 1,400 feet downstream of FM 444	*27
At the confluence of Casa Blanca Creek	*44
Downstream side of U.S. Route 59	*60
Approximately 300 feet upstream of Benbow Road	*76
Maps available for inspection at the Victoria County Courthouse, Victoria, Texas.	
UTAH	
St. George (city), Washington County (FEMA Docket No. 6903)	
Virgin River:	
250 feet upstream of Interstate Highway 15	*2529
Santa Clara River:	
Just upstream of Valley View Drive	*2634
Fort Pierce Wash:	
At Fort Pierce Drive	*2565
Sand Hollow Wash:	
150 feet upstream of 2000 North Street	*2821
Halfway Wash:	
50 feet upstream of Dixie Downs Road	*2710
Middletown Wash:	
150 feet upstream of Middletown Drive	*2865
Maps are available for inspection at the City Engineer's Office, 175 East 200 North, St. George, Utah.	
VERMONT	
Grafton (town), Windham County (FEMA Docket No. 6903)	
Saxtons River:	
At downstream corporate limits	*590
At third upstream crossing of State Route 121 (upstream side)	*695
At confluence of South Branch Saxtons River	*821
At eighth upstream crossing of State Route 121 (upstream side)	*995
Upstream side of Cabell Road	*1,113
South Branch Saxtons River:	
At confluence with Saxtons River	*821
Downstream side of Townshend Road (first crossing)	*865
Upstream of second upstream crossing of Townshend Road	*905
Hinckley Brook:	
At confluence with Saxtons River	*853
Approximately 25 feet upstream of Middletown Road	*884
Maps available for inspection at the Town Hall, Grafton, Vermont.	
VIRGINIA	
Colonial Beach (town), Westmoreland County (FEMA Docket No. 6906)	
Potomac River:	
At Bluff Point	*10
State Route 205 at western corporate limits	*7
At White Point	*11
Shoreline of Monroe Bay at Winkedoodle Point	*7
Maps available for inspection at the Town Hall, Corner of Hawthorn and Irving Avenues, Colonial Beach, Virginia.	
Irvington (town), Lancaster County (FEMA Docket No. 6903)	
Rappahannock River:	
Shoreline of Carter Creek	*7
Shoreline of Eastern Branch	*7
Maps available for inspection at the Town Office, Steamboat Road, Irvington, Virginia.	
Gloucester County (FEMA Docket No. 6903)	
North River:	
State Route 676 extended to shoreline	*7
State Routes 3 & 14 intersect eastern County boundary	*7
State Route 660 extended to shoreline	*11
Ware River:	
State Route 621 extended to shoreline	*7
End of Route 626	*8
State Route 626 extended to shoreline	*11
Wilson Creek: State Route 630 extended to shoreline	*7
Severn River:	
At the intersection of State Routes 652 & 653	*8
State Route 653 extended to shoreline	*11
Bryant Bay:	
Approximately 320 feet from the end of State Route 663	*10
State Route 720 extended to shoreline	*11
Southwest Branch Severn River:	
Intersection of State Routes 656 & 1502	*7
Approximately 50 feet from the end of State Route 649	*10
State Route 620 extended to shoreline	*11
Heywood Creek: State Route 700 extended to shoreline	*7
Thornton Creek: Intersection of State Routes 649 & 653	*8
Perrin River:	
Intersection of State Routes 1101 & 1102	*8
State Route 643 extended to shoreline	*11
Monday Creek:	
Intersection of State Routes 646 & 649	*8
State Route 648 extended to shoreline	*10
State Route 649 extended to shoreline	*11
York River:	
End of State Route 1206	*7
State Route 618 extended to shoreline	*7
End of State Route 696	*8
State Route 1106 extended to shoreline	*10
State Route 1102 extended to shoreline	*11
Sarah Creek:	
State Route 699 extended to shoreline	*7
Approximately 900 feet south of the end of State Route 1202	*10
Ferry Creek: End of State Route 703	*7
Piankatank River: State Route 606 extended to shoreline	*7
Harper Creek: Intersection of State Route 198 and creek	*7
Cow Creek: Intersection of State Routes 3 & 14 and creek	*7
Beaverdam Swamp:	
Just east of intersection of State Routes 3 & 14 and swamp	*7
Just west of intersection of State Routes 3 & 14 and swamp	*11
Intersection of Hollyspring Road and State Route 616	*13
State Route 1020 extended to swamp	*16
Approximately ¾ mile upstream of State Route 1020 extended to swamp	*21
Fox Mill Run:	
Approximately 1,200 feet north of State Routes 629 & 671 intersection	*7
Intersection of U.S. Business Route 17 and Fox Mill Run	*9
Just upstream of U.S. Route 17	*16
Downstream of State Route 616	*23
Carter Creek: Entire length of creek	*7
Aberdeen: At the intersection of State Route 631	*7
Jones Creek: At the intersection of State Route 708	*7
Timberneck Creek: Intersection of State Route 636	*7
Cedarbush Creek: State Route 633 extended to shoreline	*7
Adam Creek: Intersection to State Routes 617 & 684	*7
Popular Spring Branch: Intersection of State Route 610	*7
Porpotank River: End of State Route 612	*7
Bland Creek: Intersection of State Route 610	*7
Fox Creek: Approximately 5,000 feet north of State Routes 662 & 618 intersection	*7
Maps available for inspection at the Court & Office Building, Gloucester, Virginia.	
Tappahannock (town), Essex County (FEMA Docket No. 6903)	
Rappahannock River:	
Entire shoreline within community	*7
Entire shoreline within community	*7
Maps available for inspection at the Town Office, 315 Duke Street, Tappahannock, Virginia.	
Westmoreland County (FEMA Docket No. 6906)	
Potomac River:	
Shoreline of Goldman Creek approximately 1,000 feet south of State Route 205	*7
Confluence of Rozier Creek and Goldman Creek	*10
Shoreline of Monroe Bay at Stratter Point	*8
Shoreline of Potomac River approximately 1,500 feet south of Stratter Point	*11
Shoreline of Northwest Yeocomico River at Crow Bar	*6
Shoreline of Yeocomico River at Parker Island	*9
Rappahannock River:	
Shoreline of Rappahannock River at Blind Point	*7
Shoreline of Rappahannock River at Smith Mount Landing	*7
Maps available for inspection at the County Administration Building, Route 622, Montross, Virginia.	
WASHINGTON	
Pierce County (unincorporated areas) (FEMA Docket No. 6696)	
Leach Creek: 400 feet upstream from the center of Cirque Drive West	*136
Chambers Creek: 100 feet downstream from the center of Steilacoom Boulevard	*202
Clover Creek: 100 feet upstream from the center of Interstate Highway 5	*269
Shallow Flooding: 200 feet upstream from the center of the Weyerhaeuser Company Railroad	*331
Spanaway Creek: 300 feet upstream from the center of 138th Street South	*293
North Fork Clover Creek: 130 feet upstream from the center of 14th Avenue East	*315
Nisqually River:	
250 feet upstream from the center of State Highway 507	*302
40 feet upstream from the center of Kernahan Road (State Creek Road)	*1759
Horn Creek: 90 feet upstream from the center of Harts Lake Road South (Harts Lake Loop Road)	*435
Ohop Creek: 50 feet upstream from the center of Clay City Road (Sigmund Road)	*537
Mashel River: 75 feet upstream from the center of Eatonville Cutoff Road	*833

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
Little Mashel River: 60 feet upstream from the center of State Highway 161 (Eatonville Lagrande Highway)	*746
Unnamed Creek: 100 feet upstream from the center of Dean Kreger Road	*551
Tanwax Creek: 720 feet upstream from the center of 352nd Street East (Golden Road)	*596
South Creek: 60 feet upstream from the center of 320th Street East (Andrew Christian Road)	*599
South Creek Tributary No. 1: 150 feet upstream from the center of Webster Road	*617
South Creek Tributary No. 2: 60 feet upstream from the center of Webster Road	*623
South Creek Tributary No. 3: 60 feet upstream from the center of State Highway 7	*568
South Creek Tributary No. 4: 600 feet downstream from the center of 46th Avenue East	*521
Muck Creek: 160 feet upstream from the center of 70th Avenue East (Lindberg Road)	*463
Lacamas Creek: 25 feet upstream from the center of 40th Avenue South	*383
Puyallup River:	
660 feet upstream from the center of State Highway 161 (North Meridian Street)	*35
50 feet upstream from the center of Orville Road East (Kapowsin Highway)	*377
Swan Creek: 40 feet upstream from the center of Pioneer Way	*15
Squally Creek: 45 feet upstream from the center of 48th Street East (Gehring Road)	*154
Clear Creek: At the center of Pioneer Way	*14
Wapato Creek I: 630 feet upstream from the center of 82nd Avenue East (Freeman Road)	*29
Wapato Creek II: 200 feet upstream from the center of Spencer Todd Road Northeast	*41
Shallow Flooding: At the center of 115th Avenue East	*50
Hylebos Creek: 40 feet upstream from the center of 12th Street East	*12
White River:	
250 feet upstream from the center of 18th Street East	*66
80 feet upstream from the center of Logging Road No. 197	*1790
Salmon Creek: 125 feet downstream from the center of North Parker Road	*54
Carbon River—With Consideration of Levees: 40 feet upstream from the center of State Highway 162	*303
Carbon River—Without Consideration of Levees: 525 feet southwest from the intersection of Burlington Northern Railroad and State Highway 162 along Burlington Northern Railroad	*281
South Prairie Creek: 250 feet southwest from the intersection of State Highway 162 and Kaperak Road along State Highway 162	*353
Greenwater River: 70 feet upstream from the center of State Highway 410	*1,686
Wilkeson Creek: 80 feet upstream from the center of State Highway 165	*815
Fennel Creek: 30 feet upstream from the center of Sumner-Buckley Highway	*476
Debra Jane Creek: 40 feet downstream from the most downstream oorporate limit	*487
Bonney Lake Outflow: 15 feet upstream from the most downstream corporate limit	*538
Kreger Lake: Along entire shoreline	*532
Silver Lake: Along entire shoreline	*607
Rapjohn Lake: Along entire shoreline	*636
American Lake: Along entire shoreline	*236
Gravelly Lake: Along entire shoreline	*220
Spanaway Lake: At the intersection of Lake Side Drive and Sheppard-Simmonds Road	*324
Ohop Lake: Along entire shoreline	*525
Tanwax Lake: Along entire shoreline	*602
Lake Louise: Along entire shoreline	*226
Lake Kapowsin: 600 feet south from the intersection of Burlington Northern Railroad and Election Road along Burlington Northern Railroad	*584
Steilacoom Lake: 800 feet northeast from the intersection of Interlaken Drive Southwest and Steilacoom Drive along Interlaken Drive Southwest	*210
Harts Lake: Along entire shoreline	*349
Little Lake: Along entire shoreline	*349
Puget Sound:	
1,000 feet west from the intersection of Mounds Road and Burlington Northern-Union Pacific Railroad along Mounds Road extended	*10
300 feet southwest from the intersection of Day Island Boulevard West and East Day Island Boulevard West along Day Island Boulevard West	*9
800 feet east from the intersection of 4th Street East and 57th Avenue East along 4th Street East	*9
Muck Creek (at Roy): 10 feet upstream from the center of the footbridge located just west of the Town of Roy	*309
Maps available for inspection at Pierce County Commission, County City Building, Room 110, Tacoma, Washington 98402.	

WEST VIRGINIA

Cabell County (FEMA Docket No. 6906)

Ohio River:	
At confluence of Paddy Creek	*555
At confluence of Ninemile Creek	*557
At confluence of Guyan Creek	*561
Mud River:	
At County Road 19	*555
Upstream side of Richard Road	*579
At confluence of Charlie Creek	*602
At upstream County boundary	*614
Guyandotte River:	
At Russell Creek Road	*555
Upstream side of County Routes 31 and 6	*559
At upstream County boundary	*578
Fourpole Creek:	
Downstream County boundary	*567
Approximately 1,920 feet upstream of downstream County boundary	*569
Hisey Fork:	
Approximately .53 mile downstream of Interstate Route 64 (west access ramp)	*556
Approximately 528 feet upstream of U.S. Route 52	*591
Approximately 125 feet upstream of Miller Road	*651
Maps available for inspection at the County Clerk's Office, Cabell County Courthouse, Huntington, West Virginia.	

Hamlin (town), Lincoln County (FEMA Docket #6903)

Mud River:	
At downstream corporate limits	*640
At upstream corporate limits	*644
Maps available for inspection at the Town Hall, 220 Main Street, Hamlin, West Virginia.	

Lincoln County (FEMA Docket No. 6906)

Mud River:	
At downstream county boundary	*614
Approximately 740 feet upstream side of confluence of Buffalo Creek	*622
At downstream side of State Route 3 bridge	*636
Approximately 1,000 feet downstream of County Highway 48	*684
At County Highway 46	*703
Porter Fork:	
At confluence with Straight Fork	*690
Approximately 2.6 miles upstream of State Route 3 bridge	*691
Guyandotte River:	
At downstream county boundary	*576
At upstream county boundary with Town of West Hamlin	*580
At County Route 36-1 bridge at Branchland	*588
Approximately 740 feet downstream of County Highway 48 bridge at Midkiff	*592
Approximately 200 feet downstream of County Highway 10-2 bridge at Ranger	*599
Approximately 0.3 mile upstream of State Route 10 bridge at Harts	*620
At most upstream county boundary	*628
Middle Fork Mud River:	
At confluence with Mud River	*636
At County Route 22	*650
At confluence of Straight Fork and Sugartree Fork	*667
Straight Fork:	
At confluence with Sugartree Fork	*667
At confluence of Valley Fork	*670
Approximately 0.9 mile upstream of confluence of Porter Fork	*691
Maps available for inspection at the Tax Assessor's Office, Lincoln County Courthouse, Hamlin, West Virginia.	

Milton (town), Cabell County (FEMA Docket No. 6906)

Mud River:	
At downstream corporate limits	*586
At upstream corporate limits	*588
Maps available for inspection at the Town Hall, 1139 Smith Street, Milton, West Virginia.	

Rainelle (town), Greenbrier County (FEMA Docket No. 6906)

Sewell Creek/Little Sewell Creek:	
At downstream of downstream corporate limits	*2,393
Upstream side of U.S. Route 60/State Route 20	*2,395
At upstream of upstream corporate limits	*2,396
Maps available for inspection at the Town Hall, Rainelle, West Virginia.	

Wayne County (FEMA Docket No. 6906)

Big Sandy River:	
At downstream county boundary	*549
At confluence of Gragston Creek	*558
At confluence of Hurricane Creek	*566
At Lock and Dam No. 3	*575
Tug Fork:	
Upstream side of State Route 37	*576
At confluence of Drag Creek	*602
At confluence of Bull Creek	*612
At upstream county boundary	*626
Twelvepole Creek:	
At downstream county boundary	*551
Upstream side of first crossing of State Route 152	*571
At fourth crossing of State Route 152	*590
At confluence of West Fork and East Fork Twelvepole Creek	*605
West Fork Twelvepole Creek:	
At confluence with Twelvepole Creek	*605
Upstream side of State Route 152	*626
Downstream side of Flat Branch Road	*643
Upstream side of second crossing of County Route 52-56	*660
Downstream side of Dullon Hill Road	*695
At second crossing of State Route 152	*708
Upstream side of Wiley Branch Road	*716
Mill Creek:	
At confluence with Tug Fork	*576
At second crossing of U.S. Route 52	*577
At third crossing of U.S. Route 52	*592
Marrowbone Creek:	
At confluence with Tug Fork	*626
At upstream county boundary	*626
Jennie Creek:	
At confluence with Tug Fork	*620
At most upstream crossing of Access Road	*638
Approximately 0.6 mile downstream of county boundary	*660
At upstream county boundary	*677
Buffalo Creek:	
Upstream side of Norfolk and Western Railway bridge	*552
Approximately 0.7 mile upstream of Indian Branch Road	*565
Downstream side of Buffalo Creek Road	*577
Approximately 0.4 mile upstream of Buffalo Creek Road	*586
Maps available for inspection at the Wayne County Courthouse, Room 105, Wayne, West Virginia.	

Wayne (town), Wayne County (FEMA Docket No. 6906)

Twelvepole Creek:	
0.6 mile downstream of downstream corporate limits	*596

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
At upstream corporate limits	*605
Maps available for inspection at the Town Hall, 440 Cleveland Street, Wayne, West Virginia.	
West Hamlin (town), Lincoln County (FEMA Docket #6903)	
Guyandotte River:	
At downstream corporate limit	*579
At confluence of Falls Creek	*582
Maps available for inspection at the Town Hall, Guyan Street, West Hamlin, West Virginia.	
WYOMING	
Rock Springs (city), Sweetwater County (FEMA Docket No. 6906)	
Bitter Creek:	
At downstream corporate limit	*6,215
At intersection of M. St. and Pilot Butte Ave	*6,254
At upstream corporate limit	*6,270
1,000 feet north of a point 6,500 feet west along the Union Pacific Railroad from its crossing with Sweetwater Creek	*6,223
Sweetwater Creek:	
At downstream face of the Railroad Access Road	*6,233
At upstream face of Blairtown Flamingo Gorge Rd. (West 2nd Street)	*6,246
At upstream corporate limit	*6,253
Deadhorse Canyon Creek:	
660 feet downstream of the Union Pacific Railroad crossing	*6,256
At upstream corporate limit	*6,388
700 feet west of the intersection of Blair Ave. and Hickory St	*6,242
At upstream corporate limit	#1
At intersection of Elk St. and 2nd St	#2
Tributary No. 1:	
At upstream face of Dewar Dr. at its intersection with Foothills Blvd	*6,235
At downstream face of Dewar Dr. at its intersection with Foothills Blvd	*6,223
At upstream face of Interstate 80 (U.S. Highway 30)	*6,229
300 feet south of a point 1,500 feet southwest along Foothills Blvd. from its intersection with Ankeny Way	*6,230
At intersection of Sierra Rd. and Sandy Rd	#2
At southwesternmost intersection of Commercial Way and Foothills Blvd	#1
Tributary No. 2:	
At confluence with Dead Horse Canyon Creek, 228 feet upstream along Dead Horse Canyon Creek from the State Highway 430 bridge	*6,362
400 feet upstream from the bridge crossing at the intersection of Donalyn Dr. and Country Club Dr	*6,407
50 feet downstream from the bridge crossing at the intersection of Donalyn and Country Club Dr	*6,397
Killpecker Creek:	
600 feet south along Rugby Ave. from its intersection with Elk St	*6,248
At upstream face of the Interstate Highway 80 bridge where it crosses Spring Dr	*6,276
At upstream corporate limit	*6,303
Maps are available for review at the Department of Public Works, 212 D Street, Rock Springs, Wyoming 82901.	

Harold T. Duryee,

Administrator, Federal Insurance Administration.

Issued: July 10, 1987.

[FR Doc. 87-16104 Filed 7-16-87; 8:45 am]

BILLING CODE 6718-03-M

FEDERAL MARITIME COMMISSION

46 CFR Parts 502, 503

[Docket No. 87-8]

Filing of Comments Pertaining to Agency Meetings

AGENCY: Federal Maritime Commission.

ACTION: Final Rule.

SUMMARY: The Federal Maritime Commission amends its Rules of Practice and Procedure and its rules implementing the Government in the Sunshine Act to establish a cutoff date for filing of comments, information, etc. on matters scheduled for consideration at an agency meeting. The language and structure of § 502.2 (46 CFR 502.2) is also clarified.

DATE: Effective July 17, 1987.

FOR FURTHER INFORMATION CONTACT: Joseph C. Polking, Secretary, Federal Maritime Commission, 1100 L Street, N.W., Rm. 11101, Washington, DC. 20573-0001, (202) 523-5725.

SUPPLEMENTARY INFORMATION: By publication in the **Federal Register** on April 15, 1987, (52 FR 12212) the Federal Maritime Commission ("FMC" or "Commission") invited comments on a "Notice of Proposed Rulemaking" ("Notice") which proposed to amend § 503.82 of Title 46 CFR by establishing a cutoff date for filing of comments, information, etc. on matters scheduled for consideration at a Commission meeting. The Notice also proposed an amendment to § 502.2 of Title 46 CFR to provide an appropriate cross-reference to the amendment in § 503.82 and indicated that the current language and structure of § 502.2 would be clarified.

The reason for the proposed rule is to provide for a more orderly and thorough consideration of information pertaining to a particular matter before the Commission by prohibiting filings after the date of the public announcement of an agency meeting. Last minute filings on such matters may not allow the Commission sufficient time to properly review the additional information prior to its consideration of the item at the Commission meeting. Such filings also unfairly preclude any opportunity for response by another interested party where one may be warranted.

The only comment received was filed by the Transpacific Westbound Rate Agreement ("TWRA"). TWRA believes that the proposal "goes far beyond 'clarify[ing] the language and structure of § 502.2' ", and could have "potentially serious consequences." (TWRA Comments at 1.) TWRA states that While the existing rule relates only to matters involving a formal proceeding or a formal filing subject to Part 502, the proposed rule would require filing with the Secretary, FMC of any matter "likely to come before the Commissioners for decision, whether or not relating to proceedings governed by this part." (TWRA Comments at 2.) This promises to create problems, according to TWRA, which sees the rule as: (1) impermissibly vague as to what documents it applies to; (2) impinging impermissibly on constitutionally protected rights of shippers, carriers, ports, members of the public, legislators, foreign and U.S. officials to communicate through written or oral communication; and (3) unduly insulating the Commissioners from the maritime world and making the Commissioners unduly dependent upon staff for information necessary for background, for policy making or the taking of new initiatives.

As indicated in the Supplementary Information of the proposed rule, the Commission intended no substantive amendment to § 502.2 other than the addition of paragraph (d). Specifically there was no intention to enlarge the rule to preclude contract with Commissioners on matters not yet before the Commission. This will be clarified in the final rule by reinserting the qualifier "pending before the Commission" so that § 502.2(c) reads, in part, "or to any matter pending before the Commission which is likely to come before the Commissioners for decision * * *."

The Commission did, however, seek to make clear that the existing requirement for filing with the Secretary as opposed to individual Commissioners extends not only to matters relating to proceedings governed by Part 502 but to other matters pending before the Commission for decision as well. That paragraph (b) of existing § 502.2 applies to other than Part 502 matters is supported by its general reference to "matters pending before the Commission." It is also evidenced by the fact that paragraph (b) was not originally included in Part 502, but rather was published as a more general Statement of Policy appearing at 46 CFR 530.16(a) (47 FR 14709, April 6, 1982). The language in question was only recently incorporated into § 502.2 on April 23, 1984 (49 FR 16994), as part of the general restructuring of Commission rules occasioned by the implementation of the Shipping Act of 1984, 46 U.S.C. app. §§ 1701-1720.

The Commission has determined that this rule is not a "major rule" as defined in Executive Order 12291, dated

February 17, 1981, because it will not result in:

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

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

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

The Chairman of the Federal maritime Commission certifies pursuant to section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 605(b), that this rule will not have a significant economic impact on a substantial number of small entities, including small businesses, small organizational units or small governmental organizations.

The Paperwork Reduction Act, 44 U.S.C. 3501–3520, does not apply to this rule because the amendments to Parts 502 and 503 of Title 46, Code of Federal Regulations, do not impose any additional reporting or recordkeeping requirements or change the collection of information from members of the public which require the approval of the Office of Management and Budget. List of Subjects in 46 CFR Parts 502, 503: Administrative Practice and Procedure, Sunshine Act.

Therefore, pursuant to 5 U.S.C. 553 and section 17 of the Shipping Act of 1984, 46 U.S.C. app. 1716(a), Parts 502 and 503 of Title 46, Code of Federal Regulations, are amended as follows:

PART 502—[AMENDED]

1. The Authority Citation for Part 502 continues to read as follows:

Authority: 5 U.S.C. 552, 553, 559; 18 U.S.C. 207; secs. 18, 20, 22, 27 and 43 of the Shipping Act, 1916 (46 U.S.C. app. 817, 820, 821, 826, 841a); secs. 6, 8, 9, 10, 11, 12, 14, 15, 16 and 17 of the Shipping Act of 1984 (46 U.S.C. app. 1705, 1707–1711, 1713–1716); sec. 204(b) of the Merchant Marine Act, 1936 (46 U.S.C. app. 1114(b)); and E.O. 11222 of May 8, 1965 (30 FR 6469).

2. Section 502.2 is revised to read as follows:

§ 502.2 Filing of documents; hours; mailing address

(a) For purposes of filing of documents with the Commission, the hours of the Commission are from 8:30 a.m. to 5:00 p.m., Monday to Friday, inclusive.

(b) Except for exhibits filed pursuant to § 502.118(b)(4), all documents required to be filed in, and correspondence relating to proceedings governed by this part should be addressed to "Secretary, Federal Maritime Commission, Washington, DC 20573–0001."

(c) Documents relating to any matter pending before the Commissioners for decision or to any matter pending before the Commission which is likely to come before the Commissioners for decision, whether or not relating to proceedings governed by this Part, shall similarly be filed with the Secretary, Federal Maritime Commission. Such documents should not be filed with or separately submitted to the offices of individual Commissioners. Distribution to Commissioners and other agency personnel is handled by the Office of the Secretary, to ensure that persons in decision-making and advisory positions receive in a uniform and impersonal manner identical copies of submissions, and to avoid the possibility of ex parte communications within the meaning of § 502.11(b). These considerations apply to informal and oral communications as well, such as requests for expedited consideration.

(d) No filings relating to matters scheduled for a Commission meeting will be accepted by the Secretary if submitted subsequent to public announcement of the particular meeting, except that the Commission, on its own initiative, or pursuant to a written request, may in its discretion, permit a departure from this limitation for exceptional circumstances. (See § 503.82(e) of this chapter.) [Rule 2.]

PART 503—[AMENDED]

3. The Authority Citation for Part 503 continues to read as follows:

Authority: 5 U.S.C. 552, 552a, 552b, 553; E.O. 12356, 47 FR 14874, 15557, 3 CFR 1982 Comp., p. 167.

4. Section 503.82 is amended by adding a new paragraph (e) to read as follows:

§ 503.82 Public announcement of agency meetings.

* * * * *

(e) No comments or further information relating to a particular item scheduled for an agency meeting will be accepted by the Secretary for consideration subsequent to public announcement of such meeting; except that the Commission, on its own initiative, or pursuant to a written request, may in its discretion, permit a departure from this limitation for exceptional circumstances.

By the Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 87–16246 Filed 7–16–87; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 80

[PR Docket No. 86–396, RM–5414; FCC 87–225]

Amendment of the Maritime Services Rules to Provide for the Licensing of Portable Ship Earth Stations

AGENCY: Federal Communications Commission (FCC).

ACTION: Final rule.

SUMMARY: The FCC has amended its maritime rules to provide for the licensing of portable ship earth stations when the applicant shows a need to operate from more than one ship or fixed offshore platform.

EFFECTIVE DATE: August 24, 1987.

ADDRESS: Federal Communications Commission, 1919 M Street, NW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Robert E. Mickley, Private Radio Bureau, Aviation and Marine Branch, Washington, DC 20554, (202) 632–7175.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order in PR Docket No. 86–396, FCC 87–225, Adopted June 25, 1987, and released July 10, 1987.

The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Summary of Report and Order

1. On October 15, 1986, the FCC released a Notice of Proposed Rule Making (NPRM) in PR Docket No. 86–396, RM–5414, 51 FR 37922, that proposed to permit the owner or operator of portable satellite equipment to be licensed for portable operation from ships and fixed offshore platforms located in the marine environment. The NPRM responded to a request by Gearhart Industries, Inc. (Gearhart).

2. Gearhart serves the petroleum drilling industry by communicating

batchlots of data between drilling rigs and land based computer centers at critical points in the drilling operation. To provide this service, Gearhart uses portable satellite earth station equipment that can quickly and economically be deployed to meet the data and voice communication requirements of drilling ships and a variety of platforms located in the marine environment. Gearhart contends that the owner or operator of the portable satellite earth station equipment should be eligible to be the licensee of a new category of station to meet this communication requirement and that the operator of such a station should be exempt from operator licensing requirements.

3. The NPRM proposed to meet the delineated offshore industry communication requirement by amending the rules to provide for the licensing of portable ship earth stations. These stations would operate as a part of the International Maritime Satellite Organization (INMARSAT) system. We proposed to expand the scope of service for portable ship earth stations to include fixed offshore platforms located in the marine environment as well as mobile drilling platforms which are considered as ships. As to licensee eligibility, we proposed that the supplemental eligibility requirements for satellite stations be amended to include the owner or operator of portable ship earth station equipment to be used to furnish satellite communication services from more than one ship or fixed offshore waters. Because any further relaxation of operator requirements would be inconsistent with the Communications Act, no change in operator license requirements was proposed.

4. Comments in this proceeding were filed by Communications Satellite Corporation (COMSAT) and the Telecommunications Committee of the American Petroleum Institute (API). There were no reply comments. COMSAT supported the rule amendment proposed in the NPRM. COMSAT noted that the amendments will accommodate a valid offshore industry communications requirement, contribute to the efficiency of offshore operations, and facilitate access by maritime users to a new and innovative terminal technology.

5. API also strongly supported early adoption of the Commission's proposal to authorize portable ship earth stations. API recommended that the locations from which portable ship earth stations may be operated be expanded. Specifically, API recommended deleting any reference to "fixed offshore platforms" in favor of authorizing the employment of portable ship earth stations from any location in the marine environment including structures on shore. The INMARSAT Convention provides that the INMARSAT Council may, on a case-by-case basis, permit access to the INMARSAT space segment by earth stations located on structures operating in the marime environment other than ships. Because of the similarity of functions performed by mobile and fixed offshore platform and the similarity of communication requirements, we are expanding the scope of service of portable ship earth stations to include fixed offshore platforms. However, due to the case-by-case" provision in the INMARSAT Convention, we are not prepared to further expand our rules at this time. Accordingly, we are adopting the portable ship earth station rules substantially as proposed in the NPRM.

6. The rules contained herein have been analyzed with respect to the Paperwork Reduction Act of 1980 and found to contain no new or modified form, information collection and/or record keeping, labeling, disclosure or record retention requirements. These new rules will slightly decrease burden hours imposed upon the public because the number of applications to fulfill licensing requirements will be lessened.

7. We have determined that section 605(b) of the Regulatory Flexibility Act of 1980 (Pub. L. 96–354) does not apply to this rule making proceeding because if promulgated, it will not have a significant economic impact on a substantial number of small entities. These proposed rules will permit the licensing of portable ship earth stations to serve those in the offshore industry with a need to use newly available portable satellite equipment. The proposed rules impose no new equipment carriage requirements.

Ordering Clauses

8. For the reason stated above, it is ordered, that under the authority contained in sections 4(i) and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i) and 303(r), the Commission's rules are amended effective August 24, 1987, as shown below.

9. It is further ordered, that this proceeding is terminated.

List of Subjects in 47 CFR Part 80

Vessels, ship stations, Radio, Communications equipment.

New Rules

Part 80 of Chapter I of Title 47 of the Code of Federal Regulations is amended as follows:

PART 80—STATIONS IN THE MARITIME SERVICES

1. The authority citation for Part 80 continues to read as follows:

Authority: Secs. 4, 303, 48, Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303, unless otherwise noted. Interpret or apply 48 Stat. 1064–1068, 1081–1105, as amended; 47 U.S.C. 151–155, 301–609; 3 UST 3450, 3 UST 4726, 12 UST 2377.

2. Section 80.1185 is revised to read as follows:

§ 80.1185 Supplemental eligibility requirements for satellite stations.

Stations in the maritime mobile-satellite service must meet the eligibility requirements contained in this section.

(a) A station license for a ship earth station may be issued to:

(1) The owner or operator of a ship.

(2) A corporation proposing to furnish a nonprofit radio communication service to its parent corporation, to another subsidiary of the same parent, or to its own subsidiary, where the party to be served is the owner or operator of the ship aboard which the ship earth station is to be installed and operated.

(b) A station license for a portable ship earth station may be issued to the owner or operator of portable earth station equipment proposing to furnish satellite communication services on board more than one ship or fixed offshore platform located in the marine environment.

3. Section 80.1187 is revised to read as follows:

§ 80.1187 Scope of communication.

Ship earth stations must be used for telecommunications related to the business or operation of ships and for public correspondence of persons on board. Portable ship earth stations are authorized to meet the business, operational and public correspondence telecommunication needs of fixed offshore platforms located in the marine environment as well as ships. The types of emission are determined by the INMARSAT organization.

4. Section 80.1189 is added to read as follows:

§ 80.1189 Portable ship earth stations.

(a) Portable ship earth stations are authorized to operate on board more than one ship. Portable ship earth stations are also authorized to be operated on board fixed offshore

platforms located in international or United States domestic waters.

(b) Portable ship earth stations must meet the rule requirements of ship earth stations with the exception of eligibility.

(c) Where the license of the portable ship earth station is not the owner of the ship or fixed platform on which the station is located, the station must be operated with the permission of the owner or operator of the ship or fixed platform.

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc. 87-16284 Filed 7-16-87; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 661

[Docket No. 70845-7085]

Ocean Salmon Fisheries Off the Coasts of Washington, Oregon, and California; Inseason Adjustment and Request for Comments

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

ACTION: Notice of inseason adjustment and request for comments.

SUMMARY: NOAA announces an adjustment to recreational ocean salmon management measures in the subarea from the Queets River to the U.S.-Canada border. The adjustment establishes a closed area. The Director, Northwest Region, NMFS (Regional Director), has determined in consultation with representatives of the Pacific Fishery Management Council (Council), the Oregon Departmernt of Fish and Wildlife (ODFW) and the Washington Department of Fisheries (WDF), that the adjustment is necessary to conform to the chinook quotas established in the preseason announcement of 1987 management measures. This action is intended to extend the recreational season.

DATES: Establishment of a closed area in the subarea from the Queets River to the U.S.-Canada border, is effective at 2400 hours local time, July 14, 1987. Comments on this notice will be received until July 28, 1987.

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

FOR FURTHER INFORMATION CONTACT: Rolland A. Schmitten (Regional Director) at 206-526-6150.

SUPPLEMENTARY INFORMATION: Regulations governing the ocean salmon fisheries are codified at 50 CFR Part 661. Management measures for 1987 were effective on May 1, 1987 (52 FR 17264, May 6, 1987). The 1987 recreational fishery for all salmon species north of Cape Falcon, Oregon, is divided into three subareas. The recreational season is all three subareas began on June 28 and will continue through the earliest of either September 24, attainment of subarea chinook or coho quotas, or attainment of overall troll and recreational chinook or coho quotas for the area between Cape Falcon, Oregon, and the U.S.-Canada border.

For the subarea from the Queets River to the U.S.-Canada border, quotas of 2,500 chinook and 26,100 coho salmon are in effect. Based on the best available information, the recreational fishery in the subarea is estimated to have caught approximately 2,275 chinook through July 13, 1987. If the fishery were to close at midnight on July 14, approximately 21,000 coho salmon would remain unharvested. Inseason action is necessary to slow the catch of chinook and to extend the recreational season. Closure of a portion of the subarea to recreational salmon fishing will diminish the chinook harvest.

Therefore, NOAA issues this notice to adjust the recreational salmon fishery in the United States exclusive economic zone (EEZ) from the Queets River to the U.S.-Canada border, by establishing the following closed area:

Waters within the EEZ inside and bounded by a line projected true north one mile from the mouth of the Sekiu River, thence westerly meandering one mile offshore to Tatoosh line, thence north on the Bonilla-Tatoosh line one mile (Duncan Rock), thence true west five miles, thence southerly meandering five miles offshore to intersect a line projected true west from Cape Alava and southerly at a distance of one mile offshore from the Cape Alava line meandering along the shoreline at one mile to intersect a true west line projected from the mouth of the Queets River.

This notice does not apply to treaty Indian fisheries or to other fisheries which may be operating in this or other areas.

The Regional Director consulted with representatives of the Council, ODFW, and WDF regarding this inseason adjustment for the recreational fishery from the Queets River to the U.S.-Canada border. The WDF representative confirmed that Washington will manage the recreational fishery in state waters adjacent to this area of the EEZ in accordance with this federal action.

Other Matters

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

List of Subjects in 50 CFR Part 661

Fisheries, Fishing, Indians.

Authority: 16 U.S.C. *et seq.*

Dated: July 14, 1987.

Bill Powell,

Executive Director, National Marine Fisheries Service.

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Proposed Rules

Federal Register
Vol. 52, No. 137
Friday, July 17, 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 246

Special Supplemental Food Program for Women, Infants and Children; Funding Formula

AGENCY: Food and Nutrition Service, USDA.

ACTION: Proposed rule.

SUMMARY: The Department proposes to amend the WIC Program Regulations concerning the formula through which the Department shall allocate funds for administrative and program services to State agencies. The Department has two objectives in amending this formula: First, to give all State agencies funds to provide equivalent service to participants and management oversight; second, to remove existing disincentives for State agencies to reduce food costs in order to serve more participants. Therefore, in accordance with this amendment, which embodies the necessary formula, the Department proposes to allocate funds to State agencies for administrative and program services costs primarily on the basis of the number of participants served. With the administrative and program services funds tied more closely to participation, the Department expects that use of this formula would more equitably allocate available funds to meet the administrative and program services costs in State agencies, and would remove disincentives for reducing food costs to serve more participants. Use of this formula would begin with the Fiscal Year 1988 funds allocation.

DATES: Comments on the proposed rule must be received on or before August 31, 1987 to be assured of consideration in the final rulemaking.

ADDRESS: Comments may be mailed to Patrick J. Clerkin, Director, Supplemental Food Programs Division, Food and Nutrition Service, USDA, 3101 Park Center Drive, Room 407, Alexandria, Virginia 22302, (703) 756–3746. All written submissions will be available for public inspection at the same address during regular business hours (8:30 a.m. to 5:00 p.m.) Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Patrick J. Clerkin (703) 756–3746 at the address above.

SUPPLEMENTARY INFORMATION:

Classification

This proposed rule has been reviewed under Executive Order 12291, and has been determined to be *not major*. The Department does not anticipate that this rule would have an annual effect on the economy of $100 million or more. This rule would not result in a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions. Nor would this rule have 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.

This rule has been reviewed with regard to the requirements of the Regulatory Flexibility Act (5 U.S.C. 601–612). Pursuant to that review, the 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 entities. This rule does not contain reporting or recordkeeping requirements subject to approval by the Office of Management and Budget in accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3507).

This program is listed in the Catalog of Federal Domestic Assistance Programs under No. 10.557 and is subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials (7 CFR Part 3015, Subpart V, and final rule related notice published June 24, 1983 (48 FR 29114)).

Background

Statutory Requirements

The Department's authority to prescribe a WIC funds allocation formula is found in section 17 of the Child Nutrition Act (CNA) of 1966 (42 U.S.C. 1786), as amended. Section 17(i) requires the Department to ". . . divide among the State agencies the funds provided in accordance with this section on the basis of a formula determined by the Secretary." Legislative directives for the distribution of administrative and program services funds to State agencies are provided in section 17(h)(1) and (h)(2). Section 17(h)(1) reads in part, "The Secretary shall make 20 percent of the funds provided under this section each fiscal year (other than funds expended for evaluation and pilot projects under subsection (g) of this section) available for State agency and local agency costs for nutrition services and administration." This paragraph further stipulates that not less than one-sixth of the funds State agencies expend for nutrition services and administration are to be used for nutrition education activities, unless a State agency requests authorization to spend less than the required amount and provides documentation that funding from other sources will be used for such activities. Section 17(h)(2) further requires the Secretary to ". . . allocate funds for nutrition services and administration to each State agency on the basis of a formula determined by the Secretary, which shall include a minimum amount, and which shall be designed to take into account the varying needs of State agencies based on factors such as the number of local agencies and the number of persons participating in the program at those agencies." In summary, the CNA directs the Department to allocate to State agencies 20 percent of the total Federal funds available for the WIC Program (minus funds expended for evaulation and pilot projects under subsection (g)) for administrative and program services according to a formula that provides a minimum amount and that considers the varying needs of State agencies.

Current Funding Formula

On July 2, 1987, a final rule was published (52 FR 25182) that set forth the formulas for allocating both WIC food and administrative and program services funds. While this rule made revisions to the formula for allocating food funds, the rule did not make any changes in the existing administrative and program services funding formula.

The current formula for allocating administrative and program services funds, in use since Fiscal Year 1984, provides funds in two ways. First, a guaranteed grant amount is calculated which is the lesser of: (a) 21 percent of a State agency's food grant, or (b) the State agency's ratio of administrative and program services funds to food funds allocated in the previous year, multiplied by the current year's food grant. Second, a discretionary funding "pot" is available to each Food and Nutrition Service (FNS) regional office. The purpose of the discretionary funding "pots" is to provide for the varying needs of State agencies. The amount of discretionary funds available to each regional office for allocation to its respective State agencies is determined based on each of its State agencies' ratio of administrative and program services funds to food funds from the previous fiscal year. The difference between the amount generated by applying the State agency's ratio to its current year's food grant and the State's guaranteed administrative and program services grant represents the State's contribution to the regional discretionary fund. The sum of all States' contributions form the regional discretionary fund.

FNS regional offices determine the amount of discretionary funds State agencies will receive. The underlying premise of these discretionary allocations by the regional offices is that their close working relationships with the State agencies afford them greater awareness of the State agencies' varying needs.

Regional offices have allocated discretionary funds using factors such as the State agency's ratio of administrative and program services funds to food funds from the previous year, administrative and program services cost per participant, service to high risk participants, funding for special projects, and individual negotiated amounts. In Fiscal Year 1987, approximately 17 percent of total administrative and program services funds were awarded through the discretionary grant component. Nationally, however, most State agencies received the amount of discretionary funds they "contributed" to the regional fund, and only 3 percent of the total discretionary funds were actually redistributed to other State agencies.

Concerns About the Existing Formula

While the use of current administrative to food ratios as a basis for allocating funds for administrative and program services provides a stable and straightforward method for funding, the Department is concerned that there may be some inequity in the distribution of funds under the formula among State agencies and regions of the country.

The current formula can only be equitable to the extent that the ratios of administrative to food funds existing in the base year, Fiscal Year 1983, were equitable. The ratios used in Fiscal Year 1983 are shown below averaged by FNS region. For comparison, the average regional ratios for Fiscal Year 1987 are also shown, and the average administrative grant per participant (AGP) in Fiscal Year 1987 is listed by region.

FNS region	FY 1983 ratios	FY 1987 ratios [1]	FY 1987 AGP [1]
Northeast Region	25.1	26.0	$9.48
Mid-Atlantic Region	23.6	22.8	7.56
Southeast Region	24.6	25.1	7.88
Midwest Region	26.0	26.2	7.43
Mountain Plains Region	28.1	27.5	8.85
Southwest Region	24.5	25.0	8.90
Western Region	21.7	23.4	8.55

[1] Fiscal Year 1987 ratios and AGPs reflect 1987 stability grants only. Projected participation was used to calculate monthly per participant grant.

There is a general recognition that these AGPs and ratios do not fully reflect each State agency's relative costs of operating the WIC Program. To the extent this is true, the grant amounts generated by the use of current ratios, including the amount of discretionary funds available for distribution to State agencies, are not fully equitable.

Additionally, the Department is concerned that the current formula is a disincentive to a State agency's reduction of food costs per participant. Lower food costs translate into additional participants. Under the current formula, State agencies must provide administration and program services for each additional participant with no increase in funding.

Consultations with the WIC Community

In the formulation of this proposal, the Department consulted with members of the WIC community on numerous occasions for input on approaches to the development of a revised funding formula. When revisions to the WIC food funding formula were first proposed in the September 9, 1986 issue of the **Federal Register** (51 FR 32093), the Department invited comments on the administrative and program services funding formula as well as the food funding formula. However, few comments were received on the former subject. Since then, the Department has had several managers' meetings with representatives of the National Association of WIC Directors (NAWD) to discuss the issues described in this preamble. These meeting took place in January and April 1987. In February 1987, all State agencies were sent a written summary of the first managers' meeting. During the national WIC meeting which the NAWD sponsored in March 1987, the Department held workshops on formula options under development, and members of the large WIC community who attended these workshops provided comments and suggestions. As a result, the contributions of the NAWD and the larger WIC community have been instrumental in the design of this proposed administrative and program services funding formula.

Funding Principles

During the initial meetings with NAWD representatives, concerns about the current formula were discussed, and general funding principles and cost-related factors were intensively considered. The following funding principles were formulated:

(1) Equitable allocation of funds among State agencies and regions;

(2) Funding based primarily on the number of participants served;

(3) Flexibility to handle the needs of State agencies in special circumstances (i.e., very small State agencies, outlying areas, etc.);

(4) Funding stability with reasonable and measured movement toward changes in grant levels;

(5) Simplicity;

(6) Consistency with program goals;

(7) Use of comparable and verifiable data;

(8) Examination and consideration of long-range impact of proposed formula changes on the capacity of State agencies to deliver benefits; and

(9) Consideration of factors which affect administrative and program services costs that are not under a State agency's control.

Factors Which Affect Administrative and Program Services Costs

A number of factors which might affect administrative and program services costs were considered in development of the formula proposal. The initial list of factors that were explored in relation to WIC administrative and program services costs included: Salaries; economies of

scale realized at the State level, based on total participation; economies of scale realized at the local level, based on the median size of local agencies or the number of distribution sites for WIC services; types of participants such as those considered to be at high-risk for medical problems or nutritional deficiencies or those who speak foreign languages; the rural/urban composition of the caseload; geographic factors, such as the number of square miles in the State agency's jurisdiction or topography; centralized or decentralized State health care systems, including the integration of WIC with other health care programs; and indirect costs which are paid with WIC Program funds in accordance with a federally-approved cost allocation plan for the State agency.

Further analysis of the above-mentioned factors resulted in the elimination of several factors chiefly because these factors were deemed to be under the control of State agencies. If the State agency or health department could make decisions which would control the factor at issue, then the costs associated with that factor were considered to be under the State's control. After this analysis, four factors remained outside of the State's control:

(1) Salaries;

(2) Economies of scale based on total statewide participation;

(3) Rural/urban caseload composition; and

(4) Geographic factors (particularly topography).

Data Bases for Cost Factors

The Department began further exploration into the possible inclusion of the four cost-related factors into a funding formula based primarily on participation. While comparable and verifiable data exist for the salary factors, the Department encountered difficulties in locating appropriate data sources and identifying cost differentials for the factors of economies of scale, rural/urban caseload composition, and geographic differences. A discussion follows of the Department's research efforts for data sources and attendant conclusions regarding the feasibility of including some or all of the cost factors in a proposed funding formula.

• *Salaries.*

Salary costs account for the largest WIC administrative and program services expenditures as budgeted by most State agencies; in addition, State government pay scales and cost of living differences limit the discretion State agencies might otherwise exercise in determining salary costs. For these reasons, salary costs are being considered for possible inclusion in the funding formula.

The U.S. Bureau of the Census and the U.S. Bureau of Labor Statistics collect data on average government salaries for all States. The Census Bureau conducts a survey of public employment in October of each year. The survey findings, which include average October salaries for full-time State and local government employees (exclusive of the dollar value of fringe benefits), are published annually in August of the following year. The most recent report is entitled, "Public Employment in 1985," GE85–NO. 1, which reflects data from October 1985. The average salary data for State and local governments is derived from information provided by all State governmental units including the District of Columbia and a sample of approximately 22,000 local governments. The Census Bureau provides average October salaries for State and local government employees in various functional work categories as well as for total combined staffs. Because the survey covers only one month, the Census Bureau has advised against converting the monthly salary levels to annual levels.

The U.S. Bureau of Labor Statistics (BLS) collects data on a quarterly basis from State employment agencies of the 50 States, the District of Columbia, Puerto Rico, and the Virgin Islands. The data includes quarterly totals of wages and monthly numbers of employees from all private sector, Federal, State and local government units which are subject to State unemployment insurance laws or the Unemployment Compensation for Federal Employees Program. According to the BLS, this dataset, known as the "ES–202" series, comprises a vitual census (98 percent) of private and public employment and wage data in the U.S. The quarterly reports are compiled on a calendar year basis in the BLS bulletin 2272 entitled, "Employment and Wages, Annual Averages." Annual salary averages are provided for total State governments, total local governments, and for various functional work categories at the State and local levels.

After reviewing the information from the Census Bureau and the BLS, the Department believes that the BLS data would be an appropriate source on salary information for possible inclusion in a funding formula. The advantages of the BLS data include the comprehensive coverage of workers in the States and the period of time over which the data is collected. However, since there is no BLS salary data for Guam and the Indian State agencies, alternate data sources must be used for these State agencies.

The Department proposes to use a salary level for Guam that equals the salary level for Hawaii's State and local government workers as provided by BLS, and for the Indian State agencies, the salary level equal to that of the grade 9, step 1 in the general schedule pay scale of the Federal government. The Department believes that the salary levels selected for the Guam and Indian State agencies would be a reasonable reflection of the salaries actually paid by those agencies. Data from the Indian Health Service (IHS) of the U.S. Department of Health and Human Services was considered for this purpose. However, the average salary levels provided by IHS were based on only one month's payroll and disproportionately reflected the salary levels for physicians and other highly paid health care administrators. In addition, salary data was not available for some States. For these reasons, the Department decided not to use the IHS data.

The more basic question, however, that remains to be answered is whether salaries or any of the other cost-related factors should be included in the funding formula. Some members of the WIC community have questioned the appropriateness of including salary costs as a factor in the funding formula. They believe the differences in salary costs are offset by other cost differences. Others believe it is a factor which should be recognized in the formula as salaries have such a major impact on the quality and number of staff that State and local agencies can hire. For these reasons, the Department has proposed a formula with two options, one that includes salary data as a factor and one that does not. The Department will choose one of these options, or will adopt a combination of both, for inclusion in the final rule. Comments on this issue will be welcomed.

• *Economies of Scale.*

Another factor which logically affects administrative and program services costs is the economy of scale phenomenon. It has been observed that there are certain fixed administrative and program services costs in the delivery of program benefits that an agency must bear regardless of the size of the caseload. Thus, agencies with larger participation levels are able to realize reductions in costs per participant, as the fixed costs are spread out among more participants. Smaller agencies have comparatively higher costs per participant.

While economies of scale are intuitively understood to influence costs for State agencies relative to their caseloads sizes, there is a lack of objective knowledge about the function of economies of scale within the WIC Program. Without this knowledge, it is difficult to determine an appropriate measure to factor into the funding formula. The Department believes that more research is needed to understand how economies of scale actualiy affect WIC administrative and program services costs, what specific costs are most influenced, the participation level(s) at which economies of scale are operational and how much allowance should be made at each of those levels.

However, it is recognized that a funding formula based primarily on participation would result in many small State agencies receiving much smaller grants than they receive under existing funding methodologies. To avoid this outcome, the Department is proposing the inclusion of a size-adjusted cost factor that would provide additional compensation to State agencies for the first 15,000 participants. A State agency providing service up to 15,000 participants monthly would be considered a small State agency. The mechanics of the size-adjusted cost factor will be explained in greater detail in subsequent paragraphs of this preamble.

• *Rural/Urban Caseload Composition and Geographic Factors.*

During the initial WIC managers' discussions on factors affecting WIC administrative and program services costs, it was generally agreed that location plays a role in determining the cost of serving WIC participants. The rural/urban composition of the WIC caseload as well as geographic factors, particularly topography, were most frequently mentioned as aspects of location that affect administrative and program service costs.

Regarding rural/urban caseload composition, the basic argument is that it costs more administratively to operate the program in rural areas. Higher costs result from staff time that is spent traveling to and from clinic sites where fewer participants are seen in comparison to urban areas. The combination of distance and smaller caseloads result in a lowered staff to participant ratio. Although the salary levels may be lower in rural areas, the number of staff in relation to participation is higher. In addition to these considerations, some rural areas have topographic obstacles such as mountainous terrain which can further add to the administrative and program services costs of serving rural WIC participants.

While the Department recognizes these concerns, the problem remains of locating accurate measurements for rurality and topography that would be used in the funding formula. Rurality is not easily defined. The U.S. Census Bureau defines rural population as that which is not urban. Summarizing the Census Bureau's definition, urban population areas include incorporated and unincorporated places with 2,500 or more inhabitants. While careful research goes into the Census Bureau's classification of areas as rural or urban, the determination is made only once every 10 years for the decennial census.

A more commonly used population classification which is updated at more frequent intervals is the metropolitan statistical area (MSA). Formerly known as the standard metropolitan statistical area, the MSA is a statistical standard designated and defined by the Office of Management and Budget. Due to the definition of a MSA population, however, areas that are essentially rural in character may be included within the boundaries of a MSA. Thus, a drawback to the use of data classified according to the MSA system is that rural populations may be de-emphasized. Since the purpose of including such data in the funding formula is to provide additional funds for the cost of providing WIC services in rural or nonmetropolitan areas, the likelihood exists that certain areas which could reasonably be considered rural would not be included as such in the dataset.

The U.S. Department of Health and Human Services (DHHS), encountered similar problems when rurality was considered as a possible factor in alternative funding formulas for the Maternal and Child Health (MCH) Federal block grants. In a report issued in September 1982 entitled, "Report to the Congress on the Study of Equitable Formulas for the Allocation of Block Grant Funds," DHHS noted that data on rurality was inconsistent. Further, DHHS noted the effects of a rurality factor on allocations to States were not significant. Thus, DHHS concluded that rurality should not be used as a factor in MCH alternative funding formulas.

Regarding the topography issue, there appears to be no means of adequately measuring and quantifying topographical factors for inclusion in the funding formula.

Given the considerations discussed in the preceding paragraphs, the Department does not plan to pursue further investigation of either rural/urban caseload composition or topography as factors for the administrative and program services funding formula. The size-adjusted cost factor will provide recognition of the special circumstances confronting sparsely populated States in delivering WIC benefits to participants as many small State agencies also serve a largely rural population.

Proposed Administrative Funding Formula

• *Formula Objectives and Features*

The Department seeks to revise the formula by which funds for administrative and program services are allocated in order to offer equivalent service and management and to remove disincentives to State agencies using food funds as efficiently and effectively as possible so that more eligible persons can be served. In regard to food cost economies, the Department's intent is for State agencies to review current policies and practices on food package design, food delivery systems and vendor selection to determine potential cost savings measures. State agencies should not contemplate measures detrimental to the nutritional integrity of the food package. Any changes to food packages will be reviewed carefully by FNS in accordance with guidelines outlined in FNS Instruction 804–1, *WIC Program—Food Package Design: Administrative Adjustments and Nutrition Tailoring.*

To accomplish this objective within the context of ongoing program operations, the Department proposes a formula that retains the basic concept of funding to maintain State agencies' previous administrative and program services grant levels (stability) while promoting a gradual movement toward a funding grant which represents each State agency's "fair share" (parity; i.e., the amount of administrative and program services funds to which a State agency would be entitled if such funding were based primarily on participation). Two options are presented for determining how the parity grant levels would be calculated. Each would factor in an allowance for the first 15,000 participants served by a State agency. In addition, the proposed formula would retain the concept of discretionary funding by FNS regional offices.

• *General Concept of the Formula*

The formula as proposed provides a strategy for implementing gradual change while protection current grant levels, thereby avoiding disruption to program operations. This would be done by protecting the previous year's administrative and program services

grant up to the level of such funding of the previous year. Unless a State agency is projected to serve fewer participants than in the previous year, a State agency could expect to receive, at a minimum, funding equal to the previous year's grant. (A State agency's total funding level (stability plus residual) would be adjusted by the operation of discretionary funding provisions as discussed in subsequent paragraphs of this preamble.) After the stability funding is satisfied, any remaining funds would be distributed to qualifying State agencies on the basis of either (1) projected participation increases over the previous year, or (2) parity grant levels that exceed the stability levels. The parity grant determinations under both proposed options A and B are designed to fund primarily on the basis of participation. The formula does not recognize all situations where a State agency has higher than average costs, however such State agencies would qualify for additional funding if they are able to increase participation. To provide further encouragement to State agencies to increase participation, a two-pronged approach (projected participation increases and parity) is proposed to help ensure that additional funding is provided for increases in participation. Ultimately, however, the goal of the proposed funding formula is eventually to fund all State agencies at their parity grant levels.

Under the proposed formula, a State agency's total grant level would equal the stability grant plus any additional funds for which the State agency qualifies for parity or for participation increases. Discretionary funding by FNS regional offices would be continued under the proposed formula because the Department recognizes that no formulaic approach to funds allocation can fully respond to the varying needs of State agencies administering the Program. Discretionary funds would be made available for allocation by FNS regional offices by substracting a percentage from each State agency's total grant level and aggregating those amounts for all State agencies in the FNS region.

For commentors who are interested in reviewing the full formula database and mathematical operations, an information package is available. Copies of the document will be forwarded to all State agencies administering the WIC Program and to all FNS regional offices. Copies will also be made available to other interested parties upon their request. Requests should be submitted in writing to Patrick Clerkin, whose address and telephone number are given at the beginning of this preamble.

• *Formula Description*

1. Stability Component

All State agencies will receive a stability grant if sufficient funds have been appropriated by Congress and are available for allocation. The stability grant level would equal the previous fiscal year's administrative and program services grant unless participation is projected to decrease. If projected participation decreases, State agencies would be guaranteed their prior year grant with a per participant reduction for the participant decrease. As with the current formula, adjustments would be made to the administrative and program services stability grant due to recoveries made for failure to meet the 95 percent performance standard for food expenditures. Reduction of the food grant would result in a decrease in the projected number of participants that could be served. A lower projected participation level would thus produce a reduction in the administrative and program services grant.

2. Projected Participation

Participation as projected by FNS would determine whether State agencies would receive a reduction from the previous fiscal year's administrative and program services funding level. In the context of distribution of residual funds, it would determine whether State agencies are eligible for additional funds based on participation increases and would be used in the parity grant calculations under both proposed options.

The Department proposes to project participation by dividing each State agency's current fiscal year food grant by its previous fiscal year's average monthly food expenditure per participant (FEP) increased by an inflation factor. This quotient is further divided by 12 to arrive at a monthly participation level. The FEP is derived from participation and food expenditures which State agencies report monthly to FNS on the Form FNS–498, WIC Monthly Financial and Program Status Report. To account for increased costs in the current fiscal year, the FEP would be increased by the same base anticipated rate of inflation that would be applied in determining current year food grants. This calculation of participation is based on historic data. No prospective economies are considered in the calculation. This proposal does not provide for formulaic recognition of participation increases attributable to prospective economies. Such prospective economies could be rewarded by allocation of discretionary administrative grant funds to States. The Department invites comment as to how such prospective economies might be incorporated in a formula.

3. Grant Adjustments Based on Changes in Projected Participation

As described, the participation level projected by FNS would be used to determine funding increases or decreases from the previous year's grant. In the initial year, this would be done by comparing each State agency's projected monthly participation level to its 12 month averaged participation level for the previous fiscal year. In subsequent years, each State agency's projected participation level would be compared to the level projected for the previous year. The incrases or decreases in participation from the projection would be multiplied by a Federal administrative expenditure per person (AEP) to determine the amount of funds that should be added to or substracted from the State agency's previous year's administrative and program services grant. The Federal AEP used will be the weighted average of AEPs from the State agencies in the lowest quartile (of AEPs) from the previous fiscal year. The purpose in using an AEP derived from the lowest quartile is to limit the amount of funds that would flow to or from State agencies' grant levels from this component of the formula.

4. Parity Component: Two Options

The basic concept behind the parity component is to gradually move State agencies to a funding level that represents their "fair share" of available funds. Both parity options determine fair share funding primarily on the basis of participation. Also, both options would recognize the higher costs associated with smaller participation levels on a per participant basis. The primary difference between the two options is that one makes no adjustment for differences among States in levels of salaries paid and the other does. Secondary differences in methods of providing for the needs of smaller participation levels are inherent in the approaches. The former, designated as Option A, provides funds on the basis of a per participant rate. The latter, designated as Option B, provides each State agency with funds on the basis of a constructed salary budget which computes number of State and local staff according to staff to participant ratios, and salaries paid within the State. The balance of funds is paid out on a flat administrative grant per person.

Size-Adjusted Factor

The Department is proposing a size-adjusted factor that would fund each State agency for the first 5,000 participants at a level that is no more than 68 percent higher than the per participant funding provided for average participation levels exceeding 15,000 monthly. The next 10,000 participants or average monthly participation levels between 5,001 and 15,000 participants would be funded at a level that is no more than 2.4 percent higher than the per participant funding for participation levels exceeding 15,000 monthly. These percentages (68 percent and 2.4 percent) equal the percent differences between the weighted average AEP for the State agencies with participation levels up to 5,000 and in the range of 5,001 to 15,000 respectively and the weighted average AEP for State agencies with participation levels over 15,000. The weighted average AEP for participation up to 5,000 was calculated by dividing the Fiscal Year 1986 total Federal administrative and program services expenditures for State agencies in that size group by their Fiscal Year 1986 total cumulative participation. The weighted average AEPs for participation levels between 5,001 and 15,000 and over 15,000 were calculated in a similar way using Fiscal Year 1986 data and allowing for higher AEPs for the first 15,000 participants.

(a) *Option A—Administrative Grant Per Participant (unadjusted for salary costs).* Parity under Option A provides each State with an administrative grant per participant (AGP) for each participant it is projected to serve on a monthly basis. The underlying assumption in Option A is that the rate of reimbursement for each participant served should take into consideration only the relatively greater needs of smaller participation levels. Three AGP rates would be calculated for three participation levels: up to 5,000; 5,001 to 15,000; and over 15,000 so that as a State agency's participation expanded, its AGP would be adjusted downward. The highest AGP rate, applied to the first 5,000 participants, would equal 1.68 times the AGP rate applied to participation levels over 15,000. Another AGP rate applied to the next 10,000 participants, would equal 1.024 times the AGP rate applied to participation over 15,000.

For example, if the AGP rate for participation levels over 15,000 equalled $8.00, the AGP rate for the smallest participation level (up to 5,000 participants) would equal 1.68 times $8.00, or $13.44, and the AGP rate for the second participation level (between 5,001 and 15,000 participants) would equal 1.024 times $8.00, or $8.61. Thus, the rate of compensation for a State agency under Option A depends on how many participants fall into one or more of the participation levels. Using the AGP rates given in the above example, following are three scenarios that demonstrate the mechanics of Option A parity grant calculations.

State A is projected to serve 4,000 participants per month; State B is projected to serve 10,000 participants each month; and State C is projected to serve 100,000 participants monthly. Their grants would be calculated as follows:

	Participation (average monthly projected)	× AGP Rates			= Monthly Grant	×12 Months = Option A parity grant
		1st 5,000 × $13.44	next +10,000 × $8.16	over +15,000 × $8.00		
State A	4,000	4,000 × 13.44	0 +× 8.16	0 +× 8.00	$53,760	$645,120
State B	10,000	5,000 × 13.44	5,000 +× 8.16	0 +× 8.00	$108,000	$1,296,000
State C	100,000	5,000 × 13.44	10,000 +× 8.16	85,000 +× 8.00	$828,000	$9,945,600

Based on the above calculations, the final AGPs would equal $13.44 for State A, $10.80 for State B, and $8.29 for State C.

(b) *Option B—Constructed Budget (adjusted for salary costs).* Under Option B, parity grant levels would be determined by constructing a budget for a staffing level and for salary costs based on each State agency's projected participation level. Implicit in this approach to parity is that staffing and salary costs have the largest impact on State agencies' abilities to administer the WIC Program and deliver nutrition education benefits. The Department's primary intent in proposing Option B is to recognize the importance of salary costs which constitute the major administrative and program services expenditure for most State agencies. The particular approach used in Option B to account for salary costs (i.e., the construction of staffing levels applied to an average salary level) is one way to accomplish this. Other methodologies could be used to recognize salary costs in a funding formula based primarily on participation. Thus, the Department encourages commentors to address not only the general issue of including salary costs as a factor in the funding formula but also to suggest methodologies for doing so. Option B as proposed would estimate the staffing levels and salary costs as follows:

(1) *Staff.* (a) The number of full-time equivalent (FTE) staff credited at the State agency level would be determined by applying the staffing standards contained in the WIC Program Regulations, 7 CFR 246.3(d). Staffing standards are addressed for administrators, program specialists, and nutritionists. The FTE staffing standards include 1.0 FTE staff for a participation level of 500, 2.0 FTE staff for 1,500 participants, and an additional 1.0 FTE staff for each additional 10,000 participants. Although the regulation does not address staffing levels over 10.0 FTE staff which would apply to a participation level of 81,500, the proposal would extend the staffing standard of 1.0 FTE staff for each additional 10,000 participants over 1,500 up to the highest average participation level a State agency is projected to serve monthly. Thus, a State agency with a projected average monthly participation level of 281,500 would be credited with 30.0 FTE staff.

(b) The number of FTE staff credited at the local agency level would be determined by applying staff to participant ratios to the number of participants a State agency is projected to serve. The staff to participant ratios are intended to account for staff needed to carry out the activities preformed at the local level such as certification, nutrition education, and other duties.

The local level staff to participant ratio would be adjusted for caseload size in a manner similar to the adjustments made to the AGP to account for size differences under Option A. A ratio of 1:179 would be applied to the first 5,000 participants; a ratio 1:294 would be applied to partiicpation levels between 5,001 and 15,000 or the next 10,000 participants; finally, a ratio of 1:300 would be applied to the portion of the monthly caseload over 15,000 participants.

(2) *Salary Costs.* The salary costs for each State agency, exclusive of the dollar value of fringe benefits, would be calculated for the estimated number of

State and local FTE staff. The Department proposes to use the most recent average annual salary data available from the BLS and other data sources, as previously discussed. (In the case of the BLS data, the applicable average would be the average of all State and local government salaries for the State.) This average would be multiplied by the number of credited FTE staff.

(3) *Other Costs.* Any funds remaining after credited salary costs have been fully funded would be distributed to State agencies on the basis of their percent shares of the national projected participation level.

5. Shortfall Allocation

The shortfall component of the proposed formula allocates residual funds to qualifying State agencies either on the basis of projected participation increases or higher parity grant levels in comparison to their stability grants. The first step in this process is to determine the *higher* of a State agency's (1) potential grant based on projected participation increases or (2) parity grant level. The stability grant level is then subtracted from the potential grant or parity amount to determine the amount of additional funds necessary to bring the State agency to its parity or potential grant level. If sufficient funds are available, each State agency would receive the entire amount of that shortfall. However, in the likely event that sufficient funds will not be available, a State agency would receive an amount of the total funds available for shortfall allocation that is equal to its percent of the total shortfall for all State agencies. For example, a State agency is eligible to receive $10,000 in residual funds which represents 5 percent of the total shortfall amount for all State agencies (a total shortfall of $200,000). If $150,000 was available for the shortfall allocation, this State agency would receive 5 percent or $7,500 of the available funds.

6. Total Grant Level

Under the proposed formula the total funding levels for State agencies would equal the stability grant plus any additional funds received from the shortfall allocation.

7. Discretionary Funding

The Department proposes to make 10 percent of each State agency's total administrative and program services grant level available for redistribution by FNS regional office discretionary funding. The amount that each regional office could allocate would equal 10 percent of the total grant levels for all State agencies in the region. This provision permits FNS to make funding allowances for dynamic changes to the operational needs of State agencies. For example, discretionary funds would provide a means to award extra funds to State agencies that show that they will achieve substantial food costs savings, and thus, higher participation in the upcoming year, if the regional office deems payment of such funds to be appropriate.

List of Subjects in 7 CFR Part 246

Food assistance programs, Food donations, Grant programs—social programs, Indians, Infants and children, Maternal and child health, Nutrition, Nutrition education, Public assistance programs, WIC, Women.

For the reasons set forth in the preamble, 7 CFR 246.16 is proposed to be amended as follows:

PART 246—SPECIAL SUPPLEMENTAL FOOD PROGRAM FOR WOMEN, INFANTS AND CHILDREN

1. The authority citation for Part 246 continues to read as follows:

Authority: Sec. 341–353, Pub. L. 99–500 and 99–591, 100 Stat. 1783 and 3341 (42 U.S.C. 1786); Sec. 3, Pub. L. 95–627, 92 Stat. 3611 (42 U.S.C. 1786); Sec. 203, Pub. L. 96–499, 94 Stat. 2599; Sec. 815, Pub. L. 97–35, 95 Stat. 521 (42 U.S.C. 1786).

2. In § 246.16 (as amended at 52 FR 25190, July 2, 1987), paragraphs (c)(3)(i) and (c)(3)(ii) are revised, and new paragraph (c)(3)(iii) is added to read as follows:

§ 246.16 Distribution of funds.

* * * * *

(c) * * *

(3) * * *

(i) *Allocation of stability funds.* To the extent funds are available, and subject to the provisions of paragraph (c)(3)(iii) of this section, each State agency shall receive an amount equal to the *lesser* of the final amount of funds received for administrative and program services in the preceding fiscal year, *or* the amount of funds received for administrative and program services in the preceding fiscal year reduced by an amount commensurate with the projected decrease in participation from the preceding year as determined by FNS.

(ii) *Allocation of residual funds.* Subject to the provisions of paragraph (c)(3)(iii) of this section, any funds remaining available for allocation for administrative and program services after the stability allocation required by paragraph (c)(3)(i) of this section has been completed shall be allocated as residual funds.

(A) FNS shall allocate residual funds to each State agency according to a method that determines the *higher* of an amount equalling the stability funds which are allocated in accordance with paragraph (c)(3)(i) of this section *plus* an amount commensurate with the projected increase in participation from the preceding year as detemrined by FNS *or* the amount of funds generated by the formula set forth in paragraph (c)(3)(ii)(B) of this section.

(B) (Following are options that are proposed for the formula referenced in paragraph (c)(3)(ii)(A) of this section by which residual funds may be allocated to State agencies. In establishing final regulations, the Department will consider comments on each option and modifications or combinations of these.)

Option A

The formula shall calculate the amount of funds each State agency would receive if *all* available administrative and program services funds were allocated on the basis of the average monthly participation levels, as projected by FNS. To account for relatively higher costs associated with small participation levels, the formula shall provide funding at a proportionately higher rate for the first 15,000 or fewer participants that each State agency is projected to serve monthly.

Option B

The formula shall calculate the amount of funds each State agency would receive if *all* available administrative and program services funds were allocated on the basis of the cost of providing salaries to the number of full-time equivalent (FTE) staff conforming to a prescribed staff to participant ratio applied to each State agency's projected level of monthly participation. FNS shall estimate salary costs, exclusive of fringe benefits, by multiplying an average annual salary by the number of FTE staff. To acocunt for relatively higher costs associated with small participation levels, the formula shall provide compensation at a proportionately higher rate for the first 15,000 or fewer participants that each State agency is projected to serve monthly. After the salary costs for State agencies have been fully funded any remaining administrative and program services funds would be allocated on the basis of each State agency's percent share of the national average monthly participation that is projected by FNS.

(iii) *Discretionary funds.* Each State agency's final administrative and program services grant shall be reduced

by 10 percent, and these funds shall be aggregated for all State agencies within each FNS region to form a discretionary fund. FNS shall distribute these funds at its discretion based on the varying needs of State agencies within the region.

* * * * *

Dated: July 14, 1987.

Anna Kondratas,

Administrator.

[FR Doc. 87-16313 Filed 7-15-87; 9:21 am]

BILLING CODE 3410-30-M

NATIONAL LABOR RELATIONS BOARD

29 CFR Part 102

Freedom of Information Act, Implementation; Fee Schedule

AGENCY: National Labor Relations Board.

ACTION: Proposed rule.

SUMMARY: The National Labor Relations Board is proposing to amend its rule implementing the Freedom of Information Act (FOIA), as mandated by the Freedom of Information Reform Act of 1986 (Pub. L. 99-570), which requires that the NLRB promulgate regulations, pursuant to notice and receipt of public comment, specifying the schedule of fees applicable to the processing of FOIA requests and establishing procedures and guidelines for determining when such fees should be wavied or reduced. The proposed revisions substantially conform to the Uniform Freedom of Information Act Fee Schedule and Guidelines published by the Office of Management and Budget in 52 FR 10012 (Mar. 27, 1987).

DATE: Comments by: August 17, 1987.

ADDRESS: Send or deliver written comments to: John C. Truesdale, Executive Secretary, 1717 Pennsylvania Avenue NW., Room 701, Washington, DC 20570, Telephone (202) 254-9430.

FOR FURTHER INFORMATION CONTACT: John C. Truesdale, Executive Secretary, Telephone (202) 254-9430.

SUPPLEMENTARY INFORMATION: On 27 October 1986 the President signed into law the Omnibus Drug Enforcement, Education, and Control Act (Pub. L. 99-570). Included in the law was the Freedom of Information Reform Act of 1986. That Act amended FOIA with regard to the charging and waiving of fees. The amendment to FOIA required the Office of Management and Budget (OMB) to issue a "uniform schedule of fees for all agencies." Individual agencies, in turn, are directed to "promulgate regulations, pursuant to notice and receipt of public comment, specifying the schedule of fees" applicable to processing of FOIA requests.

After a 30-day period for public comment, OMB published its final Uniform Freedom of Information Act Fee Schedule and Guidelines on March 27, 1987 (52 FR 10012). The final guidelines incorporated changes deemed appropriate as a result of public comments.

The Board's proposed rule has adopted the approach of the OMB guidelines, which indicate that an agency's direct costs of responding to FOIA requests are to be passed on to individual users to the greatest extent that the law will allow. The definitions that are contained in the Board's proposed rule follow in large part the definitions that were published by OMB.

As amended, FOIA now provides for the charging of fees for document duplication to requesters who are resprentatives of the news media and educational or noncommercial scientific institutions; fees for document search, duplication, and review for commercial use requesters; and fees for search time and duplication for all other requesters. 5 U.S.C. 552(a)(4)(A)(ii). The Board's proposed rule implements these statutory provisions consistent with the approach taken in the final OMB rules.

The FIOA Reform Act also created a new statutory fee waiver standard, which provides for fee waiver or reduction of fees where disclosure of the requested information is in the public interest because disclosure (1) is likely to contribute significantly to public understanding of the operations or activities of the Government and (2) will not primarily further the commercial interests of the requester. 5 U.S.C. 552(a)(4)(A)(iii). The Board's proposed rule reflects this revised standard for granting a fee waiver.

With the exception of renumbering, most of § 102.117 which is not related to fees is unchanged. A new paragraph (d) contains the fee-related material.

A final rule will be issued after consideration of comments to the proposed rule.

Pursuant to section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 et seq.), the National Labor Relations Board certifies that the proposed rule will not have a significant economic impact on a substantial number of small business entities.

List of Subjects in 29 CFR Part 102

Administrative practice and procedure, Labor management relations, Freedom of Information Act.

Accordingly, it is proposed to amend 29 CFR Part 102 as follows:

PART 102—RULES AND REGULATIONS, SERIES 8, AS AMENDED

1. The authority citation for 29 CFR Part 102 is revised to read as follows:

Authority: Section 6, National Labor Relations Act, as amended (29 U.S.C. 151, 156). Section 102.117 also issued under section 552(a)(4)(A) of the Freedom of Information Act, as amended (5 U.S.C. 552(a)(4)(A)). Sections 102.143 through 102.155 also issued under section 504(c)(1) of the Equal Access to Justice Act, as amended (5 U.S.C. 504(c)(1)).

2. Section 102.117 is amended by redesignating paragraphs (d) through (k) as (e) through (l), adding a new paragraph (d), revising paragraph (c)(1), (c)(2)(i), (c)(2)(ii) and newly redesignated (e) through (l), and by removing (c)(2)(iv) and (c)(2)(v).

§ 102.117 Board materials and formal documents available for public inspection and copying; requests for described records; time limit for response; appeal from denial of request; fees for document search, duplication, and review; files and records not subject to inspection.

* * * * *

(c)(1) Requests for the inspection and copying of records other than those specified in paragraph (a) and (b) of this section must be in writing and must reasonably describe the record in a manner to permit its identification and location. The envelope and the letter should be clearly marked to indicate that it contains a request for records under the Freedom of Information Act (FOIA). The request must contain a specific statement assuming financial liability in accordance with paragraph (d)(2) of this section for the direct costs of responding to the request. If the request is for records in a Regional or subregional office of the Agency, it should be made to that Regional or subregional office; if for records in the Office of the General Counsel and located in Washington, DC, it should be made to the Freedom of Information Officer, Office of the General Counsel, Washington, DC; and if for records in the offices of the Board in Washington, DC, to the executive Secretary of the Board, Washington, DC. Requests made to other than the appropriate office will be forwarded to that office by the receiving office, but in that event the applicable time limit for response set forth in paragraph (c)(2)(i) of this section shall be calculated from the date of receipt by the appropriate office.

(2)(i) Within 10 working days after receipt of a request by the appropriate office of the Agency a determination shall be made whether to comply with such request, and the person making the request shall be notified in writing of that determination. If the determination is to comply with the request, the records shall be made promptly available to the person making the request upon payment of any charges due in accordance with the provisions of paragraph (d)(2) of this section. If the determination is to deny the request, the notification shall set forth the reasons therefor and the name and title or position of each person responsible for the denial, and shall notify the person making the request of the right to appeal the adverse determination under the provisions of paragraph (c)(2)(ii) of this section.

(ii) An appeal from an adverse determination made pursuant to paragraph (c)(2)(i) of this section must be filed within 20 working days of the receipt by the person of the notification of the adverse determination where the request is denied in its entirety; or, in the case of a partial denial, within 20 working days of the receipt of any records being made available pursuant to the request. If the adverse determination was made in a Regional Office, a subregional office, or by the Freedom of Information Officer, Office of the General Counsel, the appeal shall be filed with the General Counsel in Washington, DC. If the adverse determination was made by the Executive Secretary of the Board, the appeal shall be filed with the Chairman of the Board in Washington, DC. Within 20 working days after the receipt of a appeal the Chairman of the Board or the General Counsel, as the case may be shall make a determination with respect to such appeal and shall notify the person in writing. If the determination is to comply with the request, the record shall be made promptly available to the person making the request upon receipt of payment of any charges due in accordance with the provisions of paragraph (d)(2) of this section. If on appeal the denial of the request for records is upheld in whole or in part, the person making the request shall be notified of the reasons for the determination, the name and title or position of each person responsible for the denial, and the provisions for judicial review of that determination under the provisions of 5 U.S.C. 552(4)(B). Even though no appeal is filed from a denial in whole or in part of a request for records by the person making the request, the Chairman of the Board or the General Counsel may without regard to the time limit for filing of an appeal, sua sponte initiate consideration of an adverse determination under this appeal procedure by wrtten notification to the person making the request. In such event the time limit for making the determination shall commence with the issuance of such notification.

* * * * *

(d)(1) For purposes of this section, the following definitions apply:

(i) "Direct costs" means those expenditures which are actually incurred in searching for and duplicating and, in the case of commercial use requesters, reviewing documents to respond to a FOIA request.

(ii) "Search" includes all time spent looking for material that is responsive to a request, including page-by-page and line-by-line identification of material within documents. Searches may be done manually or by computer using existing programing.

(iii) "Duplication" refers to the process of making a copy of a document necessary to respond to a FOIA request. Such copies can take the form of paper copy, microfilm, videotape, audiotape, or machine readable documentation (e.g., magnetic tape or disk), among others. The copy provided must be in a form that is reasonably usable by requesters.

(iv) "Review" refers to the process of examining documents located in response to a request that is for commercial use to determine whether a document or any portion of any document located is permitted to be withheld. It includes processing any documents for disclosure, e.g., doing all that is necessary to excise them and otherwise prepare them for release.

(v) "Commercial use request" refers to a request from or on behalf of one who seeks information for a use of purpose that furthers the commercial trade or profit interests of the requester or the person on whose behalf the request is made.

(vi) "Educational institution" refers to a preschool, a public or private elementary or secondary school, an institution of graduate higher education, an institution of undergraduate higher education, an institution of professional education, or an institution of vocational education, which operates a program or programs of scholarly research.

(vii) "Representative of the news media" refers to any person actively gathering news for an entity that is organized and operated to publish or broadcast news to the public. The term "news" means information that is about current events or that would be of current interest to the public. In the case of "freelance" journalists, they may be regarded as working for a news organization if they can demonstrate a reasonable expectation of publication through that organization, even though not actually employed by it.

(viii) "Working days," as used in this paragraph, means calendar days excepting Saturdays, Sundays, and legal holidays.

(2) Persons requesting records from this Agency shall be subject to a charge of fees for the full allowable direct costs of document search, review, and duplication, as appropriate, in accordance with the following schedules, procedures, and conditions:

(i) Schedule of charges:

(A) For each one-quarter hour or portion thereof of clerical time	$2.50
(B) For each one-quarter hour or portion thereof of professional time	6.60
(C) For each sheet of duplication (not to exceed 8½ by 14 inches) of requested records	0.10
(D) All other direct costs of preparing a response to a request shall be charged to the requester in the same amount as incurred by the Agency. Such costs shall include, but not be limited to: certifying that records are true copies, and sending records to requesters or receiving records from the Federal records storage centers by special methods such as express mail	

(ii) Fees incurred in responding to information requests are to be charged in accordance with the following categories of requesters:

(A) Commercial use requesters will be assessed charges to recover the full direct costs of searching for, reviewing for release, and duplicating the records sought. Requesters must reasonably describe the records sought. Commercial use requesters are not entitield to 2 hours of free search time nor 100 free pages of reproduction of documents.

(B) Educational institution requesters will be assessed charges for the cost of reproduction alone, excluding charges for the first 100 pages. To be eligible for inclusion in this category, requesters must show that the request is being made under the auspices of a qualifying institution and that the records are not sought for commercial use, but are sought in furtherance of scholarly research. Requesters must reasonably describe the records sought.

(C) Requesters who are representative of the news media will be assessed charges for the cost of reproduction alone, excluding charges for the first 100 pages. To be eligible for inclusion in this

category, a requester must meet the criteria in paragraph (d)(1)(vii) of this section, and the request must not be made for commercial use. In reference to this class or requester, a request for records supporting the news dissemination function of the requester shall not be considered to be a request that is for commercial use. Requesters must reasonably describe the records sought.

(D) All other requesters, not elsewhere described, will be assessed charges to recover the full reasonable direct cost of searching for and reproducing records that are responsive to the request, except that the first 100 pages of reproduction and the first 2 hours of search time shall be furnished without charge. Requesters must reasonably describe the records soght.

(E) Absent a reasonably based factual showing that a requester should be placed in a particular user category, fees will be imposed as provided for in the commercial use requester category.

(iii)(A) In no event shall fees be imposed on any requester where the total charges are less than $11, which is the Agency cost of collecting and processing the fee itself.

(B) If the Agency has reason to believe that a requester or several requesters whose interests are aligned are breaking up a request into several smaller requests for the purpose of evading the imposition of fees that otherwise would be charged, the Agency may, after notification, aggregate the requests and impose fees in accordance with the fee schedule in this section.

(iv) Documents are to be furnished without charge or at reduced levels 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.

(v) If a requester fails to pay chargeable fees that were incurred as a result of the Agency's processing of the information request, beginning on the 31st day following the date on which the notification of charges was sent, the Agency may assess interest charges against the requester in the manner prescribed in section 3717 of Title 31 U.S.C.

(vi) Each request for records shall contain a specific statement assuming financial liability, in full or to a specified maximum amount, for charges, in accordance with paragraphs (d)(2)(i) and (ii) of this section, which may be incurred by the Agency in responding to the request. If the anticipated charges exceed the maximum limit stated by the person making the request or if the request contains no assumption of financial liability for charges, the person shall be notified and afforded an opportunity to assume financial liability. The request for records shall not be deemed received for purposes of the applicable time limit for response until a written assumption of financial liability is received. The Agency may require a requester to make an advance payment of anticipated fees under the following circumstances:

(A) If the anticipated charges are likely to exceed $250, the Agency shall notify the requester of the likely cost and obtain satisfactory assurance of full payment where the requester has a history or prompt payment of FOIA fee, or require an advanced payment of an amount up to the full estimated charges in the case of requesters with no history of payment.

(B) If a requester has previously failed to pay fees that have been charged in processing a request within 30 days of the date when the notification of fees was sent, the requester will be required to pay the entire amount of fees that are owed plus interest as provided for in paragraph (d)(2)(v) of this section, before the Agency will process a further informaiton request. In addition, the Agency may require advance payment of fees that the Agency estimates will be incurred in processing the further request before the Agency commences processing that request. When the Agency acts under paragraph (d)(2)(vi)(A) or (B) of this section, the administrative time limits for responding to a request or an appeal from initial denials will begin to run only after the Agency has received the fee payments required above.

(vii) Charges may be imposed even though the search discloses no records responsive to the request, or none not exempt from disclosure.

(e) Subject to the provisions of §§ 102.31(c) and 102.66(c), all files, documents, reports, memoranda, and records of the Agency falling with the exemptions specified in 5 U.S.C. 552(b) shall not be made available for inspection or copying, unless specifically permitted by the Board, its Chairman or its General Counsel.

(f) An individual will be informed whether a system of records maintained by this Agency contains a record pertaining to such individual. An inquiry should be made in writing or in person during normal business hours to the official of this Agency designated for that purpose and at the address set forth in a notice of a system of records published by this Agency, in a Notice of Systems of Government-wide Personnel Records published by the Office of Personnel Management, or in a Notice of Government-wide System of Records published by the Department of Labor. Copies of such notices, and assistance in preparing an inquiry, may be obtained from any Regional Office of the Board or at the Board offices at 1717 Pennsylvania NW., Washington, DC 20570. The inquiry should contain sufficient information, as defined in the notice, to identify the record. Reasonable verification of the identity of the inquirer, as described in paragraph (j) of this section, will be required to assure that information is disclosed to the proper person. The Agency shall acknowledge the inquiry in writing within 10 days (excluding Saturdays, Sundays, and legal public holidays) and, wherever practicable, the acknowlegment shall supply the information requested. If, for good cause, the Agency cannot supply the information within 10 days, the inquirer shall within that time period be notified in writing of the reasons therefor and when it is anticipated the information will be supplied. An acknowledgement will not be provided where the information is supplied within the 10-day period. If the Agency refuses to inform an individual whether a system of records contains a record pertaining to an individual, the inquirer shall be notified in writing of that determination and the reasons therefor, and of the right to obtain review of that determination under the provisions of paragraph (k) of this section.

(g) An individual will be permitted access to records pertaining to such individual contained in any system of records described in the notices of systems of records published by this Agency, or access to the accounting of disclosures from such records. The request for access must be made in writing or in person normal business hours to the person designated for that purpose and at the address set forth in the published notice of systems of records. Copies of such notices, and assistance in preparing a request for access, may be obtained from any Regional Office of the Board or at the Board Offices at 1717 Pennsylvania Avenue, NW., Washington, DC 20570. Reasonable verification of the identity of the requester, as described in paragraph (j) of this section, shall be required to assure that records are disclosed to the proper person. A request for access to records or the accounting of disclosures from such records shall be acknowledged in writing by the Agency within 10 days of receipt (excluding Saturdays, Sundays,

and legal public holidays) and, wherever practicable, the acknowledgement shall inform the requester whether or not access will be granted and, if so, the time and location at which the records or accounting will be made available. If access to the record or accounting is to be granted, the record or accounting will normally be provided within 30 days (excluding Saturdays, Sundays, and legal public holidays) of the request, unless for good cause shown the Agency is unable to do so, in which case the individual will be informed in writing within the 30-day period of the reasons therefor and when it is anticipated that the access will be granted. An acknowledgment of a request will not be provided if the record is made available within the 10-day period. If an individual's request for access to a record or an accounting of disclosures from such a record under the provisions of this paragraph is denied, the notice informing the individual of the denial shall set forth the reasons therefor and advise the individual of the right to obtain a review of that determination under the provisions of paragraph (k) of this section.

(h) An individual granted access to records pertaining to such individual contained in a system of records may review all such records. For that purpose the individual may be accompanied by a person of the individual's choosing, or the record may be released to the individual's representative who has written consent of the individual, as described in paragraph (j) of this section. A first copy of any such record or information will ordinarily be provided without charge to the individual or representative in a form comprehensible to the individual. Fees for any other copies of requested records shall be assessed at the rate of 10 cents for each sheet of duplication.

(i) An individual may request amendment of a record pertaining to such individual in a system of records maintained by this Agency. A request for amendment of a record must be in writing and submitted during normal business hours to the person designated for that purpose and at the address set forth in the published notice for the system of records containing the record of which amendment is sought. Copies of such notices, and assistance in preparing a request for amendment, may be obtained from any Regional Office of the Board or at the Board offices at 1717 Pennsylvania Avenue, NW., Washington, DC 20570. The requester must provide verification of identity as described in paragraph (j) of this section, and the request should set forth the specific amendment requested and the reason for the requested amendment. The Agency shall acknowledge in writing receipt of the request within 10 days of receipt (excluding Saturdays, Sundays, and legal public holidays) and, wherever practicable, the acknowledgment shall advise the individual of the determination of the request. If the review of the request for amendment cannot be completed and a determination made within 10 days, the review shall be completed as soon as possible, normally within 30 days (Saturdays, Sundays, and legal public holidays excluded) of receipt of the request unless unusual circumstances preclude completing the review within that time, in which event the requester will be notified in writing within that 30-day period of the reasons for the delay and when the determination of the request may be expected. If the determination is to amend the record, the requester shall be so notified in writing and the record shall be amended in accordance with that determination. If any disclosures accountable under the provisions of 5 U.S.C. 552a(c) have been made, all previous recipients of the record which was amended shall be advised of the amendment and its substance. If it is determined that the request should not be granted, the requester shall be notified in writing of that determination and of the reasons therefor, and advised of the right to obtain review of the adverse determination under the provisions of paragraph (k) of this section.

(j) Verification of the identification of individuals required under paragraphs (f), (g), (h), and (i) of this section to assure that records are disclosed to the proper persons shall be required by the agency to an extent consistent with the nature, location, and sensitivity of the records being disclosed. Disclosure of a record to an individual in person will normally be made upon the presentation of acceptable identification. Disclosure of records by mail may be made upon the basis of the identifying information set forth in the request. Depending upon the nature, location, and sensitivity of the requested record, a signed notarized statement verifying identity may be required by the Agency. Proof of authorization as representative to have access to a record of an individual shall be in writing, and a signed notarized statement of such authorization may be required by the Agency if the record requested is of a sensitive nature.

(k)(1) Review may be obtained with respect to:

(i) A refusal, under paragraph (f) or (l) of this section, to inform an individual if a system of records contains a record concerning that individual,

(ii) A refusal, under paragraph (g) or (l) of this section, to grant access to a record or an accounting of disclosures from such a record, or

(iii) A refusal, under paragraph (i) of this section, to amend a record.

The request for review should be made to the Chairman of the Board if the system of records is maintained in the office of a Member of the Board, the Office of the Executive Secretary, the Office of the Solicitor, the Division of Information, or the Division of Administrative Law Judges. Consonant with the provisions of section 3(d) of the National Labor Relations Act, and the delegation of authority from the Board to the General Counsel, the request should be made to the General Counsel if the system of records is maintained by an office of the Agency other than those enumerated above. Either the Chairman of the Board or the General Counsel may designate in writing another officer of the Agency to review the refusal of the request. Such review shall be completed within 30 days (excluding Saturdays, Sundays, and legal public holidays) from the receipt of the request for review unless the Chairman of the Board or the General Counsel, as the case may be, for good cause shown, shall extend such 30-day period.

(2) If, upon review of a refusal under paragraph (f) or (l), the reviewing officer determines that the individual should be informed of whether a system of records contains a record pertaining to that individual, such information shall be promptly provided. If the reviewing officer determines that the information was properly denied, the individual shall be so informed in writing with a brief statement of the reasons therefor.

(3) If, upon review of a refusal under paragraph (g) or (l), the reviewing officer determines that access to a record or to an accounting of disclosures should be granted, the requester shall be so notified and the record or accounting shall be promptly made available to the requester. If the reviewing officer determines that the request for access was properly denied, the individual shall be so informed in writing with a brief statement of the reasons therefor, and of the right to judicial review of that determination under the provisions of 5 U.S.C. 552a(g)(1)(B).

(4) If, upon review of a refusal under paragraph (i) of this section, the reviewing official grants a request to amend, the requester shall be so notified, the record shall be amended in

accordance with the determination, and, if any disclosures accountable under the provisions of 5 U.S.C. 552a(c) have been made, all previous recipients of the record which was amended shall be advised of the amendment and its substance. If the reviewing officer determines that the denial of a request for amendment should be sustained, the Agency shall advise the requester of the determination and the reasons therefor, and that the individual may file with the Agency a concise statement of the reason for disagreeing with the determination, and may seek judicial review of the Agency's denial of the request to amend the record. In the event a statement of disagreement is filed, that statement,

(i) Will be made available to anyone to whom the record is subsequently disclosed together with, at the discretion of the Agency, a brief statement summarizing the Agency's reasons for declining to amend the record, and

(ii) Will be supplied, together with any Agency statements, to any prior recipients of the disputed record to the extent that an accounting of disclosures was made.

(l) To the extend that portions of systems of records described in notices of Government-wide systems of records published by the Officer of Personnel Management are identified by those notices as being subject to the management of an officer of this Agency, or an officer of this Agency is designated as the official to contact for information, access, or contest of those records, individual requests for access to those records, requests for their amendment, and review of denials of requests for amendment shall be in accordance with the provisions of 5 CFR Part 297, Subpart A, § 297.101, et seq., as promulgated by the Office of Personnel Management. To the extent that portions of systems of records described in notices of Government-wide systems of records published by the Department of Labor are identified by those notices as being subject to the management of an officer of this Agency, or an officer of this Agency is designated as the official to contact for information, access, or contents of those records, individual requests for access to those records, requests for their amendment, and review of denials of requests for amendment shall be in accordance with the provisions of this rule. Review of a refusal to inform an individual whether such a system of records contains a record pertaining to that individual and review of a refusal to grant an individual's request for access to a record in such a system may be obtained in accordance with the provisions of paragraph (k) of this section.

Dated, Washington, DC July 10, 1987.

By direction of the Board.

National Labor Relations Board.

Joseph E. Moore,

Acting Executive Secretary.

[FR Doc. 87-16039 Filed 7-16-87; 8:45 am]

BILLING CODE 7545-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[A-5-FRL-3233-6]

Approval and Promulgation of Implementation Plans; Indiana

AGENCY: U.S. Environmental Protection Agency (USEPA).

ACTION: Supplemental Notice of Proposed Rulemaking.

SUMMARY: This notice supplements USEPA's proposed rulemaking notice of February 4, 1987 (52 FR 3452), on Indiana's sulfur dioxide (SO2) State Implementation Plan (SIP). Today, USEPA proposes to approve a revised section of Indiana's SO2 rule, 325 IAC 7-1-3.1, as preliminarily adopted by the State on March 12, 1987.

DATE: Comments on this revision and on the proposed USEPA action must be received by August 17, 1987.

ADDRESSES: Copies of State's submittal and other materials relating to this rulemaking are available for inspection during normal business hours at the following addresses: (It is recommended that you telephone Steven D. Griffin, at (312) 353-3849, before visiting the Region V Office.).

U.S. Environmental Protection Agency, Region V, Air and Radiation Branch (5AR-26), 230 South Dearborn Street, Chicago, Illinois 60604.

Indiana Department of Environmental Management, Office of Air Management, 105 South Meridian Street, P.O. Box 6015, Indianapolis, Indiana 46206-6015.

Comments on this proposed rule should be addressed to: (Please submit an original and three copies if possible.) Gary Gulezian, Chief, Regulatory Analysis Section, Air and Radiation Branch (5AR-26), U.S. Environmental Protection Agency, Region V, 230 South Dearborn Street, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: Steven D. Griffin (312) 353-3849.

SUPPLEMENTARY INFORMATION: On February 4, 1987 (52 FR 3452), USEPA published a notice of proposed rulemaking on the Indiana SO2 plan. That notice proposed to disapprove Indiana's overall SO2 plan, because the plan contains a compliance methodology rule that is inconsistent with protection of the 3-hour and 24-hour SO2 National Ambient Air Quality Standards (NAAQS).

On March 12, 1987, Indiana submitted to USEPA for "parallel processing" its proposed revised rule 325 IAC 7-1-3.1, as preliminarily adopted by the Indiana Air Pollution Control Board (Board) on March 4, 1987.[1] The revised rule would replace existing 325 IAC 7-1-3. It includes a stack test compliance method which may be used at any time, and a 30-day averaging fuel analysis method, each of which may be used to determine compliance or noncompliance with source emission limits. However, a determination of noncompliance through the use of one method cannot be refuted by evidence of compliance through the other method. In accordance with the proposed rulemaking notice of February 4, 1987, USEPA is proposing to approve 325 IAC 7-1-3.1 as preliminarily adopted by the Board, because it provides for independent use of stack testing to determine compliance with SO2 emission limits.[2]

USEPA's February 4, 1987, notice indicated that correction of identified deficiencies in the compliance rule would allow USEPA to reinstate the March 12, 1982, final approval (47 FR 10813) for most of Indiana's SO2 SIP provisions. In *Indiana & Michigan Electric Corp.* v. *EPA*, 733 F.2d 489 (1984), the Seventh Circuit set aside USEPA's March 12, 1982, approvals of SIP emission limits, solely on the ground that USEPA had elected not to act on the 30-day averaging compliance methodology included in 325 IAC 7-1-3. Pursuant to the February 4, 1987, notice, therefore, those emission limits would be reinstated as federally approved and enforceable limits once the State

[1] The generic procedures for "parallel processing" are described in 47 FR 27073 (June 23, 1982). The State and USEPA propose rulemaking at roughly the same time, announce concurrent comment periods, and jointly review public comments. The State and USEPA then coordinate resolution of any deficiencies prior to the State's final adoption of the rule. If the State's rule, as finally adopted, is substantially identical to the proposed rule, then USEPA will take final action on the rule shortly following its submittal to USEPA. On the other hand, if the final rule is substantially different than the proposed rule, then USEPA may publish a rulemaking notice reproposing action as necessary.

[2] The text of 325 IAC 7-1-3.1, as preliminarily adopted, is reprinted at the end of this notice.

submits and USEPA approves a finally adopted 325 IAC 7–1–3.1 that is substantially identical to the proposed rule.

Reinstatement of that prior approval would reestablish a federally approved SO2 plan for 77 of Indiana's 92 counties.[3] Before the SIP provisions applicable to the remaining 15 counties in Indiana are approvable, the State must resolve additional technical deficiencies. For these 15 counties, the technical deficiencies cited in the February 4, 1987, notice remain, and USEPA will rulemake on these counties' SIP provisions in future notices. A table of the 77 counties involved in this notice and the remaining 15 counties which will require resolution of additional deficiencies appears at the end of this notice.

325 IAC 7–1–3.1 as Preliminarily Adopted by the Indiana Air Pollution Control Board on March 4, 1987

325 IAC 7–1–3.1 Reporting Requirements and Methods To Determine Compliance Authority: IC 13–1–1–4; IC 13–7–5–1. Affected: IC 13–1–1–1; IC 13–1–1–4; IC 13–7–1–1; IC 13–7–5–1; IC 13–7–7–2.

Sec. 3.1(a). Owners or operators of sources or facilities subject to 325 IAC 7–1 shall submit to the Commissioner the following reports which are based on fuel sampling and analysis data.

(1) Fuel combustion sources with total coal-fired heat input capacity greater than or equal to 1,500 million Btu per hour shall submit quarterly reports of the 30-day rolling weighted average sulfur dioxide emission rate in pounds per million Btu. Records of the daily average sulfur content, heat content, and weighting factor shall be maintained and made available upon request.

(2) Fuels combustion sources with total coal-fired heat input capacity greater than 10 and less than 1,500 million Btu per hour shall submit quarterly reports of the calendar month average sulfur content, heat content and sulfur dioxide emissions rate in pounds per million Btu and the total monthly coal consumption.

(3) All other fuel combustion sources shall submit reports of calendar month or annual average sulfur content, heat content, fuel consumption and sulfur dioxide emission rate in pounds per million Btu upon request.

(b) Compliance or non-compliance with the emission limitations contained in 325 IAC 7–1 can be determined by a stack test in accordance with Method 6, Appendix A of 40 CFR Part 60, revised as of July 1, 1986, and no later amendments.[4]

(c) Fuel sampling and analysis data shall be collected and this data can be used to determine compliance or non-compliance with the emission limitations contained in 325 IAC 7–1 as specified below:

(1) For coal-fired fuel combustion sources with heat input capacity greater than or equal to 1,500 million Btu per hour, compliance or non-compliance shall be determined using a 30-day rolling weighted average sulfur dioxide emission rate in pounds per million Btu.

(2) For all other combustion sources, compliance or non-compliance shall be determined using a calendar month average sulfur dioxide emission rate in pounds per million Btu.

(d) A determination of non-compliance pursuant to either the method specified in 325 IAC 7–1–3.1(b) or the method specified in 325 IAC 7–1–3.1(c) shall not be refuted by evidence of compliance pursuant to the other method.

325 IAC 7–1–3 is repealed.

Table of Indiana Counties

77 Counties Affected by This Notice

Adams	Henry
Allen	Howard
Bartholomew	Huntington
Benton	Jackson
Blackford	Jasper
Boone	Jay
Brown	Jennings
Carroll	Johnson
Cass	Knox
Clark	Kosciusko
Clay	Lagrange
Clinton	Lawrence
Crawford	Madison
Daviess	Marshall
Decatur	Martin
Dekalb	Miami
Delaware	Monore
Dubois	Montgomery
Dlkhart	Newton
Fayette	Noble
Fountain	Ohio
Franklin	Orange
Fulton	Owen
Grant	Parke
Greene	Perry
Hamilton	Pike
Hancock	Pulaski
Harrison	Putnam
Hendricks	Randolph
Ripley	Tipton
Rush	Union
St. Joseph	Vanderburgh
Scott	Wabash
Shelby	Warren
Spencer	Wshington
Starke	Wells
Steuben	White
Switzerland	Whitley
Tippecanoe	

15 Counties Subject to Future Rulemaking

Dearborn	Porter
Floyd	Posey
Gibson	Sullivan
Jefferson	Vermillion
Lake	Vigo
LaPorte	Warrick
Marion	Wayne
Morgan	

Under 5 U.S.C. section 605(b), the Administrator has certified that SIP approvals do not have a significant economic impact on a substantial number of small entities. (See 46 FR 8709.)

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

Authority 42 U.S.C. 7401–7642.

Dated: May 15, 1987.

Frank M. Covington,

Acting Regional Administrator.

[FR Doc. 87–16187 Filed 7–16–87; 8:45 am]

BILLING CODE 6560–50–M

[3] On March 12, 1982, USEPA approved a general 6.0 pounds (lbs) per million British Thermal Unit (MMBTU) emission limit (325 IAC 7–1–2(b)) for most of Indiana's counties, including the 77 identified in USEPA's February 4, 1987, notice. This same 6.0 lbs/MMBTU emission limit is still enforceable by Indiana at this time in the 77 counties, and it is Indiana's intent for the emission limit to remain applicable upon the promulgation of and as determined by its revised compliance methodology, 325 IAC 7–1–3.1.

[4] Copies of the Code of Federal Regulations (CFR) referenced may be obtained from the Government Printing Office, Washington, DC 20402. Copies are also available at the Department of Environmental Management, Office of Air Management, 105 South Meridian Street, Indianapolis, Indiana 46205.

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Part 8340

[AA–340–07–4333–02]

Off-Road Vehicles; Clarifying Amendments

AGENCY: Bureau of Land Management, Interior.

ACTION: Proposed rulemaking.

SUMMARY: This proposed rulemaking would amend the existing regulations covering the use of off-road vehicles on the public lands. The amendments will make the existing regulations easier to understand and eliminate duplicate requirements.

DATE: Comments should be submitted by September 15, 1987. Comments received or postmarked after the above date may not be considered in the decisionmaking process on issuance of a final rulemaking.

ADDRESS: Comments should be sent to: Director (140), Bureau of Land Management, Room 5555, Main Interior Bldg., 1800 C Street, NW., Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Richard Traylor, (202) 343–9353.

SUPPLEMENTARY INFORMATION: The Bureau of Land Management has found that there has been some confusion on the part of the public concerning certain definitions and the designation procedures used in the existing regulations covering off-road vehicles that were published in 1979. This proposed rulemaking would clarify some definitions used in the existing regulations and simplify the designation process. The changes made by the proposed rulemaking would make the definitions more compatible with the actual on-the-ground experiences and with existing land use planning decisions.

The proposed rulemaking would eliminate the requirement for publication of a separate notice of off-road vehicle area designation in the **Federal Register**. The identification, evaluation, and designation of public lands for off-road vehicle use is accomplished through the Bureau of Land Management's resource management (land use) planning process as described in 43 CFR Part 1600. This process also integrates the environmental impact statement and environmental assessment requirement of the Council of Environmental Quality's regulations (40 CFR Parts 1500–1508) implementing provisions of the National Environmental Policy Act. Both the Bureau's land use planning regulations and the Council of Environmental Quality's regulations provide for publication of advisory and descriptive **Federal Register** notices, making unnecessary the requirement for and expense of the separate notice required by the existing off-road vehicle regulations.

The principal author of this proposed rulemaking in Richard Traylor, Division of Recreation, Cultural and Wilderness Resources, Bureau of Land Management, assisted by the staff of the Division of Legislation and Regulatory Management, Bureau of Land Management.

It is hereby determined that this rulemaking does not constitute a major Federal action significantly affecting the quality of the human environment and that no detailed statement pursuant to section 102(2(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)) is required.

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

The changes made by this proposed rulemaking will benefit the using public in that they simplify and clarify the designation process. The changes will impact all users equally, whether large or small.

There are no information collection requirements in the changes made by this proposed rulemaking to 43 CFR Part 8340 which require approval of the Office of Management and Budget under 44 U.S.C. 3507.

List of Subjects in 43 CFR Part 8340

Public Lands, Recreation and recreation areas, Traffic regulations.

Under the authority of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 *et seq.*), the Taylor Grazing Act (43 U.S.C. 315a), the Endangered Species Act (16 U.S.C. 1531 *et seq.*), the Wild and Scenic Rivers Act (16 U.S.C. 1281c), the Act of September 15, 1960, as amended (16 U.S.C. 670 *et seq.*), the Land and Water Conservation Fund Act (16 U.S.C. 4601–4606a), the National Trails System Act (16 U.S.C. 1241 et seq.) and Executive Order 11644 (Use of Off-Road Vehicles on the Public Lands) (37 FR 2877, 3 CFR Parts 74, 332), as amended by Executive Order 11989 (42 FR 26959), it is proposed to amend Part 8340, Group 8300, Subchapter H, Chapter II of Title 43 of the Code of Federal Regulations as set forth below:

PART 8340—[AMENDED]

1. The authority citation for part 8340 continues to read:

Authority: 43 U.S.C. 1201, 43 U.S.C. 315a, 16 U.S.C. 1531 *et seq.*, 16 U.S.C. 1281c, 16 U.S.C. 670 *et seq.*, 16 U.S.C. 4601–6a, 16 U.S.C. 1241 *et seq.* and 43 U.S.C. 1701 *et seq.*

2. Section 8340.0–5 is amended by revising paragraphs (f), (g) and (h) to read:

§ 8340.0–5 Definitions.

* * * * *

(f) "Open area" means an area where all types of vehicle use is permitted at all times, anywhere in the area subject to the operating regulations and vehicle standards set forth in Subparts 8341 and 8342 of this title.

(g) "Limited area" means an area restricted at certain times, in certain areas, and/or to certain vehicular use. These restrictions may be of any type, but can generally be accommodated within the following type of categories: numbers of vehicles; types of vehicles; time or season of vehicle use; permitted or licensed use only; use on existing roads and trails; use on designated roads and trails; and other restrictions.

(h) "Closed area" means an area where off-road vehicle use is prohibited. Use of off-road vehicles in closed areas may be allowed for certain reasons; however, such use shall be made only with the approval of the authorized officer.

* * * * *

§ 8341.2 [Amended]

3. Section 8341.2(a) is amended by removing from where it appears in the first sentence thereof the phrase "close the areas or trails affected" and replacing it with the phrase "close the areas affected".

4. Section 8342.2 is revised to read:

§ 8342.2 Designation procedures.

(a) *Public participation.* The designation and redesignation of trails is accomplished through the resource management planning process described in Part 1600 of this title. Current and potential impacts of specific vehicle types on all resources and uses in the planning area shall be considered in the process of preparing resource management plans, plan revisions, or plan amendments. Prior to making designations or redesignations, the authorized officer shall consult with interested user groups, Federal, State, county and local agencies, local landowners, and other parties in a manner that provides an opportunity for the public to express itself and have their views given consideration.

(b) *Designation.* The approval of a resource management plan, plan revision, or plan amendment constitutes formal designation of off-road vehicle use areas. Public notice of designation or redesignation shall be provided through the publication of the notice required by § 1610.5–1(b) of this title. Copies of such notice shall be available to the public in local Bureau offices.

(c) *Identification of designated areas and trails.* The authorized officer shall, after designation, take action by marking and other appropriate measures to identify designated areas and trails so that the public will be aware of locations and limitations applicable thereto. The authorized officer shall make appropriate informational material, including maps, available for public review.

J. Steven Griles,

Assistant Secretary of the Interior.

May 11, 1987.

[FR Doc. 87–16238 Filed 7–16–87; 8:45 am]

BILLING CODE 4310–84–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 87-6]

Multiple Synchronous Transmitters by AM Broadcast Stations

AGENCY: Federal Communications Commission.

ACTION: Notice of Inquiry; extension of comment period.

SUMMARY: This action, requested by the National Association of Broadcasters, extends the comment and reply comment period to November 9, 1987 and December 9, 1987, respectively, for the *Notice of Inquiry* in MM Docket No. 87-6 regarding AM Synchronous Transmitters (52 FR 8085, March 16, 1987).

DATES: Comments are due November 9, 1987; reply comments are due December 9, 1987.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Jay Jackson, Mass Media Bureau, (202) 632-9660.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Order Granting Motion for Further Extension of Time for Filing Comments adopted July 6, 1987. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street Northwest, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 1919 M Street NW., Room 246, Washington, DC 20554.

Federal Communications Commission.

William H. Johnson,

Acting Chief, Mass Media Bureau.

[FR Doc. 87-16282 Filed 7-16-87; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF DEFENSE

48 CFR Parts 215 and 252

Department of Defense Federal Acquisition Regulation Supplement; Estimating Systems

AGENCY: Department of Defense (DoD).

ACTION: Proposed rule.

SUMMARY: The Defense Acquisition Regulatory (DAR) Council is proposing to revise section 215.811 to the DoD FAR Supplement (DFARS) to (1) require that certain large business entities establish and maintain adequate estimating systems, depending on the dollar value of contracts received in the preceding fiscal year; (2) provide guidelines for the characteristics of adequate estimating systems; and (3) provide procedures for conducting estimating systems reviews by the Government.

DATES: Comments should be submitted in writing to the DAR Council at the address shown below no later than September 15, 1987. Please cite DAR Case 86-109 in all correspondence related to this issue.

ADDRESS: Interested parties should submit written comments to: Defense Acquisition Regulatory Council, ATTN: Mr. Charles W. Lloyd, Executive Secretary, ODASD(P) DARS, c/o OUSD(A) (M&RS), Room 3D139, The Pentagon, Washington, DC 20301-3062.

FOR FURTHER INFORMATION CONTACT: Mr. Charles W. Lloyd, Executive Secretary, DAR Council, (202) 697-7266.

SUPPLEMENTARY INFORMATION:

A. Background

The proposed revisions to DFARS section 215.811 are a result of concern within the Government that lack of adequate estimating systems can result in submittals by contractors of factually inaccurate proposals and this situation would then hamper the Government's ability to properly analyze these proposals and utilize them as a basis for determining fair and reasonable prices.

B. Regulatory Flexibility Act

The proposed rule will have no significant impact on small businesses because these entities will not be required to establish and maintain estimating systems; the rule requires that "certain *large* business entities" establish and maintain an estimating system. Therefore, a Regulatory Flexibility Analysis has not been prepared. Comments from small entities concerning the affected *DFARS* section will also be considered in accordance with section 610 of the Act. Such comments must be submitted separately and cite *DAR Case 87-610D* in correspondence.

c. Paperwork Reduction Act

The rule does contain requirements for information collection which will require approval of OMB under 44 U.S.C. 3501 et seq. A request for approval is presently being prepared and will be forwarded to OMB.

List of Subjects in 48 CFR Parts 215 and 252

Government procurement.

Owen Green,

Acting Executive Secretary, Defense Acquisition Regulatory Council.

Therefore, it is proposed that 48 CFR Parts 215 and 252 be amended as follows:

1. The authority citations for Parts 215 and 252 continue to read as follows:

Authority: 5 U.S.C. 301, 10 U.S.C. 2202, DoD Directive 5000.35 and DoD FAR Supplement 201.301.

PART 215—CONTRACTING BY NEGOTIATION

215.811 [Amended]

2. Section 215.811 is amended by removing paragraphs (S-70) and (S-71).

3. Sections 215.811-70 through 215.811-79 are added to read as follows:

Subpart 215.8—Price Negotiation

* * * * *

* * * * *

215.811-70 Definitions.

"Estimating System" is a term used to describe a contractor's system for generating cost estimates which forecast costs based on information that is available at the time. An estimating system includes the organizational structure; established lines of authority, duties, and responsibilities; policies and procedures; internal controls and managerial reviews; flow of work, coordination, and communication; and estimating methods, techniques, accumulation of historical costs, and analysis used by a contractor to generate effective estimates of costs and other data included in proposals submitted in the expectation of receiving contract awards.

"Contractor", for purposes of this section 215.811, means a business unit as defined in FAR 30.102.

"Significant Estimating System Deficiency" means a deficiency which is expected to have a material effect such that it may result in unreliable current or

future proposals. A material effect is presumed to occur when the system deficiency is expected to—

(a) Influence by at least 20 percent of a major cost element such as direct engineering labor, or manufacturing overhead for the contractor;

(b) Influence by at least 5 percent the total cost of all cost elements for the contractor;

(c) Produce unreliable estimates which a prudent businessperson would consider significant in terms of absolute dollars; or

(d) Result from a contractor's failure to substantially comply with the requirements of 215.811–75.

215.811–71 Policy.

It is the policy of the DoD that contractor estimating systems produce timely and well supported proposals. The presence of system deficiencies may indicate an inability for the system to produce reliable cost estimates and cost report projections.

215.811–72 Applicability.

(a) Section 215.811 applies to any contractor which is a large business entity which in its preceding FY received DoD prime contracts or subcontracts exceeding $25 million for which certified cost or pricing data was required.

(b) For a large contractor which does not meet criteria in (a) above but which in its preceding fiscal year received DoD prime contracts or subcontracts exceeding $10 million for which certified cost or pricing data was required, the PCO may activate clause 252.215–7003 when recommended by the ACO. The PCO shall not activate the clause without concurrence of the ACO.

(c) The requirements of this section do not apply to small businesses.

215.811–73 System Disclosure and Maintenance Requirements.

(a) An estimating system disclosure is adequate when the contractor has provided the cognizant ACO with documentation that:

(1) Accurately describes those practices that the contractor currently uses in preparing cost proposals; and

(2) Provides sufficient detail for the Government to make an informed judgment regarding the adequacy of contractor's estimating practices.

(b) Changes to the cost estimating system must be disclosed to the cognizant ACO at least 60 days prior to the effective date of the change.

215.811–74 Responsibilities.

(a) The ACO cognizant of a contractor which is required to disclose its cost estimating system is responsible for determining if there are significant deficiencies in the contractor's estimating system and to pursue corrections of the deficiencies (see 215.81–77).

(b) The cognizant auditor is responsible for being the team leader in conducting estimating system reviews.

215.811–75 Contractor estimating system standard.

A covered contractor's estimating system must be disclosed, maintained, reliable, consistently applied and verifiable and must produce supportable and documented cost estimates.

215.811–76 Characteristics of an adequate estimating system.

(a) *General.* Adequacy of an estimating system is dependent on the successful interrelationship of many variables and the relative importance or necessity for each is determined largely by the particular conditions present at an individual contractor location. In general, reliable systems should provide for the use of appropriate source data, utilize sound estimating techniques and appropriate judgment, maintain a consistent approach, and adhere to established policies and procedures. Although it is not possible to list all of the characteristics that are necessary to make every estimating system reliable, there are some features that should be present in most systems. Other characteristics made essential by an individual contractor's circumstances may be identified by the cognizant ACO. These individual characteristics that are essential to allow a particular contractor's estimating system to be reliable may form the basis of a deficiency finding if they are either not present or are not consistently applied.

(b) *Evaluation.* In evaluating the contractor's estimating system, the ACO should consider whether the contractor's estimating system:

(1) Establishes clear responsibility for preparation, review and approval of cost estimates.

(2) Provides written description of the structure and duties of the estimating group's operational personnel, and various functions such as accounting, planning, etc.

(3) Assures relevant personnel have sufficient training, experience and guidance to perform estimating tasks in accordance with the contractor's established procedures.

(4) Identifies the sources of data utilized in developing cost estimates.

(5) Provides for adequate supervision throughout the estimating process.

(6) Assures consistent application of estimating techniques.

(7) Provides for detection and timely correction of errors.

(8) Protects against cost duplication.

(9) Includes historical experience and analysis of variances.

(10) Requires use of appropriate/analytical methods.

(11) Intergrates information available from other management systems.

(12) Requires management review.

(13) Utilizes periodic assessment of the reliability of the estimating system.

215.811–77 Indicators of potentially significant estimating deficiencies.

Some of the indicators that may produce or lead to significant estimating deficiencies are as follow:

(a) Failure to assure that historical experience is available to and utilized by cost estimators.

(b) Continuing failure to obtain or analyze material or failure to perform subcontractor cost reviews required by FAR 15.806.

(c) Consistent absences of analytical support for significant proposed cost amounts such as evidenced by excessive reliance on individual personal judgment which is not applied to historical experience or commonly utilized standards.

(d) Deficiencies in the purchasing system to the extent that deficiencies significantly degrade the ability to generate appropriate material cost estimates.

(e) Deficiencies in contractor recordkeeping (such as for allocation of labor cost) that would distort cost history used to support cost estimates.

(f) Continuing significant defective pricing findings within the same cost element(s).

(g) Unreliable proposal cost estimates resulting from cost accounting system deficiencies.

(h) Failure to promulgate disclosed methods and practices to persons responsible for preparing estimates or support for estimates.

215.811–78 Procedures.

(a) *Systems reviews.* Cognizant audit and CAS activities will establish and manage regular programs for reviewing selected contractors' estimating systems. Reviews and reports shall be accomplished as a contract audit and contract administration office team effort, with the contract auditor designated as team leader. Reviews shall be tailored to take full advantage of the day-to-day work done as an integrated part of both the contract audit and contract administration facilities. The program established by the contract audit activity shall be coordinated with

the appropriate contract administration activity to assure that team membership includes qualified technical specialists, and that adequate personnel resources are made available to accomplish the program. The ACO or a representative should coordinate the contract administration activity's review, consolidate technical findings and recommendations, and, when appropriate, prepare a comprehensive written report which shall be submitted to the auditor. The contract administration activity's written report shall be attached to the estimating survey team report. A systems review shall be conducted at least every three years at contractor locations required to make disclosure pursuant to section 215.811–72 except where the auditor, in coordination with the ACO, determines that past experience and a current vulnerability assessment of pricing activity at a contractor discloses low risk.

(b) *Disposition of survey team findings*—(1) *Reporting of survey team findings.* The auditor will document the results of the system review in a report to the ACO. The report shall address the survey team findings and recommendations. If there are significant estimating deficiencies, the report shall include a recommendation for disapproval of that portion(s) of the estimating system.

(2) *Field pricing reports.* When the report of a system review indicates that there may be a significant estimating system deficiency, the effect of such deficiency shall be mentioned in the field pricing report for each contractor proposal reviewed until resolution of such deficiency.

(3) *Contracting officer responsibility.* The contracting officer responsible for negotiation of the proposal shall evaluate each proposal in light of the system deficiency. If the contracting officer determines that the deficiency does not have a significant impact on the instant negotiation, then he or she should proceed with the negotiations. If the contracting officer determines that the system deficiency does affect the proposal and does have a significant impact on the instant negotiation, then the contracting officer should consider alternatives such as:

(i) Allowing additional time for the contractor to correct the deficiency and submit a corrected proposal;

(ii) Considering another type of contract; e.g., and FPIF instead of an FFP;

(iii) Using additional cost analysis techniques to determine that reasonableness of the cost element(s) affected by the system deficiency, i.e., what should the element(s) cost. (See the Armed Services Pricing Manual (ASPM) for appropriate analytical techniques.)

(iv) Segregating the questionable areas as a cost reimbursable contract line;

(v) Reducing the allowance for profit or fee; or

(vi) Including a contract clause that provides for adjustment of the contract amount after award (reopener clause). The alternative(s) chosen should be dependent upon the risk to the government in the instant negotiation. However, due to administrative complexities and costs, the use of a reopener clause should be limited to circumstances where the government's interest cannot be adequately protected by other means.

(4) *Initial notification of contractor.* Upon receipt of the system review report, the ACO shall provide a copy to the contractor and allow 30 days or a reasonable extension thereto for submission of its written response.

(i) *Contractor agreement.* If the contractor agrees with the report findings and recommendations, the contractor should within 60 days of receipt of the initial notificaiton, correct any identified system deficiencies or submit a corrective action plan showing milestones and actions leading to elimination of the deficiencies.

(ii) *Contractor disagreement.* If the contractor disagrees with the report findings and recommendations, the contractor's response should contain the rationale for each area of disagreement.

(5) *Evaluation of contractor's response.* The ACO, in consultation with the auditor, will evaluate the contractor's response and determine whether—

(i) The estimating system contains deficiencies which need correction;

(ii) Any such deficiencies are significant estimating deficiencies which would result in disapproval of a portion(s) of the contractor's estimating system; or

(iii) Any proposed corrective action(s) are adequate to correct the deficiency.

(6) Notification of ACO determination. The ACO will notify the contractor and the auditor of his/her determination and, if appropriate, of the Government's intent to disapprove the affected portion(s) of the system. The notice shall list the cost elements it covers and identify any deficiencies requiring correction. If appropriate, the notice shall also require the contractor to make correction or submit a corrective action plan within 45 days showing proposed milestones and actions.

(7) *Monitoring contractor's corrective action.* The auditor and ACO will monitor the contractor's progress toward correction of deficiencies. In the event the contractor fails to make adequate progress toward corective action, the ACO shall take whatever action is determined appropriate to remedy the situation. Actions which should be considered by the ACO include but are not limited to bringing the issue to the attention of higher level of management, reducing or suspending progress payments and/or recommending nonaward of a potential contract. If the contractor refuses to make necessary system corrections, the ACO shall prepare a final decision in accordance with the disputes clause.

(8) *Notice of disapproval.* (i) If, within 45 days after receipt of the notification of ACO determination (see paragraph (b)(6) above) or a reasonable extension thereto, contractor has neither submitted an acceptable corrective action plan nor corrected significant deficiencies, the affected portion(s) of the contractor's estimating system shall be disapproved in writing. The notice of disapproval shall identify the cost element(s) covered by the disapproval and list the deficiencies which prompted the disapproval for each affected cost element.

(ii) A copy of the Notice of Disapproval shall be sent to the cognizant auditor and to each contracting office and contract administration office having substantial business with the contractor.

(9) *Eliminating estimating system disapproval.* After the ACO determines that the contractor has corrected the significant system deficiencies, the ACO shall notify the contractor, the auditor and all affected contracting activities that the disapproval has been withdrawn.

215.811–79 Contract clause.

The contracting officer shall insert the clause at 252.215–7003 in all solicitations and contracts to be awarded on the basis of certified cost or pricing data, unless exempt or waived under FAR 15.804–3, to a contractor required to disclose its cost estimating system pursuant to section 215.811–72.

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

4. Section 252.215–7003 is added to read as follows:

252.215-7003 Cost estimating system requirements.

As prescribed in 215.811-79, insert the following clause:

Cost Estimating System Requirements (Date)

(a) *Definition.* "Estimating System" is a term used to describe a contractor's system for generating cost estimates which forecast costs based on information that is available at the time.

(b) *Applicability.* Unless otherwise provided in the Schedule, this clause is applicable if the Contractor, in its fiscal year preceding award of this contract, received Department of Defense (DoD) prime contracts or subcontracts thereunder exceeding $25 million for which certified cost or pricing data was required.

(c) *System requirements.* (1) The Contractor shall establish and maintain an estimating system which meets the requirements of section 215.811-75 of the DoD FAR Supplement.

(2) The Contractor shall disclose its estimating system to the Contracting Officer responsible for contract administration (ACO) in writing. An estimating system disclosure is adequate when the Contractor has provided the ACO with documentation which (i) accurately describes those practices that the Contractor currently uses in preparing cost proposals; and (ii) provides enough information in sufficient detail for the Government to understand the Contractor's estimating practices.

(3) Changes to the disclosed cost estimating system must be communicated to the ACO not later than sixty (60) days prior to the effective date of the change.

(4) The Contractor shall complay with its disclosed estimating system.

(d) *Estimating system deficiencies.* (1) If during the period of performance of this contract, the Contractor receives a report of the review of its estimating system which identifies deficiencies in the system, the Contractor agrees to respond as follows:

(i) If the Contractor agrees with the report findings and recommendations, the Contractor shall, within thirty (30) days of receipt of such report, indicate its agreement; and within sixty (60) days of receipt of such report, correct any identified deficiencies or submit a corrective action plan showing proposed milestones and actions leading to elimination of the deficiencies.

(ii) If the Contractor disagrees with the report findings and recommendations, the contractor shall respond within thirty (30) days of receipt of the report indicating its rationale for each area of disagreement.

(2) The ACO shall evaluate the Contractor's response to the report and notify the Contractor of his/her determination concerning any remaining deficiencies and/or the adequacy of any proposed corrective action(s).

(e) *Access to records.* The Contracting Officer or representatives of the Contracting Officer shall have the right to examine and audit books, records, documents, and any other information necessary for the Government to evaluate the Contractor's estimating system. This right of examination and audit includes, but is not limited to, access to management reports, systems of internal accounting and administrative control, operating records, budget plans, and analyses, and any other type of information, regardless of form, having a bearing on the validity of Contractor cost representations and the economy and efficiency of Contractor operations. This right of examination (and audit) shall include inspection at all reasonable times at the Contractor's plants, or parts of them, (and discussions and interview with Contractor employees) engaged (directly or indirectly) in performing contracts and preparing cost estimates or support for cost estimates.

(End of clause)

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DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 580

[Docket No. 87-09]; Notice 1]

Odometer Disclosure Requirements

AGENCY: National Highway Traffic Safety Administration (NHTSA) DOT.

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: This notice implements the Truth in Mileage Act of 1986 (Pub. L. 99-579). As required by that statute, the agency proposes to make mileage disclosure a condition of title, amend the form and content of the odometer disclosure statement, add disclosure requirements for lessors and lessees, extend the current record retention requirement for dealers and distributors and add a retention requirement for lessors and auction companies. In addition, this notice discusses how the agency will respond to requests from a State for assistance, extensions of time or approval of an alternative State mileage disclosure requirement.

DATES: Comments on this NPRM are due no later than September 15, 1987. We propose that §§ 580.10, 580.11 and 580.12 be effective 30 days after publication of the Final Rule in the **Federal Register.** As provided by the statute, we propose an effective date of April 29, 1989, for all other provisions.

ADDRESS: Written comments should refer to the docket number of this notice and should be submitted to: Docket Section, Room 5109, Nassif Building, 400 Seventh Street SW., Washington, DC 20590. [Docket Hours are 8:00 a.m. to 4:00 p.m.]

FOR FURTHER INFORMATION CONTACT: Judith Kaleta, Office of the Chief Counsel, Room 5219, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, DC 20590 (202-366-1834).

SUPPLEMENTARY INFORMATION:

Background

In 1972, Congress found that purchasers of motor vehicles rely heavily on the odometer reading as an index of the condition and value of a vehicle; that purchasers are entitled to rely on the odometer reading as an accurate reflection of the mileage actually traveled by a vehicle; that an accurate indication of the mileage traveled by a motor vehicle assists the purchaser in determining the safety and reliability of a vehicle and, therefore, enacted Titel IV of the Motor Vehicle Information and Cost Savings Act, 15 U.S.C. 1981-1991. The purpose of the law is to prohibit tampering with odometers on motor vehicles and to establish certain safeguards for the protection of purchasers with respect to vehicles having altererd or reset odometers. Section 408(a) of the law, 15 U.S.C. 1988(a), requires the Secretary of Transportation to prescribe rules and regulations requiring any transferor to give a written disclosure (1) of the cumulative mileage registered on the odometer or (2) that the actual mileage is unknown, if the odometer reading is known by the transferor to be different from the number of miles the vehicle has actually traveled. This authority was delegated to NHTSA, 49 CFR 1.50(f) and 49 CFR 501.8(e). To carry out this mandate, NHTSA promulgated Federal regulation 49 CFR Part 580. Since March 1, 1973, a regulation has been in effect which requires the transferor of a motor vehicle to make written disclosure to the transferee concerning the odometer reading and its accuracy. On March 9, 1978, the regulation was amended to prescribe the manner in which dealers and distributors of motor vehicles must retain odometer disclosure statements.

Since 1972, the law has required written disclosure of the odometer reading to be provided by the transferor at the time the ownership of the vehicle is transferred. This disclosure is made on a separate piece of paper, an odometer disclosure statement, which can be altered or discarded. Furthermore, these statements are not readily accessible to subsequent purchasers since the odometer disclosure statement stays with each

purchaser and is not transferred with the vehicle or its title. Several States have added a space on the title for the seller to include the odometer reading or the mileage disclosure at the time of transfer of ownership. However, usually there is no penalty for failure to disclose this information on the title; alterations of odometer readings are either undetected or accepted; the disclosure does not conform to the requirements of the Federal regulation; false or incomplete information is entered on the title; or the title is stamped "See Federal odometer statement" or "unverified". Investigative experience has shown that some of these practices have encouraged title laundering as a means of facilitating odometer fraud.

Title laundering is a scheme commonly used by dealers involved in odometer fraud. The main purpose of title laundering is to get a low mileage title from a State motor vehicle titling office in exchange for a high mileage title. The most basic form of title laundering is to simply alter the high odometer reading on the title to a low odometer reading and apply for and receive a title containing the lower reading. A more sophisticated scheme involves sending the high mileage title to a State not requiring odometer readings on title documents and obtaining a new title which does not contain an odometer reading.

After hearing testimony that odometer fraud costs consumers hundreds of dollars per purchase, in excess of $2 billion annually; that a "significant part of this fraud involves vehicles which have been used by lease companies or in business fleets;" and that odometer fraud occurs frequently under conditions where cars have been sold through mass sales techniques such as auctions, Congress determined that, for the protection of consumers, legislation was needed to strengthen the provisions with respect to disclosure of motor vehicle mileage when motor vehicles are transferred, and enacted the Truth in Mileage Act of 1986, Pub. L. 99–579. That Act requires that any transfer of ownership or licensing of any vehicle be accompanied by the title of the vehicle. The title must include a space for the mileage of the vehicle and be printed by secure process, or if not printed, be set forth by a secure system in order to decrease the possibility of counterfeiting or altering titles. New applications for titles must be accompanied by the transferor's (seller's) title, and if that title contains a space for the transferor to disclose the vehicle's mileage, that information must be included and the statement must be signed and dated by the transferor. This provision of the new law helps create a permanent record or "paper trail" on the vehicle's title at the place where the vehicle is titled, which is most often the State motor vehicle authority. This record can be checked by car owners and law enforcement and other State officals to track odometer fraud. H.R. Rep. 833, 99th Cong., 2nd Sess. 33 (1986).

The new law also requires that at the time ownership of a vehicle is to be transferred by the lessor, the lessor of vehicles with long-term leases must advise his lessee that the lessee is required by law to disclose the vehicle's mileage and the penalty for failure to comply with the law. In addition, the new law requires that auction companies establish and maintain records for at least four years following the date a vehicle is sold at the auction. The records must include the name of the most recent owner of the vehicle, the name of the buyer, the vehicle identification number and the odometer reading on the date the auction took possession of the vehicle. These provisions will provide purchasers and law enforcement investigators with a better means to track a vehicle's course from seller to consumer.

Finally, the new law authorizes this agency to provide assistance to any State to conform its laws to the final rule for this part and to the Motor Vehicle Information and Cost Savings Act and to provide extensions of time in the event that any State requires additional time beyond April 29, 1989, in revising its laws to meet the new Federal criteria. It also authorizes the agency to approve of an alternate motor vehicle mileage disclosure requirement if it is consistent with the purposes of the new law.

Recognizing that the new law will affect all those involved in selling and leasing motor vehicles (auto auctions, new and used car dealers, leasing companies and financial institutions), State motor vehicle administrators and those enforcement agencies involved in odometer enforcement, the agency attempted to inform these organizations of the law's provisions and the fact that the agency would be conducting a rulemaking proceeding to implement the law. A summary of the agency's efforts to inform various organizations about the new law is available in the docket. As a result of these efforts, the agency has received both oral and written comments. The docket contains a summary of the oral comments received and a copy of each of the written comments. This notice reflects the agency's consideration of these comments and the comments are addressed throughout the notice as appropriate.

Scope

This notice addresses the responsibilities assigned by the new law to the agency. Therefore, we are proposing to amend the current regulation with respect to both the odometer disclosure and record retention requirements and to incorporate the requirements of the new law which are applicable to lessors, lessees and auction companies. We are also proposing procedures which States may follow in petitioning for assistance, extension of time or approval of alternate mileage disclosure requirements. Finally, we have taken this opportunity to clarify some aspects of the current regulation.

Definitions

To clarify that the liability for issuing a false odometer disclosure statement could be placed on a person acting as an agent for the owner of a vehicle, we are proposing to amend the definition of the terms "transferor" and "transferee". Under the previous definition of transferor, the transferor transferred "his ownership" in a motor vehicle. Therefore, a vehicle owner could assert that he had no knowledge that an employee or agent had issued a false odometer disclosure statement and the employee or agent could assert that he did not have any ownership interest in the vehicle. Efforts to enforce the odometer laws have been thwarted since, in some cases, prosecutors have been unable to prove a violation of 15 U.S.C. 1988(b) which prohibits a transferor from violating any rule prescribed under the section or giving a false statement to a transferee in making any disclosure required by such rule. *See, e.g. United States* v. *Powell*, No. 85–3143, slip op. (D. Ore., December 309, 1986). The proposed definition expands the term "transferor" to include the transferor's agent. Similarly, the definition of transferee has been expanded to include the transferee's agent.

The proposed definition of mileage has been added for two reasons. First, the definition makes clear that there is a difference between mileage and odometer reading. Odometer reading is the reading which appears on the vehicle's odometer. The proposed definition of mileage is the actual distance the vehicle had traveled. Therefore, when disclosing mileage, the transferor must indicate whether or not the odometer reading reflects the actual

distance the vehicle has traveled. Second, the proposed definition reflects the agency's position that a person may lawfully replace odometers which register kilometers with those that register miles traveled. (Conversion from kilometers to miles is made by multiplying the kilometer reading by .62.) If the mileage on the new odometer is capable of being set to the same number of miles the vehicle traveled in miles converted from kilometers, a transferor may subsequently certify that the odometer reading reflects the actual distance the vehicle has traveled.

Definitions of lessee and lessor have been proposed to clarify all references to these persons. These definitions are consistent with the Truth in Mileage Act's definition of leased motor vehicle.

We are proposing to define the terms "secure printing process" and "other secure processes" broadly, in accordance with the Congressional intent to encourage new technologies which will provide increased security for titles. H.R. Rep. 833, 99th Cong., 2nd Sess. 33 (1986).

Security of Motor Vehicle Titles

We are proposing the addition of a new section 580.4 concerning the security of motor vehicle titles. According to the new law, each State motor vehicle title must be set forth by a secure printing process or other secure process, beginning on April 29, 1989. If a State allows subsequent reassignments of the vehicle to be recorded on a document other than the title itself, we are proposing that the document used to reassign title also be set forth by a secure printing process or other secure process. To assist the States in their efforts to issue motor vehicle titles which comply with the requirements of the Truth in Mileage Act and this regulation, we have prepared a list of technologies that we propose to deem to be a "secure process." This list is attached to this notice as Appendix A. Comments are requested on the appropriateness of these methods in light of the purposes of this regulation and the available technology. It should be noted that while intaglio printing is one method of deterring the counterfeiting of a document, it is not the only method. A requirement that titles be printed in bank note intaglio printing process (as opposed to other processes) was specifically rejected by Congress as being too restrictive. Comments are also requested on the use of "other secure processes", such as the "smart card"—a microcomputer with processor, program memory, and user π emory on a single microchip bonded to a carrier package, such as a standard plastic credit card. We also seek comments on whether our final rule should contain a procedure by which a State could seek our concurrence in an alternative method of document security beyond those listed in the final rule.

Odometer Disclosure Requirements

We are proposing a new section 580.5 concerning the disclosure of odometer information. This new section amends the requirements of the existing section 580.4. It continues to require the transferor to sign the disclosure and to certify whether to the best of his knowledge the odometer reading reflects the vehicle's actual mileage. It also continues to require the transferor to disclose whether the odometer reading reflects the amount of mileage in excess of the designed mechanical odometer limit. In light of industry practices, however, we are proposing to delete any reference to specific designed mechanical odometer limitations. Limitations vary from four to six digits. Alternatively, if the odometer reading is not the actual mileage and should not be relied upon, the transferor must continue to disclose this fact. We are proposing that this disclosure also include a warning notice to alert the transferee that a discrepancy exists between the odometer reading and the actual mileage. In the past, the agency has received complaints from consumers alleging that they did not understand the meaning of a disclosure stating that the odometer reading is not the actual mileage. This proposed warning notice should alert the buyer to question the discrepancy between the odometer reading and the actual distance the vehicle has traveled. In addition, we are proposing to continue to require the transferee's signature. NHTSA considers the signature to be essential because it is an acknowledgement that the purchaser is aware of the mileage or any problems with the odometer reading. The signature prevents the purchaser from later alleging that he was not informed of the mileage or that the mileage on the vehicle's odometer was different from that appearing on the odometer disclosure statement. Furthermore, the buyer's signature is important to investigative and prosecutorial efforts.

Section 580.5, as proposed, also differs from the former § 580.4 in the following ways. We are proposing that the transferor, in addition to signing the odometer disclosure statement, print his name. This is necessary so that in the course of an investigation, we can accurately identify the person signing the statement where signatures are difficult to read. We have also proposed that the odometer reading not include tenths of miles. Tenths of miles have no bearing on the condition or value of a vehicle. Furthermore, investigative experience has disclosed odometer fraud schemes in which subsequent transferors have altered the odometer reading on titles by placing a decimal point between the last two digits on the disclosure statement and adding a new, lower ten thousand digit. For example, 57339 becomes 25733.9. The proposed new requirement to eliminate tenths as part of the disclosure is an effort to discourage this scheme. In addition, we are proposing to shorten the odometer disclosure form. The agency has permitted the use of an abbreviated form without the second set of certifications on all State documents evidencing ownership of a motor vehicle due to the practical limitations of space on titles and other ownership documents. *See* 45 FR 784 (1980). At this time, we see no reason to differentiate between the disclosure on these documents and the separate odometer disclosure statements which will be issued for new vehicles, vehicles imported into the United States from foreign countries and vehicles titled prior to the enactment of State laws or regulations implementing the title requirements of the final rule for this part. We note that investigative experience has shown that the circumstances described in the three statements in the second set of certifications were not exhaustive and transferors who were unable to classify the situation under one of the three statements would mistakenly check a wrong statement or leave the section blank and not make any disclosure. Therefore, we see no need for a second set of certifications and propose to eliminate it entirely.

While the proposed regulation sets forth the information which must be disclosed, we have added in Appendices B and C sample forms which may be used. Appendix B is a sample disclosure form which a State may wish to include on its titles. Each State is free, however, to organize the information required by the final rule any way it wishes. Appendix C is a sample disclosure form which may be used if a vehicle has not been previously titled such as a new vehicle or a vehicle imported into the United States from a foreign country. Transferors may incorporate this disclosure on the sale invoice or other transfer document. Manufacturers may incorporate this disclosure on the certificate of origin.

Furthermore, we recognize that titles for vehicles issued prior to the

enactment of a State law or regulation implementing the title requirements of the final rule for this part may not contain a space for the transferor to disclose the mileage and for the transferee to sign the disclosure. The issuance of new, conforming titles for these vehicles would place an undue burden upon the States. In addition, NHTSA is not authorized to require the issuance of new, conforming titles for all vehicles currently registered in the States. Indeed, Congress contemplated that all titles would not immediately include a space for a mileage disclosure and that a transition period would be required. The Truth in Mileage Act does not say that motor vehicles can only be licensed if the transferee includes with the application the transferor's title which includes a disclosure. Rather, the new law states that only ". . . if that title contains the space referred to in paragraph (2)(A)(iii) . . ." would the transferor sign and date a disclosure statement. Therefore, the sample disclosure form in Appendix C may also be used by transferors if the title does not include a space for mileage disclosure as required by the final rule for this part. In summation, to implement provisions of the Truth in Mileage Act of 1986, § 580.5 proposes that each transfer of a motor vehicle must be accompanied by the vehicle's title and that the buyer must sign the disclosure on the title or reassignment document.

Some commenters were concerned that because disclosure must be made on the title, titles must be present at the time of sale. One commenter argued that nothing in either the language of the Act or its legislative history 'dictates that the title shall be the exclusive disclosure document or demands that sellers cannot continue to comply with the Act by providing the traditional mileage disclosure statement at the time of the contract so long as the title also contains the same mileage information when it is delivered." Other commenters agreed, stating that transferors should be allowed to issue a separate disclosure statement, sell the vehicle without the title being present and make a second disclosure on the title when it is obtained from a lienholder or previous owner. The commenters suggested that the buyer not be required to sign the title so that the seller could mail it to the buyer. The National Auto Auction Association stated that requiring "certificates of title to be present at an auction sale or a retail sale would be virtually impossible in the American economy," because of the way that most motor vehicles are currently financed. Another commenter asserted that a requirement that the title be present at the time of the sale "could virtually destroy the efficient operation of the used automobile market by severely restricting the availability of financing." In States that permit the owner of a motor vehicle subject to a lien to hold title, the lienholder would be unable to make the odometer disclosure on the title in cases of repossession. In States in which the title of a vehicle under lien is held by the lienholder, a person may not have possession of the title at the time of transfer. The Oregon Independent Automobile Dealers Association declared that transfer accompanied by titles "will cause dealers to keep vehicles in inventory for unreasonable amounts of time, thereby tying up needed capital unnecessarily" and passed a resolution recommending that "NHTSA eliminate the provision in Pub. L. 99–579 that requires dealers to have a title prior to offering the vehicle for sale."

We are aware that it is not the current practice in the industry to have the title present at the time a vehicle is transferred and that a high percentage of vehicles are financed and/or sold through auction "title attached". (This means that the title is not available at the time of sale and an annotation is made on the bank draft received by the seller as payment that it should not be honored unless the vehicle's title is attached.) However, Congress noted that "[o]ne of the major barriers to decreasing odometer fraud is the lack of evidence or 'paper trail' showing incidence of rollbacks." Therefore, the provisions of the Motor Vehicle Information and Cost Savings Act were amended to combat odometer fraud by making the disclosure of an odometer's mileage a condition of title. Section 2 of the Truth in Mileage Act prohibits the licensing of any vehicle for use in any State unless the title which is issued by the State to the transferee following a transfer "contains a space for the transferee to disclose (in the event of a future transfer) the mileage at the time of such future transfer and to sign and date the disclosure." It also states that a motor vehicle may not be licensed for use in any State unless, if the transferor's title contains a space for a mileage disclosure, the disclosure is signed and dated by the transferor. Section 408(d) of the Motor Vehicle Information and Cost Savings Act, 15 U.S.C. 1988(d). It is clear that since the disclosure must be made on the title under these provisions and since the disclosure must be made "In connection with the transfer of ownership" under section 408(a) of the Motor Vehicle Information and Cost Savings Act, 15 U.S.C. 1988(a), the title must accompany the transfer of ownership. In the Committee Report accompanying the new law, Congress specifically noted that the amendments require that "any *transfer of ownership* or licensing of any vehicle be accompanied by the title of such vehicle." H.R. Rep. 833, 99th Cong., 2nd Sess., 18 (1986) (emphasis added). We are merely implementing the requirement of the law and have no authority to "eliminate" provisions of it. The issuance of a separate odometer disclosure statement and a disclosure on the title at a later date, as suggested by the commenters, would require the transferor and transferee to meet on two separate occasions to complete both disclosures. Furthermore, not requiring the buyer to sign the title would mean that only the transferor is aware of the previous mileage disclosures. The integrity of the "paper trail" intended by Congress would be in jeopardy. This would defeat the purpose of the Act which is to "establish certain safeguards for the protection of purchasers with respect to the sale of motor vehicles having altered or reset odometers." 15 U.S.C. 1981. In addition, the issuance of two separate odometer disclosure statements would duplicate the paperwork burden because dealers and distributors who must retain a copy of each odometer disclosure statement they issue and receive, would then be required to retain copies of both disclosures each time they purchase and sell a vehicle.

Several other commenters noted that a requirement that the certificate of title be available at the time of transfer was not unreasonably burdensome. A representative of the National Association of Fleet Administrators (NAFA) stated that the association's larger fleet and lease members sell a vehicle only when they are in receipt of its title. We were advised by a member of the National Independent Automobile Dealers Association that Ohio currently prohibits dealers from displaying for sale or selling a vehicle without having obtained a manufacturer's or importer's certificate or the certificate of title. *See*, Ohio Rev. Code Ann. § 4505.18 (Page). Trade associations representing financial institutions stated that they would make every effort to ensure that titles could be made available to transferors at the time of transfer. They suggested the use of a certificate of title to be issued to the registered owner and a notice of security interest filing to be issued to the lienholder as is the current practice in several States. They expect to work with the States and/or dealers

associations to resolve financing problems. The Agency invites comments on how titles could be made available to transferors where the vehicle is subject to a lien in order to meet specific requirements of the law.

The National Independent Automobile Dealers Association asked whether a Power of Attorney could be granted so that the transferor could sign on behalf of the transferee to avoid any problems where the vehicle is subject to an existing lien. We recognize that Powers of Attorney are necessary in transfers involving an incompetent or deceased owner. However, Powers of Attorney would allow the same person to sign the title's odometer disclosure section as both the transferor and transferee and only one party to the transfer would be aware of the previous mileage disclosures. This could jeopardize the integrity of the "paper trail" and defeat the purpose of the Act.

The National Auto Auction Association (NAAA) suggested a shortened form which would consist of the odometer reading and a space for the transferor to check "actual" or "true mileage unknown." We have not accepted this suggestion because "true mileage unknown" provides a loophole for individuals who have been guilty of rollbacks. Those persons merely check this statement hoping to exonerate themselves from blame if the mileage is later discovered to be greater than they certified it to be at the time of sale. *See* 42 FR 9046 (1977). Furthermore, the category "true mileage unknown" does not take into account situations where although the odometer reading is not actual, it is not unknown. For example, it does not cover the situation where the odometer has been repaired or replaced and set back to zero with a label affixed to the left door frame stating the odometer reading before repair or replacement. Since the titles of 28 States and the District of Columbia currently include disclosure information similar to our proposed disclosure information, we do not believe that our proposal will be viewed as burdensome.

Exemptions

We are proposing a new § 580.6 which exempts certain transferors from issuing odometer disclosure statements. This new section exempts the same transferors exempted by former § 580.5. While some courts have determined that NHTSA's authority to create exemptions may be limited, we believe that NHTSA has the authority to create exemptions for transfers of vehicles for which the odometer reading is not relied upon as an indicator of vehicle mileage or condition. 47 FR 51885 (1982). In addition to those transferors listed in the regulation, the agency previously ruled that an odometer statement did not have to be issued if a vehicle was so badly damaged that it could not be returned to the road. 43 FR 10922 (1978). Therefore, we considered an exemption for transferors of vehicles sold "for parts". However, it has come to our attention that a vehicle declared a total loss and sold by an insurance company or other seller "for parts" may be repaired by a salvage company and subsequently resold for use on the road. The insurance company or other seller would not have issued an odometer disclosure statement; there would be no record of the vehicle's mileage; and the buyer could roll back the odometer and sell the vehicle with a false odometer disclosure statement. Our investigative experience has shown that a lack of documented evidence has made it impossible to determine who was responsible for misrepresentations of mileage in cases in which a vehicle was allegedly sold "for parts". Therefore, we recently overruled our previous interpretation exempting transferors of vehicles sold "for parts," and consistent with that ruling, we have decided not to include an exemption for transferors who may determine that a vehicle should be sold "for parts." Only those transferors specifically exempted by this section can transfer vehicles without issuing odometer disclosure statements.

Leased Vehicles

In accordance with the Congressional mandate, we are proposing a new § 580.7 applicable to leased vehicles. Most motor vehicles subject to long-term leases are sold at the end of the lease period. Sometimes, they are sold without the lessor ever taking possession of them. The potential exists for a lessee who purchases the vehicle from his lessor to roll back the vehicle's odometer and sell the vehicle to a third party for more than its actual value. Additionally, the potential exists for a lessee to roll back a vehicle's odometer in order to avoid a lessor's penalty for excess mileage. To ensure that vehicles subject to long-term leases have accurate odometer readings executed on titles at the time of transfer, the new law requires that we promulgate rules to require written disclosure of mileage to be made by the lessee to the lessor upon the lessor's transfer of ownership of a vehicle. Under the proposed § 580.7, lessors are required to provide written notice to the lessee of the lessee's obligation to disclose the mileage of the lease vehicle and the penalties for failure to disclose the information. The disclosure required to be made by the lessor and lessee parallels that made by the transferor and transferee. In addition, it requires that the person making the disclosure print his or her name. This requirement has been added to ensure, for investigative purposes, that we are able to read the name of the person signing the statement so that we can locate that person. While the proposed regulation sets forth the information which must be disclosed and we have set forth in Appendix D a sample format, we are not requiring that disclosure be made on a separate form or in the particular format of Appendix D. The disclosure may be made on the lease agreement, on the condition report or on any other document, provided the disclosure contains all the information required by this section. To implement section 2(e) of the Truth in Mileage Act, section 408 of the Motor Vehicle Information and Cost Savings Act, 15 U.S.C. 1988(e), we propose to permit a lessor who transfers ownership of a vehicle without obtaining possession of the vehicle to disclose on the title the mileage indicated by the lessee unless he has reason to believe that the lessee's disclosure does not reflect the actual mileage of the vehicle.

Record Retention

The proposed new § 580.8 concerns the retention of odometer disclosure statements by motor vehicle dealers, distributors and lessors. Dealers and distributors who are required by this Part to issue an odometer statement shall retain for five years the original or a photostate, carbon or other facsimile copy of each odometer statement they issue and receive. Lessors shall retain for five years following the date they transfer ownership of the leased vehicle, the odometer statement they receive from their lessee. This proposed section increases the length of time dealers and distributors are required to retain odometer disclosure statements. Under the current § 580.7, dealers and distributors are required to retain statements for four years. We have proposed a five year retention period because the statute of limitations for a criminal violation of section 413 of the Motor Vehicle Information and Cost Savings Act, 15 U.S.C. 1990, is five years. (*See*, 18 U.S.C. 3282). Investigative and prosecutorial experience have shown that, in some cases, the government has been unable to obtain access to records necessary to determine violations of the Act within the statute of limitations since there was no requirement to retain these records for the entire period covered by the statute of limitations. This new section

should not create any significant additional burden since the majority of dealers and distributors retain this information as part of the vehicle file which they maintain for tax purposes for at least five years. With regard to information storage, like its predecessor, this proposal is phrased broadly to include any media by which such information may be stored, provided there is no loss of information.

We are also proposed the addition of a new § 580.9 which concerns the odometer record retention by auction companies. Each auction company shall retain, for five years, the following information: the name of the most recent owner on the date the auction took possession of the motor vehicle, the name of the buyer, the vehicle identification number and the odometer reading on the date the auction company took possession of the motor vehicle. This information can be retained in any way that is systematically retrievable. We are not requiring that this information be included on any special form, but may be part of the auction invoice or other document currently used by auction companies or be maintained as a portion of their computer data base.

Procedures for State Requests for Assistance, Approval or Extension

Section 2(c) of the Truth in Mileage Act requires the Secretary of Transportation to assist a State in revising its laws to comply with the new disclosure requirements for transferors and transferees, upon "application" from the State. Section 408(d)(1) and (2) of the Motor Vehicle Information and Cost Savings Act, 15 U.S.C. 1988(d)(1) and (2). We are proposing a new § 580.10 which sets forth the procedures a State may follow to apply for assistance. The application shall be in writing and include a copy of the motor vehicle titling and disclosure laws and/or regulations in effect in the State and the proposed law or regulation which the State believes will comply with Federal requirements.

Section 408(f) of the Motor Vehicle Information and Cost Savings Act states that subsections (d), concerning motor vehicle titles, and (e), concerning lessor and lessees, shall apply in a State unless the State has in effect alternate motor vehicle mileage requirements approved by the Department. We are proposing, in a new section 580.11, that a State may petition for approval of alternate motor vehicle disclosure requirements. The petition shall be in writing and set forth the motor vehicle provisions in effect in the State, including a copy of the applicable State law, regulation, or both. In addition, the petition shall explain how the State motor vehicle disclosure requirements are consistent with the purposes of the Motor Vehicle Information and Cost Savings Act. NHTSA will then notify the State of its decision to either grant or deny the petition.

We are proposing a new § 580.12 which specifies the procedures that may be followed by a State to request an extension of time in the event that it requires additional time beyond April 29, 1989, to conform its laws to the Motor Vehicle Information and Cost Savings Act and this part. We propose that the State submit a petition for an extension of time to NHTSA. To enable the agency to make the findings required by the new law, the petition shall discuss the efforts the State has taken to meet the deadline, the reasons why it needs additional time, the length of time desired for extension and a description of the steps to be taken while the extension is in effect. Notice of either the grant or denial of the petition will be issued to the State and will be published in the **Federal Register.** The proposed § 580.12 also allows for the renewal of an extension of time.

Regulatory Impacts

Costs to the States

The agency has considerd the impact of this proposal and has tentatively determined that it is neither "major" within the meaning of Executive Order 12291 nor "significant" within the meaning of the Department of Transportation regulatory policies and procedures. The title documents in a majority of States require only minor changes, such as the addition of a space for the transferee's signature. Furthermore, the majority of States maintain only a four to six month supply of title documents. Therefore, by the effective date of the Truth in Mileage Act and the final rule for this part, the supply of outdated title documents would be expended and the new conforming title documents could be ordered and in stock for issuance. Finally, it has been determined by the Director, Congressional Budget Office, that the cost to most states to meet the titling requirements is not expected to be significant. S. Rep. 47, 99th Cong., 1st Sess. 4 (1985). For these reasons, a full regulatory evaluation has not been prepared. However, the agency invites comments from the States on the costs they expect to incur.

Environmental Impacts

In accordance with the National Environmental Policy Act of 1969, the agency has considered the environmental impacts of the proposed rule and has determined that this action does not constitute a major Federal action significantly affecting the quality of the human environment. Accordingly, no Environmental Impact Statement will be filed.

Small Business Impacts

The agency has also considered the impacts of this rule in relation to the Regulatory Flexibility Act. While one commenter asserted that a requirement that motor vehicle titles be present at the time of transfer "will cause dealers to keep vehicles in inventory for unreasonable amounts of time, thereby tying up needed capital", because there does not appear to be any significant impact on auto dealers in Ohio, where the titles are already required to be present at the time of transfer, I certify that this rule will not have a significant economic impact on a substantial number of small entities. Accordingly, no regulatory flexibility analysis has been prepared. However, the agency invites comments from small businesses on this issue.

Paperwork Reduction Act

The requirements in this proposal that dealers, distributors, lessors and auction companies disclose mileage information and/or retain odometer disclosure information are considered to be information collection requirements as that term is defined by the Office of Management and Budget (OMB) in 5 CFR Part 1520. Accordingly, these proposed requirements are being submitted to OMB for its approval, pursuant to the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). Comments on the proposed information collection should be submitted to: Office of Management and Budget, Office of Information and Regulatory Affairs, Washington, DC 20503, Attention: Desk Officer for NHTSA. It is requested that comments sent to OMB also be sent to the NHTSA rulemaking docket for this proposed action.

Public Comments

Interested persons are invited to submit comments on the proposal. It is requested but not required that 10 copies be submitted.

All comments must not exceed 15 pages in length. (49 CFR 553.21). Necessary attachments may be appended to these submissions without regard to the 15-page limit. This limitation is intended to encourage commenters to detail their primary arguments in a concise fashion.

All comments received before the close of business on the comment closing date listed above will be considered and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Comments received too late for consideration in regard to the final rule will be considered as suggestions for further rulemaking action. Comments on the proposal will be available for inspection in the docket. The agency will continue to file relevant information as it becomes available and it is recommended that interested persons continue to examine the docket for new material.

Those persons desiring to be notified upon receipt of their comments by the docket should enclose a self-addressed, stamped postcard in the envelope with their comments. Upon receiving the comments, the docket supervisor will return the postcard by mail.

In consideration of the foregoing, Part 580 of Title 49 of the Code of Federal Regulations would be revised to read as follows:

PART 580—ODOMETER DISCLOSURE REQUIREMENTS

Sec.

Authority: 15 U.S.C. 1988; delegation of authority at 49 CFR 1.50(f) and 501.8(e)(1).

§ 580.1 Scope.

This part prescribes rules requiring transferors and lessees of motor vehicles to make written disclosure to transferees and lessors respectively, concerning the odometer mileage and its accuracy as directed by sections 408 (a) and (e) of the Motor Vehicle Information and Cost Savings Act as amended, 15 U.S.C. 1988 (a) and (e). In addition, this part prescribes the rules requiring the retention of odometer disclosure statements by motor vehicle dealers, distributors and lessors and the retention of certain other information by auction companies as directed by sections 408(g) and 414 of the Motor Vehicle Information and Cost Savings Act as amended, 15 U.S.C. 1990(d) and 1988(g).

§ 580.2 Purpose.

The purpose of this part is to provide purchasers of motor vehicles with odometer information to assist them in determining a vehicle's condition and value by making the disclosure of a vehicle's mileage a condition of title and by requiring lessees to disclose to their lessors the vehicle's mileage at the time the lessors transfer the vehicle. In addition, the purpose of this part is to preserve records that are needed for the proper investigation of possible violations of the Motor Vehicle Information and Cost Savings Act and any subsequent prosecutorial, adjudicative or other action.

§ 580.3 Definitions.

All terms defined in sections 2 and 402 of the Motor Vehicle Information and Cost Savings Act are used in their statutory meaning. Other terms used in this part are defined as follows:

"Lessee" means any person to whom a motor vehicle has been leased for a term of at least 4 months.

"Lessor" means any person who has leased 5 or more motor vehicles in the past 12 months.

"Mileage" means actual distance that a vehicle has traveled.

"Secure printing process or other secure process" means any process which deters and detects counterfeiting and/or unauthorized reproduction and allow alterations to be visible to the naked eye.

"Transferee" means any person to whom the ownership in a motor vehicle is transferred, or any person who, as agent, accepts transfer of ownership in a motor vehicle for another, by purchase, gift, or any means other than by creation of a security interest.

"Transferor" means any person who transfers his ownership or any person who, as agent, transfers the ownership of another, in a motor vehicle by sale, gift, or any means other than by creation of a security interest.

§ 580.4 Security of title documents.

Each title shall be set forth by means of a secure printing process or other secure process. In addition, any other documents which are used to reassign the title shall be set forth by the same secure process.

§ 580.5 Disclosure of odometer information.

(a) Each title, at the time it is issued to the transferee, must contain the mileage disclosed by transferor when ownership of the vehicle was transferred and contain a space for the information required to be disclosed under paragraphs (c), (d), (e) and (f) of this section at the time of future transfer.

(b) Any documents which are used to reassign a title shall contain a space for the information required to be disclosed under paragraphs (c), (d), (e) and (f) of this section at the time of transfer of ownership.

(c) At the time of transfer of ownership of a motor vehicle, each transferor shall disclose the mileage to the transferee in writing on the title or on the document being used to reassign the title. This written disclosure must be signed by the transferor, including the printed name, and contain the following information:

(1) The odometer reading at the time of transfer (not to include tenths of miles);

(2) The date of transfer;

(3) The transferor's name and current address;

(4) The transferee's name and current address; and

(5) The identity of the vehicle, including its make, model, year, and body type and its vehicle identification number.

(d) In addition to the information provided under paragraph (c) of this section, the statement shall refer to the Motor Vehicle Information and Cost Savings Act and State law, where applicable, and shall state that incorrect information may result in civil liability and civil or criminal penalties.

(e) In addition to the information provided under paragraphs (c) and (d) of this section,

(1) The transferor shall certify that to the best of his knowledge the odometer reading reflects the actual mileage, or;

(2) If the transferor knows that the odometer reading reflects the amount of mileage in excess of the designed mechanical odometer limit, he shall include a statement to that effect; or

(3) If the transferor knows that the odometer reading differs from the mileage and the difference is greater than that caused by odometer calibration error, he shall include a statement that the odometer reading does not reflect the actual mileage, and should not be relied upon. This statement shall also include a warning

notice to alert the transferee that a discrepancy exists between the odometer reading and the actual mileage.

(f) The transferee shall sign the disclosure statement and print his name.

(g) If the vehicle has not been titled or if the title does not contain a space for the information required, the written disclosure shall be executed as a separate document.

§ 580.6 Exemptions.

Notwithstanding the requirements of § 580.5:

(a) A transferor of any of the following motor vehicles need not disclose the vehicle's odometer mileage:

(1) A vehicle having a Gross Vehicle Weight Rating, as defined in § 571.3 of this title, of more than 16,000 pounds;

(2) A vehicle that is not self-propelled;

(3) A vehicle that is 25 years old or older; or

(4) A vehicle sold directly by the manufacturer to any agency of the United States in conformity with contractual specifications.

(b) A transferor of a new vehicle prior to its first transfer for purposes other than resale need not disclose the vehicle's odometer mileage.

§ 580.7 Disclosure of odometer information for leased motor vehicles.

(a) Before executing any transfer of ownership document, each lessor of a leased motor vehicle shall notify the lessee in writing that ownership of the vehicle is being transferred and that the lessee is required to provide a written disclosure to the lessor regarding the mileage. This notice shall also inform the lessee of penalties for failure to comply with the requirement.

(b) Upon receiving notification from the lessor that ownership of the leased motor vehicle is to be transferred, the lessee shall furnish to the lessor a written statement regarding the mileage of the vehicle. This statement must be signed by the lessee and, in addition to the information required by paragraph (a) of this section, shall contain the following information:

(1) The printed name of the person making the disclosure;

(2) The current odometer reading (not to include tenths of miles);

(3) The date of the statement;

(4) The lessee's name and current address;

(5) The lessor's name and current address;

(6) The identity of the vehicle, including its make, model, year, and body type, and its vehicle identification number;

(7) The date that the lessor notified the lessee of disclosure requirements;

(8) The date that the completed disclosure statement was received by lessor; and

(9) The signature of the lessor.

(c) In addition to the information provided under paragraphs (a) and (b) of this section,

(1) The lessee shall certify that to the best of his knowledge the odometer reading reflects the actual mileage; or

(2) If the lessee knows that the odometer reading reflects the amount of mileage in excess of the designed mechanical odometer limit, he shall include a statement to that effect; or

(3) If the lessee knows that the odometer reading differs from the mileage and that the difference is greater than that caused by odometer calibration error, he shall include a statement that the odometer reading is not the actual mileage and should not be relied upon.

(d) If the lessor transfers the leased vehicle without obtaining possession of it, the lessor may indicate on the title the mileage disclosed by the lessee under paragraph (b) and (c) of this section, unless the lessor has reason to believe that the disclosure by the lessee does not reflect the actual mileage of the vehicle.

§ 580.8 Odometer disclosure statement retention.

(a) Dealers and distributors of motor vehicles who are required by this part to execute an odometer disclosure statement shall retain for five years a photostat, carbon or other facsimile copy of each odometer mileage statement which they issue and receive. They shall retain all odometer disclosure statements at their primary place of business in an order that is appropriate to business requirements and that permits systematic retrieval.

(b) Lessors shall retain, for five years following the date they transfer ownership of the leased vehicle, each odometer disclosure statement which they receive from a lessee. They shall retain all odometer disclosure statements at their primary place of business in an order that is appropriate to business requirements and that permits systematic retrieval.

§ 580.9 Odometer record retention for auction companies.

Each auction company shall establish and retain at its primary place of business in an order that is appropriate to business requirements and that permits systematic retrieval, for five years following the date of sale of each motor vehicle, the following records:

(a) The name of the most recent owner (other than the auction company);

(b) The name of the buyer;

(c) The vehicle identification number; and

(d) The odometer reading on the date which the auction company took possession of the motor vehicle.

§ 580.10 Application for assistance.

(a) A State may apply to NHTSA for assistance in revising its laws to comply with the requirements of 408(d)(1) and (2) of the Motor Vehicle Information and Cost Savings Act, 15 U.S.C. 1988(d)(1) and (2) and §§ 580.4 and 580.5 of this part.

(b) Each application filed under section shall—

(1) Be written in the English language;

(2) Be submitted, to the Office of Chief Counsel, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590;

(3) Include a copy of current motor vehicle titling and/or disclosure requirements in effect in the State; and

(4) Include a draft of legislation or regulations intended to amend or revise current State motor vehicle titling and/or disclosure requirements to conform with Federal requirements.

(c) The agency will respond to the applicant, in writing, and provide a list of the Federal statutory and/or regulatory requirements that the State may have failed to include in its proposal and indicate if any sections of the proposal appear to conflict with Federal requirements.

§ 580.11 Petition for exemption from disclosure requirements.

(a) A State may petition NHTSA for an exemption from the disclosure requirements of §§ 580.5 and 580.7 of this part.

(b) Each petition filed under this section shall—

(1) Be written in the English language;

(2) Be submitted to the Office of Chief Counsel, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590;

(3) Set forth the motor vehicle disclosure requirements in effect in the State, including a copy of the applicable State law or regulation; and

(4) Explain how the State motor vehicle dislosure requirements are consistent with the purposes of the Motor Vehicle Information and Cost Savings Act.

(c) Notice of either a grant or denial of a petition for approval of alternate motor vehicle disclosure requirements is issued to the petitioner. The effect of a grant of a petition is to relieve s State

from any futher responsibility to conform the State motor vehicle titles with §§ 580.5 and 580.7 of this part. The effect of a denial is to require a State to conform to the requirements of §§ 580.5 and 580.7 of this part until such time as the NHTSA approves any alternate motor vehicle disclosure requirements.

§580.12 Petition for extension of time.

(a) If a State cannot conform its laws to achieve compliance with this part by April 29, 1989, the State may petition for an extension of time.

(b) Each petition filed under this section shall—

(1) Be written in the English language;

(2) Be submitted, by February 28, 1989, to the Office of Chief Counsel, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC, 20590;

(3) Set forth a chronological analysis of the efforts the State has taken to meet the deadline, the reasons why it has failed to do so, the length of time desired for extension and a description of the steps to be taken while the extension is in effect.

(c) Notice of either the grant of denial of the petition is issued to the petitioner and will be published in the **Federal Register.**

(d) A petition for a renewal of an extension of time must be filed no later than 30 days prior to the termination of the extension of time granted by the Agency. A petition for a renewal of an extension of time must meet the same requirements as the original petition for an extension of time.

(e) If a petition for a renewal of the extension of time which meets the requirements of § 580.12 (b) is filed, the extension of time will continue until a decision is made on the renewal petition.

Appendix A to Part 580—Secure Printing Processes and Other Secure Processes

1. Methods to deter or detect counterfeiting and/or unauthorized reproduction.

(a) Intaglio Printing With Latent Images—a printing process utilized in the production of bank-notes and other security documents whereby an engraved plate meets the paper under extremely high pressure forcing the paper into the incisions below the surface of the plate. The three dimensional nature of intaglio printing creates latent images that aid in verification of authenticity and deter counterfeiting.

(b) High Resolution Printing—a printing process which achieves excellent art clarity and detail and quality approaching that of the intaglio process. Use of this process requires at least one of the following additional processes to insure proper security:

(1) Micro-line Printing—a reduced line of type that appears to be a solid line to the naked eye but contains readable intelligence under strong magnification.

(2) Pantograph Void Feature—wording incorporated into a pantograph by varying screen density in the pantograph. The wording will appear when attempts are made to photocopy on color copiers.

2. Methods to allow alterations to be visible to the naked eye.

(a) Erasure Sensitive Background Inks—a process whereby the text is printed in a dark color ink over a fine line erasure-sensitive prismatic ink tint.

(b) Security Lamination—retro-reflective security laminate is placed over vital information after it has been entered to allow for detection of attempts to alter this information.

Appendix B to Part 580—Disclosure form for title.

Odometer Disclosure Statement

Federal law (and State law, if applicable) requires that you state the mileage upon transfer of ownership. An inaccurate or untruthful statement may make you liable for damages and for civil or criminal penalties, pursuant to the Motor Vehicle Information and Cost Savings Act of 1972 (Pub. L. 92–513, as amended by Pub. L. 94–364 and Pub. L. 99–579.)

I state that the odometer now reads _____ (no tenths) miles and to the best of my knowledge that it reflects the actual mileage of the vehicle described herein, unless one of the following statements is checked.

— (1) I hereby certify that to the best of my knowledge the odometer reading reflects the amount of mileage in excess of its mechanical limits.

— (2) I hereby certify that the odometer reading is NOT the actual mileage.

WARNING — ODOMETER DISCREPANCY.

_____

(Transferor's Signature)

_____

(Printed name)

_____

(Transferee's Signature)

_____

(Printed name)

Date of Statement _____

Transferee's Name _____

Transferee's Address _____

(Street).

_____

(City) (State) (ZIP Code)

Appendix C to Part 580—Separate Disclosure Form

Odometer Disclosure Statement

Federal law (and State law, if applicable) requires that you state the mileage upon transfer or ownership. An inaccurate or untruthful statement may make you liable for damages and for civil or criminal penalties, pursuant to the Motor Vehicle Information and Cost Savings Act of 1972 (Pub. L. 92–513, as amended by Pub. L. 94–364 and Pub. L. 99–579).

I, _____, (transferor's name, Print) state that the odometer now reads _____ (no tenths) miles and to the best of my knowledge that it reflects the actual mileage of the vehicle described below, unless one of the following statements is checked.

— (1) I hereby certify that to the best of my knowledge the odometer reading reflects the amount of mileage in excess of its mechanical limits.

— (2) I hereby certify that the odometer reading is NOT the actual mileage.

WARNING — ODOMETER DISCREPANCY.

Make _____ Model _____

Body Type _____

Vehicle Identification Number _____

Year _____ _____

_____

(Transferor's Signature)

_____

(Printed name)

Transferor's Address

_____

(Street)

_____

(City) (State) (ZIP Code)

Date of Statement _____

_____

(Transferee's Signature)

_____

(Printed name)

Transferee's Name _____

Transferee's Address _____

(Street)

_____

(City) (State) (ZIP Code)

Appendix D to Part 580—Disclosure Form for Leased Vehicle

Odometer Disclosure Statement (Leased Vehicle)

Onwership of the vehicle described below is being transferred. Federal law requires that you disclose the mileage to the lessor at this time. Failure to comply with this requirement or making an inaccurate or untruthful statement may make you liable for civil damages and for civil or criminal penalties, pursuant to the Motor Vehicle Information and Cost Savings Act of 1972 (Pub. L. 92–513 as amended by Pub. L. 99–579). Complete disclosure form below and return to lessor.

I, _____ (name of person making disclosure, Print) state that the odometer now reads _____ (no tenths) miles and to the best of my knowledge that it reflects the actual mileage of the vehicle described below, unless one of the following statements is checked.

—(1) I hereby certify that to the best of my knowledge the odometer reading reflects the amount of mileage in excess of its mechanical limits.

—(2) I hereby certify that the odometer reading is NOT the actual mileage.

Make _____ Model _____ Body Type

Vehicle Identification Number _____Year

Lessee's Name _____

Lessee's Address _____

(Street)

_____

(City) (State) (ZIP Code)

Lessee's Signature _____

Date of Statement _____

Lessor's Name _____

Lessor's Address _____

(Street)

(City) (State) (ZIP Code)
Date Disclosure Form Sent to Lessee
Date Completed Disclosure Form Received From Lessee
Lessor's Signature

Issued on July 14, 1987.

Erika Z. Jones,

Chief Counsel, National Highway Traffic Safety Administration.

[FR Doc. 87-16278 Filed 7-14-87; 5:04 pm]

BILLING CODE 4910-59-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 649

American Lobster Fishery; Availability of Management Plan Amendment

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

ACTION: Notice of availability of a fishery management plan amendment and request for comments.

SUMMARY: NOAA issues this notice that the New England Fishery Management Council (Council) has submitted Amendment 2 to the Fishery Management Plan for American Lobster (FMP) for review by the Secretary of Commerce. Comments are invited from the public on the amendment and any other documents made available.

DATE: Comments will be accepted until September 10, 1987.

ADDRESS: Send comments to Richard Roe, Director, Northeast Region, National Marine Fisheries Service, 14 Elm Street, Gloucester, MA 01930. Mark the outside of the envelope "Comments on Amendment 2 to the Lobster FMP."

Copies of Amendment 2 are available upon request from Douglas G. Marshall, Executive Director, New England Fishery Management Council, Suntaug Office Park, 5 Broadway (Route 1), Saugus, MA 01906.

FOR FURTHER INFORMATION CONTACT: Kathi Rodriguez, Resource Management Specialist, 617-281-3600, EXT. 324.

SUPPLEMENTARY INFORMATION: The FMP was prepared by the Council under the provisions of the Magnuson Fishery Conservation and Management Act.

Amendment 2 to the FMP proposes to (1) modify the lobster management program to enhance the spawning potential of the total resource by increasing the minimum carapace length from 3 3/16 inches to 3 5/16 inches in 1/32-inch increments over a five-year period beginning January 1988; (2) require escape vents compatible to a minimum carapace length of 3 5/16 by January 1, 1990; (3) make it illegal to possess V-notched female lobsters throughout the range of the stock; however, no person would be in violation of this prohibition if such lobsters are returned to the natural habitat; and (4) establish a nationwide prohibition on the possession of V-notched female, egg-bearing, or undersized American lobsters caught under the Magnuson Act.

Regulations proposed by the Council to implement Amendment 2 are scheduled to be published within 15 days.

List of Subjects in 50 CFR Part 649

Fisheries.

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

Dated: July 14, 1987.

Bill Powell,

Executive Director National Marine Fisheries Service.

[FR Doc. 87-16309 Filed 7-16-87; 8:45 am]

BILLING CODE 3510-22-M

Notices

Federal Register
Vol. 52, No. 137
Friday, July 17, 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

Commodity Credit Corporation

Proposed Determinations With Regard to the 1988 Upland Cotton Program

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Notice of proposed determinations.

SUMMARY: The Secretary of Agriculture proposes to make the following determinations with respect to the 1988 crop of upland cotton: (a) The loan level; (b) whether Plan A or Plan B should be implemented and the loan repayment level under the chosen Plan; (c) whether loan deficiency payments should be made available, and, if so, whether such payments should be made available in cash only or in cash and commodity certificates; (d) the established "target" price; (e) the national program acreage; (f) whether a voluntary reduction percentage should be proclaimed and, if so, the amount of such percentage reduction; (g) whether an acreage limitation program should be implemented and, if so, the percentage reduction under such acreage limitation program; (h) whether an optional land diversion program should be established and, if so, the percentage of diversion required under such a program; (i) whether the inventory reduction program should be implemented; (j) whether commodity certificates should be issued, whether such certificates should be generic or commodity-specific, and what restrictions should be placed on the use of such certificates; (k) whether a seed cotton recourse loan program should be implemented and, if so, the appropriate loan level and the method of adjustment to a lint basis; and (l) other related determinations. These determinations are to be made in accordance with the Agricultural Act of 1949, as amended (the "1949 Act"), and the Commodity Credit Corporation Charter Act, as amended (the "Charter Act").

EFFECTIVE DATE: Comments must be received on or before September 15, 1987, in order to be assured of consideration.

ADDRESS: Director, Commodity Analysis Division, USDA–ASCS, Room 3741, South Building, P.O. Box 2415, Washington, DC 20013.

FOR FURTHER INFORMATION CONTACT: Charles V. Cunningham, Leader, Fibers Group, Commodity Analysis Division, USDA–ASCS, Room 3741 South Building, P.O. Box 2415, Washington, DC 20013 or call (202) 447–7954. The Preliminary Regulatory Impact Analysis describing the options considered in developing this proposed determination and the impact of implementing each option is available on request.

SUPPLEMENTARY INFORMATION: This notice has been reviewed under USDA procedures established in accordance with Executive Order 12291 and Departmental Regulation No. 1512–1 and has been designated as "major". It has been determined that these program provisions will result in an annual effect on the economy of $100 million or more.

The titles and numbers of the Federal assistance programs to which this notice applies are: Title-Cotton Production Stabilization: Number 10.052 and Title-Commodity Loans and Purchases: Number 10.051, as found in the catalog of Federal Domestic Assistance.

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

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

Proposed Determinations

a. *Loan Level for Upland Cotton.* Section 103A(a)(1) of the 1949 Act provides that, for the 1988 crop of upland cotton, the Secretary shall make nonrecourse loans available to producers at such level as will reflect for Strict Low Middling (SLM) one and one-sixteenth inch upland cotton (micronaire 3.5 through 4.9) at average location in the United States the smaller of (1) 85 percent of the average price (weighted by market and month) of such quality of cotton as quoted in the designated United States spot markets during 3 years of the 5-year period ending July 31 in the year in which the loan level is announced, excluding the year in which the average price was the highest and the year in which the average price was the lowest in such period (hereinafter referred to as the "spot market calculation"); or (2) 90 percent of the average, for the 15-week period beginning July 1 of the year in which the loan level is announced, of the 5 lowest-priced growths of the growths quoted for Middling one and three-thirty-seconds inch cotton, C.I.F. northern Europe (adjusted downward by the average difference during the period April 15 through October 15 of the year in which the loan is announced between such average nothern European price quotation and quotations in the designated United States spot markets for SLM 1 1/16 inch cotton (micronaire 3.5 through 4.9)) (hereinafter referred to as the "northern Europen calculation").

Section 103A(a)(2) provides that the loan level may not be reduced by more than 5 percent from the loan level determined for the preceding crop, nor below 50 cents per pound. Further, if the northern European calculation results in a price which is less that the price derived from the spot market calculation, the Secretary may increase the loan level to such a level as the Secretary deems appropriate, but not in excess of the level which is determined based upon the spot market calculation.

The spot market calculation cannot be completed until after spot market data for the entire 1986–87 marketing year is obtained. Based upon quotations through March 1987, the spot market calculation is as follows:

(1) Weighted average spot market prices for SLM 1 1/16 inch upland cotton (micronaire 3.5 through 4.9):

August 1982 through July 1983—61.79 cents/lb.

August 1983 through July 1984—71.58 cents/lb.

August 1984 through July 1985—59.98 cents/lb.

August 1985 through July 1986—61.05 cents/lb.

August 1986 through March 1987—

46.67 cents/lb.

(a) Average of the five years, excluding the highest and lowest years:
61.79 + 59.98 + 61.05 /3 = 60.94 cents/lb.

(3) Loan rate based on U.S. spot market calculations through March 1987:
60.94 × .85 = 51.80 cents/lb.

The northern European calculation cannot be performed at this time since the 1949 Act provides that the calculation must be based upon market quotations through October 15, 1987. However, if Northern Europe prices continue their current trend, 90 percent of the 15-week adjusted Northern European average will be above both the statutory minimum loan rate of 50.00 cents per pound, and the spot market calculation. Thus, the 1988-crop upland cotton loan rate is likely to be based on the spot market calculation.

Section 103A(a)(3) provides that the Secretary shall determine and announce the loan rate for the 1988 crop by November 1, 1987.

Comments on the upland cotton loan rate, along with supporting data, are requested from interested persons.

b. *Plan A/Plan B and Loan Repayment Level.* Section 103A(a)(5) of the 1949 Act provides that if the Secretary determines that the prevailing world market price for upland cotton (adjusted to United States quality and location) is below the loan level determined under section 103A(a) (1) and (2), then, in order to make United States upland cotton competitive in world markets, the Secretary shall implement the provisions of Plan A or Plan B. If the Secretary elects to implement Plan A, the Secretary shall permit a producer to repay a loan made for the 1988 crop at a level determined and announced by the Secretary at the same time the Secretary announces the 1988 loan level. Such repayment level for the 1988 crop shall not be less than 80 percent of the 1988 loan level. Such repayment level, once announced for the crop, shall not thereafter be changed.

Section 103A(a)(5) further provides that if the Secretary elects to implement Plan B, the Secretary shall permit a producer to repay a loan made for the 1988 crop at the lesser of (1) the 1988 loan level; or (2) the prevailing world market price for upland cotton (adjusted to United States quality and location), as determined by the Secretary. Section 103A(a)(5) further provides that for the 1988 crop of upland cotton, if the prevailing world market price for cotton (adjusted to United States quality and location) as determined by the Secretary, is less than 80 percent of the 1988 loan level, the Secretary may permit a producer to repay the 1988 loan at such a level (not in excess of 80 percent of the 1988 loan level) as the Secretary determines will (1) minimize potential loan forfeitures; (2) minimize the accumulation of cotton stocks by the Federal Government; (3) minimize the cost incurred by the Federal Government in storing cotton; and (4) allow cotton produced in the United States to be marketed freely and comnpetitively, both domestically and internationally.

Comments are requested on whether Plan A or Plan B should be implemented and the level of the loan repayment rate.

c. *Loan Deficiency Payments.* Section 103A(b) (1)-(5) of the 1949 Act provides that, for the 1988 crop of upland cotton, the Secretary may make payments available to producers who, although eligible to obtain a loan, agree to forgo obtaining such loan in return for such payments. Pursuant to that section, payments shall be computed by multiplying (1) the loan payment rate, by (2) the quantity of upland cotton the producer is eligible to place under loan. The section provides that the loan payment rate shall be the amount by which the loan level exceeds the loan repayment rate and that the quantity of upland cotton eligible to be placed under loan may not exeed the product obtained by multiplying the individual farm program acreage for the crop by the farm program payment yield established for the farm. Section 103A(b) further provides that the Secretary may make up to one-half the amount of such payment in the form of negotiable marketing certificates.

Comments are requested on whether loan deficiency payments should be made available and, if so, the percentage of each loan deficiency payment to be made available in the form of negotiable marketing certificates.

d. *The Established (Target) Price.* Section 103A(c)(1)(A) of the 1949 Act provides that the Secretary shall make payments available to producers of upland cotton for the 1988 crop year in an amount computed by multiplying (1) the payment rate, by (2) the individual farm program acreage, by (3) the farm program payment yield.

Section 103A(c)(1)(C) provides that the payment rate for the 1988 crop of upland cotton shall be the amount by which the established "target" price for the crop exceeds the higher of (1) the national average market price received by producers during the calendar year that includes the first 5 months of the marketing year for such crop, as determined by the Secretary, or (2) the loan level for the crop. Section 103(A)(c)(1)(D) provides that the established "target" price for the 1988 crop of upland cotton shall not be less than $0.77 per pound.

Comments are requested on the level of the target price and whether the Secretary should make a portion of the deficiency payment in the form of in-kind compensation.

e. *National Program Acreage.* Section 103A(d)(1) of the 1949 Act provides that the Secretary shall proclaim a national program acreage (NPA) for the 1988 crop by November 1, 1987. Such NPA may, however, be revised for the purpose of determining the allocation factor if the Secretary determines it necessary based upon the latest information. Any revision shall be announced as soon as it has been made. The NPA shall be the number of harvested acres the Secretary determines necessary, based on the estimated weighted national average of the farm program payment yields for the 1988 crop, to produce the estimated quantity (less imports) that will be utilized domestically and for export during the 1988–89 marketing year. The Secretary may make such adjustments in the NPA as he determines necessary, taking into consideration the estimated carryover supply, to provide for an adequate but not excessive total supply of cotton for the 1988–89 marketing year. In no event shall the national program acreage be less than 10 million acres. If an acreage limitation program is implemented for the 1988 crop of upland cotton, the NPA determination will not be applicable. A carryover of 4.0 million bales is considered to provide an adequate, but not excessive, supply. If required, the national program acreage for the 1988 crop of upland cotton is currently estimated to be:

(a) Estimated domestic consumption, 1988–89 (480 lb. net wt. bales)	6,800,000
(b) Plus estimated exports, 1988–89 (480 lb. net wt. bales)	6,200,000
(c) Minus estimated imports, 1988–89 (480 lb. net wt. bales)	10,000
(d) Minus adjustment to bring stocks to desired level (480 lb. net wt. bales)	200,000
(e) Times 480 lbs. per bale equals desired pounds	6,139,200,000
(f) Divided by estimated national average of farm program payment yields (lbs./acre)	565
(g) Equals 1988 calculated National Program Acreage (acres)	10,865,841

[1] The 1988 beginning stock level is estimated to be 4.2 million bales. Therefore, the stock adjustment is 4.2 million bales minus 4.0 million bales equal 0.2 million bales.

A NPA was not announced for the 1987 crop of upland cotton since an acreage limitation program was implemented for such crop.

Comments from interested persons on the NPA calculations, along with appropriate supporting data, are requested.

f. *Voluntary Reduction Percentage.* Section 103A(d)(3) of the 1949 Act provides that the individual farm program acreages for the 1988 crop of upland cotton which are eligible for payments shall not be further reduced by application of an allocation factor if the producer reduces the acreage of upland cotton planted for harvest on the farm from the acreage base established for the farm for the 1988 crop of upland cotton by at least the percentage recommended by the Secretary in the proclamation of the national program acreage for the 1988 crop. If an acreage limitation program is implemented for the 1988 crop of upland cotton, the voluntary reduction percentage shall not be applicable to such crop. If required, the recommended national reduction percentage for the 1988-crop of upland cotton is currently estimated to be:

(a) 1988 estimated upland cotton acreage base.	14,500,000
(b) Minus 1988 NPA	10,865,841
(c) Equals reduction needed from acreage base.	3,634,159
(d) Divided by 1988 upland cotton acreage base.	14,500,000
(e) Equals 1988 crop reduction percentage.	25 percent

Comments from interested persons with respect to the voluntary reduction percentage are requested.

g. *Acreage Limitation Program.* Section 103A(f) of the 1949 Act provides that, with respect to the 1988 crop of upland cotton, if the Secretary determines the total supply of upland cotton, in the absence of an acreage limitation program (ALP), will be excessive taking into account the need for an adequate carryover to maintain reasonable and stable supplies and prices and to meet a national emergency, the Secretary may provide for an acreage limitation program.

If the Secretary elects to put an ALP into effect for 1988, the Secretary shall announce the program not later than November 1, 1987. The Secretary shall, to the maximum extent practicable, carry out an ALP for the 1988 crop of upland cotton in a manner that will result in a carryover of 4 million bales of upland cotton.

If an upland cotton ALP is announced, such reduction shall be achieved by applying a uniform percentage reduction (not to exceed 25 percent) to the upland cotton crop acreage base for the crop for each upland cotton-producing farm. Producers who knowingly produce upland cotton in excess of the permitted upland cotton acreage for the farm shall be ineligible for loans and payments with respect to that farm. Acreage on the farm to be devoted to conservation uses shall be determined by dividing (1) the product obtained by multiplying the number of acres required to be withdrawn from the production of upland cotton times the number of acres planted to upland cotton, by (2) the number of acres authorized to be planted to such commodity under the limitation established by the Secretary. This acreage is referred to as "reduced acreage."

Comments are requested on whether an ALP should be implemented and, if so, the appropriate percentage level of such limitation.

h. *Land Diversion Program.* Section 103A(f)(4)(A) of the 1949 Act provides that the Secretary may make land diversion payments to producers of upland cotton, whether or not an ALP is in effect, if the Secretary determines that such land diversion payments are necessary to assist in adjusting the total national acreage of upland cotton to desirable goals. Such land diversion payments shall be made to producers who, to the extent prescribed by the Secretary, devote to approved conservation uses an acreage of cropland on the farm in accordance with land diversion contracts entered into with the Secretary.

The amounts payable to producers under land diversion contracts may be determined through the submission of bids for such contracts by producers in such manner as the Secretary may prescribe or through such other means as the Secretary determines appropriate. In determining the acceptability of contract offers, the Secretary shall take into consideration the extent of the diversion to be undertaken by the producers and the productivity of the acreage diverted. The Secretary shall limit the total acreage to be diverted under agreements in any county or local community so as not to affect adversely the economy of the county or local community.

Any additional acreage reduction (beyond the ALP) under a land diversion program would be at a producer's option.

Comments are requested with respect to the need for an optional land diversion program as well as the provisions of such program.

i. *Inventory Reduction Program.* Section 103A(g) of the 1949 Act provides that the Secretary may make payments available to producers who: (1) Agree to forgo obtaining a loan;, (2) agree to forgo receiving deficiency payments; and (3) do not plant upland cotton for harvest in excess of the crop acreage base reduced by one-half of any acreage required to be diverted from production under the announced acreage limitation program. Such payments shall be made in the form of upland cotton which is owned by CCC and shall be subject to the availability of such upland cotton. Payments under this program shall be determined by multiplying (a) the loan payment rate (loan rate minus loan repayment rate) by (b) the quantity of upland cotton the producer is eligible to place under loan.

Comments are requested as to whether an inventory reduction program should be implemented.

j. *Commodity Certificates.* Section 107E of the 1949 Act provides that, in making in-kind payments under any upland cotton program (other than negotiable marketing certificates), the Secretary may (1) acquire and use commodities that have been pledged to the Commodity Credit Corporation (CCC) as security for price support loans, and (2) use other commodities owned by CCC. Section 107E provides that the Secretary may make in-kind payments: (1) By delivery of the commodity to the producer at a warehouse or other similar facility, as determined by the Secretary; (2) by the transfer of negotiable warehouse receipts; (3) by the issuance of negotiable certificates which CCC shall redeem for a commodity; and (4) by such other methods as the Secretary determines appropriate to enable the producer to receive payments in an efficient, equitable, and expeditious manner so as to ensure that the producer receives the same total return as if the payments had been made in cash.

Section 103A(a)(5)(D) of the 1949 Act provides for the Secretary to make payments to first handlers in the form of negotiable marketing certificates if the Secretary determines that a loan program carried out in accordance with Plan A or Plan B fails to make upland cotton fully competitive in world markets and that the prevailing world market price of upland cotton (adjusted to United States quality and location) is below the current loan repayment rate. CCC may assist any person receiving such negotiable marketing certificates in the redemption of such certificates for

cash, or marketing or exchange of such certificates for upland cotton owned by CCC or (if the Secretary and the person agree) other agricultural commodities or the products thereof owned by the CCC at such times, in such manner, and at such price levels as the Secretary determines will best effectuate the purposes of the first handler program.

Comments are requested with respect to (1) whether commodity certificates should be issued, (2) whether such certificates should be exchangeable for only upland cotton or for other commodities, and (3) what restrictions should be placed on the use of such certificates.

k. *Loan Level for Seed Cotton.* Consideration is being given as to whether recourse loans should be made available to producers of seed cotton for the 1988 crop pursuant to the authority of the Charter Act and, if so, the level at which such loans should be made available for seed cotton under the 1988 program.

Comments are requested on whether a seed cotton recourse loan program should be implemented and, if so, the appropriate loan level for seed cotton and the method of adjustment to a lint basis for the purpose of determining the seed cotton loan value.

l. *Other Related Provisions.* A number of other determinations must be made in order to carry out the upland cotton loan program such as: (1) Commodity eligibility; (2) premiums and discounts for grades, staples, and other qualities, (3) establishment of base loan rates by warehouse location; (4) the form of any deficiency, advance deficiency, diversion and loan deficiency payments (e.g. cash, commodities, commodity certificates) if such payments are made available; and (5) such other provisions as may be necessary to carry out the program.

Consideration will be given to any data, views and recommendations that may be received relating to these issues.

Authority: Secs. 103A, and 107E, of the Agricultural Act of 1949, as amended; 99 Stat. 1407, as amended, and 1448, (7 U.S.C. 1444–1, and 1445b–4); Sec. 4 and 5 of the Commodity Credit Corporation Charter Act, as amended; 62 Stat. 1070, as amended, 1072 (15 U.S.C. 714b and 714c).

Signed at Washington, DC, on July 1, 1987.

Milton Hertz,

Executive Vice President, Commodity Credit Corporation.

[FR Doc. 87–16189 Filed 7–16–87; 8:45 am]

BILLING CODE 3410–05–M

Forest Service

Supplements to Draft Environmental Impact Statements for Land and Resource Management Plans of the Deschutes, Ochoco, Okanogan, Olympic, Siuslaw, Wallowa-Whitman, and Wenatchee National Forests of Oregon and Washington

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare Supplements to Draft Environmental Impact Statements for seven National Forests in Oregon and Washington.

SUMMARY: Pursuant to section 102(2)(c) of the National Environmental Policy Act of 1969, the Department of Agriculture, Forest Service, will prepare a Supplement to the Draft Environmental Impact Statements (DEIS) on Land and Resource Management Plans for seven National Forests in Washington and Oregon. Supplements to these 7 National Forests are expected to be published on the following schedule:

National Forests	Supplement date
Deschutes—Bend, OR	August 1987.
Ochoco—Prineville, OR	August 1987.
Okanogan—Okanogan, WA	August 1987.
Olympic—Olympia, WA	September 1987.
Siuslaw—Corvallis, OR	September 1987.
Wallowa-Whitman—Baker, OR	September 1987.
Wenatchee—Wenatchee, WA	September 1987.

The purpose of each supplement is to present for public review and comment additional information that was not included in the DEIS and proposed plan for these 7 national forests.

The information presented in a supplement includes a "No Change Alternative" and a sensitivity analysis of the marginal effects of changes in management requirements used in developing the alternatives. In addition, some supplements may contain information on other topics. The information was developed because of needs identified since the DEISs were published and in response to decisions regarding two administrative appeals by the Northwest Forest Resource Council. (1) Filed on May 19, 1986 centered on direction by the Regional Forester to require inclusion of minimum management requirements (MMRs) for protection and management of natural resources such as wildlife habitat for example, in the Current Direction Alternative for each forest plan. (2) filed on September 18, 1986 centered on direction from Regional Forester to incorporate MMRs into forest plan alternatives.

FOR FURTHER INFORMATION CONTACT: Questions and comments about a supplement should be directed to Allan O. Lampi, Director of Planning, P.O. Box 3623, Portland, OR 97208; phone (503) 294–5370.

John F. Butruille,

Acting Regional Forester.

July 9, 1987.

[FR Doc. 87–16221 Filed 7–16–87; 8:45 am]

BILLING CODE 3410–11–M

Packers and Stockyards Administration

Certification of Central Filing System; Vermont

The Statewide central filing system of Vermont is hereby certified, pursuant to section 1324 of the Food Security Act of 1985, on the basis of information submitted by Paul S. Gillies, Deputy Secretary of State, for all farm products produced in that State.

This is issued pursuant to authority delegated by the Secretary of Agriculture.

Authority: Sec. 1324(c)(2), Pub. L. 99–198, 99 Stat. 1535, 7 U.S.C. 1631(c)(2); 7 CFR 2.17(e)(3), 2.56(a)(3), 51 FR 22795.

Dated: July 13, 1987.

Calvin W. Watkins,

Acting Administrator, Packers and Stockyards Administration.

[FR Doc. 87–16253 Filed 7–16–87; 8:45 am]

BILLING CODE 3410–KD–M

Soil Conservation Service

Wright Road Flood Prevention Measure, HI

AGENCY: Soil Conservation Service, USDA.

ACTION: Notice of findings of no significant impact.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR Part 1500); and the Soil Conservation Service Guidelines (40 CFR Part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Wright Road Flood Prevention Measure, County of Hawaii, Hawaii.

FOR FURTHER INFORMATION CONTACT: Richard N. Duncan, State Conservationist, Soil Conservation Service, 300 Ala Moana Boulevard, Room 4316, Honolulu, Hawaii, 96850, telephone (808) 541–2601.

SUPPLEMENTARY INFORMATION: The environmental assessment of this

federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, Richard N. Duncan, State Conservationist, has determined that the preparation and review of an environmental impact statement are not needed for this project.

The measure concerns a plan for flood control. The planned works of improvement includes installing three grassed waterways totalling 2.6 miles, three road culverts, and one driveway culvert. A total of 15.6 acres will be required for the installation of proposed structural measures. Each of the waterways is a separate system with an outlet into the Hawaii Volcanoes National Park. Road culverts will be installed under Wright Road along each of the three waterways.

The notice of a Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency and to various Federal, State, and Local agencies and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the above address. Basic data developed during the environmental assessment are on file and may be reviewed by contacting Richard N. Duncan.

No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication in the **Federal Register**.

(This activity is listed in the Catalog of Federal Domestic Assistance under No. 10.901—Resource Conservation and Development—and is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials)

June 18, 1978.

Richard N. Duncan,

State Conservationist.

[FR Doc. 87–16193 Filed 7–16–87; 8:45 am]

BILLING CODE 3410–16–M

CIVIL RIGHTS COMMISSION

Alabama Advisory Committee Meeting; Amendment

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights that a meeting of the Alabama Advisory Committee to the Commission originally scheduled for July 10, 1987, in Montgomery, Alabama, has a new date. The meeting will be held on September 11, 1987. The purpose, time and address of the meeting remain the same as previously published in 52 FR 25287 (July 6, 1987).

Dated at Washington, DC, July 10, 1987.

Susan J. Prado,

Acting Staff Director.

[FR Doc. 87–16222 Filed 7–16–87; 8:45 am]

BILLING CODE 6335–01–M

District of Columbia Advisory Committee Meeting: Amendment

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights that a meeting of the District of Columbia Advisory Committee to the Commission originally scheduled for July 14, 1987, in Washington, DC, has a new date. The meeting will be held on July 23, 1987. The purpose, time and address of the meeting remain the same as previously published in 52 FR 25619 (July 8, 1987).

Dated at Washington, DC, July 10, 1987.

Susan J. Prado,

Acting Staff Director.

[FR Doc. 87–16223 Filed 7–16–87; 8:45 am]

BILLING CODE 6335–01–M

Idaho Advisory Committee; Agenda and Notice of Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Idaho Advisory Committee to the Commission will convene at 1:00 p.m. and adjourn at 4:00 p.m. on July 31, 1987, at the Red Lion Inn, Opal Room, 2900 Chinden Boulevard, Boise, Idaho. The purpose of the meeting is to plan activities and programming for the coming year.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson, Michael Orme, or Philip Montez, Director of the Western Regional Division, (213) 894–3437 (TDD 213/894–0508). Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter, should contact the Regional Office at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, July 10, 1987.

Susan J. Prado,

Acting Staff Director.

[FR Doc. 87–16224 Filed 7–16–87; 8:45 am]

BILLING CODE 6335–01–M

DEPARTMENT OF COMMERCE

International Trade Administration

Initiation of Antidumping and Countervailing Duty Administrative Reviews

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

ACTION: Notice of initiation of antidumping and countervailing duty administrative reviews.

SUMMARY: The Department of Commerce has received requests to conduct administrative reviews of various antidumping and countervailing duty orders and findings. In accordance with the Commerce Regulations, we are initiating those administrative reviews.

EFFECTIVE DATE: July 17, 1987.

FOR FURTHER INFORMATION CONTACT: William L. Matthews or Richard W. Moreland, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377–5253/2786.

SUPPLEMENTARY INFORMATION:

Background

On August 13, 1985, the Department of Commerce ("the Department") published in the **Federal Register** (50 FR 32556) a notice outlining the procedures for requesting administrative reviews. The Department has received timely requests, in accordance with §§ 353.53a(a)(1), (a)(2), (a)(3), and 355.10(a)(1) of the Commerce Regulation, for administrative reviews of various antidumping and countervailing duty orders and findings.

Initiation of Reviews

In accordance with §§ 353.53a(c) and 355.10(c) of the Commerce Regulations, we are initiating administrative reviews of the following antidumping and countervailing duty orders and findings. We intend to issue the final results of these reviews no later than July 31, 1988.

Antidumping Duty Proceedings and Firms and Periods To Be Reviewed

Oil Country Tubular Goods from Canada

Cappco
01/07/86–05/31/87
Christianson Pipe
01/07/86–05/31/87
IPSCO
01/07/86–05/31/87

Red Raspberries from Canada

Clearbrook Packers

06/01/86–05/31/87
Jesse Processing
06/01/86–05/31/87
Marco Estates
06/01/86–05/31/87
Mukhtiar & Sons
06/01/86–05/31/87

Large Power Transformers from France

Alsthom-Atlantique
06/01/86–05/31/87

Precipitated Barium Carbonate From the Federal Republic of Germany

Kali Chemie
07/01/86–04/03/87

Large Power Transformers From Italy

Ansaldo
06/01/86–05/31/87
Legnano
06/01/86–05/31/87
OEL
06/01/86–05/31/87

Strontium Nitrate From Italy:

SABED
06/01/86–05/31/87

Fishnetting of Man-Made Fibers From Japan

Amikan
06/01/86–05/31/87
Fukui
06/01/86–05/31/87
Hakodate
06/01/86–05/31/87
Hakodate/Mitsui
06/01/86–05/31/87
Momoi
06/01/86–05/31/87
Morishita
06/01/86–05/31/87
Morishita/Mitsui
06/01/86–05/31/87
Nagaura Seimosho
06/01/86–05/31/87
Nippon Kenmo
06/01/86–05/31/87
Osada/Nichimen
06/01/86–05/31/87
Puretic
06/01/86–05/31/87
Taito Seiko
06/01/86–05/31/87
Toyama
06/01/86–05/31/87
Yamaji
06/01/86–05/31/87

Large Power Transformers From Japan

Fuji
06/01/86–05/31/87
Hitachi
06/01/86–05/31/87
Toshiba
06/01/86–05/31/87

64K DRAMS from Japan

Hitachi
12/11/85–05/31/87
Mitsubishi Electric
12/11/85–05/31/87
OKI Electric
12/11/85–05/31/87

Bicycle Tires & Tubes from Taiwan

Cheng Shin
06/01/86–05/31/87
Hwa Fong
06/01/86–05/31/87
Kenda
06/01/86–05/31/87
Li-Hsin
06/01/86–05/31/87
San Jung
06/01/86–05/31/87
Seven Stars Rubber
06/01/86–05/31/87
Shyh-Hwa Rubber
06/01/86–05/31/87
Tai Yung Rubber
06/01/86–05/31/87
Union Rubber
06/01/86–05/31/87

Fireplace Mesh Panels from Taiwan

Yeh Sheng
06/01/86–05/31/87

PVC Sheet and Film from Taiwan

Orchard Corporation of Taiwan
06/01/86–05/31/87

Countervailing Duty Proceedings and Periods To Be Reviewed

Industrial Nitrocellulose from France
01/01/86–12/31/86
Carbon Black from Mexico
01/01/86–12/13/86

Interested parties are encouraged to submit applications for administrative protective orders as early as possible in the review process.

These initiations and this notice are in accordance with section 751(a) of the Tariff Act of 1930 (19 U.S.C. 1675(a)) and §§ 353.53a(c) and 355.10(c) of the Commerce Regulations (19 CFR 353.53a(c), 355.10(c)).

Dated: July 11, 1987.

Gilbert B. Kaplan,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 87–16296 Filed 7–16–87; 8:45 am]

BILLING CODE 3510-DS-M

Applications for Duty-Free Entry of Scientific Instruments; Energy Department et al.

Pursuant to section 6(c) of the Educational, Scientific and Cultural Materials Importation Act of 1966 (Pub. L. 89–651; 80 Stat. 897), we invite comments on the question of whether instruments of equivalent scientific value, for the purposes for which the instruments shown below are intended to be used, are being manufactured in the United States.

Comments must comply with § 301.5(a)(3) and (4) of the regulations and be filed within 20 days with the Statutory Import Programs Staff, U.S. Department of Commerce, Washington, DC 20230. Applications may be examined between 8:30 A.M. and 5:00 P.M. in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

Docket number: 87–192. Applicant: U.S. Department of Energy, Argonne National Laboratory, 9700 South Cass Avenue, Argonne, IL 60439. Instrument: Temporal Analyzer, Model C2280–50. Manufacturer: Hamamatsu, Japan. Intended use: Studies of Cerenkov light from xenon and hydrocarbon liquids and fluorescene from excited states of aromatic hydrocarbons and linear hydrocarbons. The instrument will measure signals from a streak camera, digitize them and display the digitized results to allow one to make the measurements. Application received by Commissioner of Customs: May 12, 1987.

Docket number: 87–193. Applicant: University of Michigan, 503 Thompson Street, Ann Arbor, MI 48109. Instrument: Electron Microscope, Model JEM 2000FX. Manufacturer: JEOL, Japan. Intended use: The analytical capabilities of this instrument will be used to characterize the microstructure during the following research:

(1) Transformation, transformation plasticity and transformation toughening of ceramics.

(2) Effect of microstructure on mechanical properties of silicon nitride.

(3) Ductility enhancement in materials with limited dislocation mobility.

(4) Characterization of rapidly solidified materials.

(5) Intergranular cracking in austenitic alloys.

(6) Preparation and characterization of ultra-small metal clusters.

(7) Ultra-small electronics research.

(8) MBE of InP-based compounds and heterostructures.

Application received by Commissioner of Customs: May 12, 1987.

Docket number: 87–194. Applicant: U.S. Department of Energy, Argonne National Laboratory, 9700 South Cass Avenue, Argonne, IL 60439. Instrument: Scanning Electron Microscope, Model JSM–8401 with Accessories. Manufacturer: JEOL, Ltd., Japan. Intended use: The instrument will be used to characterize the properties of samples prepared by different processes and subjected to different wear and

corrosion environments during research to improve the tribological properties of components used in industry with an eventual goal of conserving energy. Application received by Commissioner of Customs: May 12, 1987.

Docket number: 87–195. Applicant: U.S. Department of Energy, Argonne National Laboratory, 9700 South Cass Avenue, Argonne, IL 60439. Instrument: Electron Microscope, Model EM 430T with Accessories. Manufacturer: N.V. Philips, The Netherlands. Intended use: Characterization of the morphology, crystallography and structure of defects, interfaces and phases present in metals, alloys, ceramics and related materials. Experiments will consist of diffraction contract analysis of the features present in a transmission image produced by passing an electron beam through thin sections of the previously mentioned materials. The objectives of these investigations are to further elucidate and understand the structure/property relationships of materials as they relate to programmatic research. Application received by Commissioner of Customs: May 13, 1987.

Docket number: 87–196. Applicant: University of California, Physics Department, Santa Barbara, CA 93106. Instrument: FTI Spectrometer, Model DA3. Manufacturer: Bomem, Canada. Intended use: Sample screening prior to running of user specific samples on a free electron laser which operates in the same spectral range. Studies of structures fabricated as part of an ongoing investigation into both the dielectric and magnetic phenomena in bulk, thin film and multilayered samples of transition metal difluorides such as a manganese fluoride and iron fluoride. Experiments to be conducted will include transmission, reflection, photoconductivity (semiconductors), magnetic resonance and attenuated total reflection measurements. The objective of the investigations will be to determine at which wavelengths a user's sample has interesting resonances so that the wavelength of the free electron laser may be adjusted accordingly. Application received by Commissioner of Customs: May 14, 1987.

Docket number: 87–197. Applicant: Cold Spring Harbor Laboratory, Bungtown Road, Cold Spring Harbor, NY 11724. Instrument: Electron Microscope, Model H–7000. Manufacturer: Nissei Sangyo America, Ltd., Japan. Intended use: Studies of the following phenomena:

1. Structure and function of nuclear ribonucleoprotein complexes,
2. Dinoflagellate chromosomes,
3. Heat shock,
4. Oncogene localization and function,
5. Adenovirus E1B tumor antigens,
6. Cytoskeletal organization and
7. SV40 DNA replication.

Application received by Commissioner of Customs: May 14, 1987.

Docket number: 87–198. Applicant: Middle Tennessee State University, Department of Biology, Murfreesboro, TN 37132. Instrument: Electron Microscope, Model EM 109. Manufacturer: Carl Zeiss, West Germany. Intended use: Studies of the ultrastructure of the Sporoamiella minima with special attention to microtubules and studies of the ultrastructure of U937 tumor cells with special attention to size and shape variations. In addition, the instrument will be used to provide a background in electron microscopy for biology majors, pre-professional students and research projects in the course Transmitting Electron Microscopy. Application received by Commissioner of Customs: May 15, 1987.

Docket number: 87–199. Applicant: Medical University of South Carolina, 171 Ashley Avenue, Charleston, SC 29425. Instrument: Electron Microscope, Model EM 109T. Manufacturer: Carl Zeiss, West Germany. Intended Use: The instrument will be used for the following research projects:

1. Ultrastructural examination of the primary tumors from Wilm's tumor patients and tumors grown in nude mice and tissue culture.
2. Study of the development of lymphatics within the pleura being conducted in an experimental animal model.
3. Identification of the ultrastructural changes of free fatty acids on the mictochondria of several organ systems of Reye's Snydrome patients.
4. Development of procedures to make ultrastructural studies of aspirates rapidly and economically available.

The instrument will also be used in the teaching of medical students, pathology residents, graduate students in pathology and students from the College of Health Related Professions.

Application received by Commissioner of Customs: May 15, 1987.

Docket number: 87–200. Applicant: Texas A&M University, Microcirculation Research Institute, Medical Sciences, Agronomy Road, College Station, TX 77843. Instrument: Electron Microscope, Model JEM 1200EX. Manufacturer: JEOL Ltd., Japan. Intended use: Ultrastructural characterization of the vasculature (blood vasculature, lymphatic vasculature) and surrounding interstitium in health and disease.

Application received by Commissioner of Customs: May 15, 1987.

Docket number: 87–201. Applicant: The University of Texas Health Science Center at Dallas, 5323 Harry Hines Boulevard, Dallas, TX 75235. Instrument: Two (2) Electron Microscopes, Model JEM 100SX. Manufacturer: JEOL Ltd., Japan. Intended use: The instruments will be used to obtain high resolution information about the ultrastructure of various biological materials. The experiments that will be conducted will include:

1. Structure/function of the cytoskeleton with emphasis on microtubule function in cultured cells and neuronal tissues.
2. Mechanisms of receptor medicated endocytosis.
3. Muscle cell differentiation.
4. Mechanisms of cell-cell interaction.
5. Wound healing.
6. Cell-substratum interaction.

In addition, the instrument will be used to train graduate and medical students.

Application received by Commissioner of Customs: May 18, 1987.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 87–16297 Filed 7–16–87; 8:45 am]

BILLING CODE 3510-DS-M

Applications for Duty-Free Entry of Scientific Instruments; Loyola University of Chicago, et al.

Pursuant to section 6(c) of the Educational, Scientific and Cultural Materials Importation Act of 1966 (Pub. L. 89–651; 80 Stat. 897), we invite comments on the question of whether instruments of equivalent scientific value, for the purposes for which the instruments shown below are intended to be used, are being manufactured in the United States.

Comments must comply with § 301.5(a)(3) and (4) of the regulations and be filed within 20 days with the Statutory Import Programs Staff, U.S. Department of Commerce, Washington, DC 20230. Applications may be examined between 8:30 A.M. and 5:00 P.M. in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

Docket Number: 87–202. Applicant: Loyola University of Chicago, Department of Biology, 6525 N. Sheridan Road, Chicago, IL 60626. Instrument: Electron Microscope, Model JEM 1200EX. Manufacturer: JEOL Ltd., Japan. Intended use: The instrument will be used for studies of biological non-human materials e.g. murine connective tissue cells, vascular endothelium and a variety of lower and higher tissues.

The research to be conducted will include:

1. Morphological and histochemical studies of plant calcium metabolism.

2. Characterization of surface macromolecules in blue-green algae species.

3. Prophylatic properties of plant extracts using as a model blue-green alga species and its lytic virus.

4. Studies of the distribution of lymphatic and blood capillaries in rat skeletal muscle.

5. Distribution of virus in various tissues of the adult mosquito.

6. Characterization of scaffolding proteins in red blood cells of hibernating small mammals.

7. Host-endosymbiont relations in a sea anemone/dinoflagellate system.

8. Bone cell ultrastructure.

In addition, the instrument will be used for teaching Biology 385, Principles of Electron Microscopy, a course whose objectives are to teach basic maintenance of the TEM itself and those techniques necessary for preparing biological materials for the TEM. Application received by Commissioner of Customs: May 18, 1987.

Docket number: 87–203. Applicant: Indiana Univerisity, P.O. Box 22, Bloomington, IN 47402. Instrument: Surface Analysis System, Model LHS–12. Manufacturer: Leybold-Heraeus, West Germany. Intended use: The instrument will be used for studies of a wide range of solids, from single crystals to powders, providing a fundamental understanding of the relationship between catalyst function and its microscopic surface structure and chemical composition. Application received by Commissioner of Customs: May 18, 1987.

Docket number: 87–204. Applicant: The University of Texas Health Science Center at Dallas, 5323 Harry Hines Blvd., Dallas, TX 75235. Instrument: Electron Microscope, Model JEM 1200EX. Manufacturer: JEOL Ltd., Japan Intended use: The insturment will be used to obtain high resolution information about the ultrastructure of various biological materials. The experiments to be conducted will include:

1. Structure/function of the cytoskeleton with emphasis on microtubule function in cultured cells and neuronal tissues.

2. Mechanisms of receptor medicated endocytosis.

3. Muscle cell differentiation.

4. Mechanisms of cell-cell interaction.

5. Wound healing.

6. Cell-substratum interaction.

In addition, the instrument will be used to train graduate and medical students.

Application received by Commissioner of Customs: May 19, 1987.

Docket number: 87–205. Applicant: University of Pennsylvania, 3451 Walnut Street, Philadelphia, PA 19104. Instrument: Cyclotron, Model BC–3015. Manufacturer: Japan Steel Works, Japan. Intended use: The instrument will be used to produce large quantities of short half-lived radioisotopes for research applications in biology and medicine. Radioactive elements, such as carbon-11, oxygen-15, nitrogen-13, fluorine-18, etc. will be synthesized into tracer molecules which will be administered to experimental animals and human subjects to study normal physiology and disease processes. In some cases, the labeled molecules will serve as radioactive pharmaceuticals for diagnostic tests for stroke, heart disease, cancer, etc, Application received by Commissioner of Customs: May 20, 1987.

Docket Number: 87–206. Applicant: Medical College of Georgia, 1120 15th Street, Augusta, GA 30912–3305. Instrument: Electron Microscope, Model EM 902. Manufacturer: Carl Zeiss, West Germany. Intended Use: The instrument is intended to be used to conduct the following research:

(1) Studies of hearing to learn what changes occur which lead to temporary and permanent deafness.

(2) Studies to determine the critical sites and mechanisms of action of neurotoxic chemicals.

(3) Studies of the generation of elastic tissues in the cardiovascular system of embryos.

(4) Studies of the normal and diseased pancreas from experimental animals and humans.

Application received by Commissioner of Customs: May 20, 1987.

Docket Number: 87–207. Applicant: Texas A&M University, College Station, TX 77843. Instrument: Arc Furnance Melt Spinner Apparatus. Manufacturer: Edmund Buhler Co., West Germany. Intended Use: Studies of new refractory amorphous metal alloys, particularly those containing elements known to be catalytically active, high corrosion resistant and/or likely to produce a magnetic moment on alloying. Experiments to be conducted will include: (i) Differential scanning calorimetry, x-ray diffractometry and electron microscopy studies to determine phase and stability; (ii) low temperature measurements of superconducting transition temperature and critical field, electron transport properties and the specific heat, (iii) photoelectron spectroscopy and auger measurements to study the metal surface and its reactivity to various probe gases; and (iv) anodic polarization, cyclic voltammetry and a-c impedance measurements in reactive solutions. The article will also be used for educational purposes in Masters and Ph.D level graduate research in physics, chemistry, chemical engineering and mechanical engineering. Application received by Commissions of Customs: May 20, 1987.

Docket Number: 87–208. Applicant: University of Rochester, School of Medicine and Dentistry, 601 Elmwood Avenue, Rochester, NY 14642. Instrument: Electron Microscope, Model EM 10CR. Manufacturer: Carl Zeiss, West Germany. Intended Use: Studies of biological specimens of cells, tissues or organs in varied research programs. The general objectives of these programs are: (1) To ascertain and quantitate the effects of x-irradiation on the normal tissues of the lung in an effort to circumvent the deleterious latent sequelae of pneumonitis and fibrosis; (2) to identify predictor of latent radiation injury which may be detectable during the clinical silent period before the onset of pneumonitis and fibrosis; (3) to provide morphologic and morphometric suport for Cancer Center investiators; (4) to identify and accurately quantitate the morphology of paracrine-endocrine cells of the prostate and (5) to characterize and quantitate morphometricallly the axonal changes in the visual pathway following systemic acrylamide exposure to ascertain their potential reversibility. Application received by Commissioner of Customs: May 21, 1987.

Docket Number: 87–210. Applicant: Indiana University, P.O. Box 4040, Bloomington, IN 47402. Instrument: CD Spectropolarimeter and Optical Rotatory Dispersion, Model J–20A. Manufacturer: JASCO, Japan. Intended Use: Measurement of optical rotary dispersion and circular dichroism curves of synthetic anticancer agents. Binding studies to tubulin proteins will also be determined using the above measurements. The objectives are to determine the absolute stereochemistry relationships in the anticancer agents and the distortions that are present when these agents bind to tubulin. Application received by Commissioner of Customs: May 26, 1987.

Docket Number: 87–211. Applicant: Princeton University, Chemistry Department, Princeton, NJ 08544. Instrument: Surface Science Facility and Accessories. Manufacturer: University of Waterloo, Canada. Intended Use: Studies of single crystals coated by a

layer of atoms or molecules at low temperature. Experiments to be conducted include the measurement of the rate at which photoevaporation, photodissociation, chemical reactivity structure and dynamics of the molecular layers occur by means of low energy molecular beam-surface scattering and polarized atom techniques. The structure and dynamic of the layers will be studied by low energy diffractive scattering. Application received by Commissioner of Customs: May 29, 1987.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 87-16298 Filed 7-16-87; 8:45 am]

BILLING CODE 3510-DS-M

Consolidated Decision on Applications for Duty-Free Entry of Extracorporeal Shock Wave Lithotripters; Mayo Foundation, University of Pennsylvania et al.; Correction

In F.R. Document 87-13533 appearing at page 22512 in the **Federal Register** of June 12, 1987, Docket Number 86-292 is hereby amended to correct column 3, line 4. The line should read:

notice at 52 FR 12220, April 15, 1987.

Reference to 19 CFR appearing at column 3 line 54 is corrected to read 15 CFR.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 87-16299 Filed 7-16-87; 8:45 am]

BILLING CODE 3510-DS-M

Applications for Duty-Free Entry of Scientific Instruments; Midwest Stone Institute et al.

Pursuant to section 6(c) of the Educational, Scientific and Cultural Materials Importation Act of 1966 (Pub. L. 89-651; 80 Stat. 897), we invite comments on the question of whether instruments of equivalent scientific value, for the purposes for which the instruments shown below are intended to be used, are being manufactured in the United States.

Comments must comply with § 301.5(a) (3) and (4) of the regulations and be filed within 20 days with the Statutory Import Programs Staff, U.S. Department of Commerce, Washington, DC 20230. Applications may be examined between 8:30 A.M. and 5:00 P.M. in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

Docket Number: 85-281R. Applicant: Midwest Stone Institute, Barnes Hospital Plaza, St. Louis, MO 63110. Instrument: Lithotripter. Manufacturer: Dornier System GmbH, West Germany. Intended use: The instrument is intended to be used for varied research purposes including but not limited to the following:

(1) The study of the effects of extracorporeal shock wave lithotripsy (ESWL) on renal function.

(2) The effect of ESWL on stone-forming bacteria.

(3) Effect of ESWL on cellular function.

(5) Measure of the atriopeptins output in the right atrium under epideral anesthesia while immersed in water up to the neck.

(5) Contrasting the effect of general inhalation anesthesia versus regional anesthesia for ESWL patients.

(6) Comparison of renal blood flow and urine output to atriopeptin release in the right atrium.

(7) Measurement of catacolomine and glucagon release with ESWL treatments contrasting regional with general anesthesia.

(8) Effect of ESWL on blood flow in the lower extremities.

In addition, the instrument will be used for training lithotripter operators. Original of this resubmitted application received by Commissioner of Customs: September 6, 1985.

Docket Number: 87-134. Applicant: State of Alaska, Department of Fish and Game, Division of FRED, 1255 W. 8th Street, P.O. Box 3-2000, Juneau, AK 99802-2000. Instrument: Microscope, Plankton Viewing, Collecting Net TV Monitor. Manufacturer: Nikon, Canton, Shimazu, Kitahara; Japan. Intended use: Study the mariculture feasibility for scallop, Pecten (Patinopecten) caurinus and giant kelp off the coastal areas of Alaska. Application received by Commissioner of Customs: March 19, 1987.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 87-16300 Filed 7-16-87; 8:45 am]

BILLING CODE 3510-DS-M

Applications for Duty-Free Entry of Scientific Instruments; University of Utah, et al.

Pursuant to section 6(c) of the Educational, Scientific and Cultural Materials Importation Act of 1966 (Pub. L. 89-651; 80 Stat. 897), we invite comments on the question of whether instruments of equivalent scientific value, for the purposes for which the instruments shown below are intended to be used, are being manufactured in the United States.

Comments must comply with § 301.5(a)(3) and (4) of the regulations and be filed within 20 days with the Statutory Import Programs Staff, U.S. Department of Commerce, Washington, DC 20230. Applications may be examined between 8:30 A.M. and 5:00 P.M. in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

Docket number: 87-008R. Applicant: University of Utah, Purchasing Department, Room 151, Annex Building, Salt Lake City, UT 84112. Instrument: Optical Rotatory Dispersion/Circular Dichorism Spectrophotometer, Model J-20C with Accessories. Manufacturer: JASCO, Japan. Original of this resubmitted application was published in the **Federal Register:** November 5, 1986.

Docket number: 87-045R. Applicant: The University of Chicago, 5801 South Ellis Avenue, Chicago, IL 60637. Instrument: CD Spectropolarimeter, Model J-600A. Manufacturer: JASCO, Japan. This resubmitted application was published in the **Federal Register:** December 12, 1986.

Docket number: 87-066R. Applicant: Fisk University, 1000 17th Avenue, North, Nashville, TN 37203. Instrument: FTI Spectrophotometer, Model DA3.16. Manufacturer: Bomem, Canada. Original of this resubmitted application was published in the **Federal Register:** January 15, 1987.

Docket number: 87-184. Applicant: Brandeis University, 415 South Street, Waltham, MA 02254. Instrument: High Pressure Generator and Optical Cell. Manufacturer: Nova Swiss Werke, Switzerland, Intended use: The instrument will be used for educational purposes through research in physical organic chemistry and honors projects for undergraduate chemistry and biophysics students. Application received by Commissioner of Customes: May 8, 1987.

Docket number: 87-185. Applicant: Wright State University, Department of Physics, Colonel Glenn Highway, Dayton, OH 45435. Instrument: Torroidal Electrostatic Analyzer. Manufacturer: High Voltage Engineering, The Netherlands. Intended use: The instrument will be used for studies of any material whose near surface structure is to be studied with monolayer depth resolution. Initially these will be interfaces between metals and insulators and oxide layers on GaAs. In addition, the instrument will be used to provide practical experience in a working research laboratory to students in Physics 494 and Physics 499. Application received by Commissioner of Customs: May 11, 1987.

Docket number: 87-186. Applicant: Virginia Polytechnic Institute and State

University, Chemical Engineering, 133 Randolph Hall, Blacksburg, VA 24061. Instrument: Surface Analysis System for X-ray Photoelectron Spectroscopy, Model LHS–12. Manufacturer: Leybold-Heraeus Vacuum Products, West Germany. Intended use: The instrument will be used for studies done on the surfaces of metal oxides, metals and semiconductors that could be, or presently are, used in various types of catalysts, chemical gas sensors and electronic devices. Analyses will be made on both clean substrates, as well as surfaces onto which other materials or gases have been deposited or adsorbed. The primary objective of these investigations is to develop a fundamental understanding of the surface processes which occur in the operation catalysts and gas sensors, and the interfacial properties associated with the formation of junctions with a variety of electron materials. The instrument will also be used for educational purposes in the courses CHE 7990 Doctoral Research and Dissertation, CHE 5990 Masters Research and Dissertation and CHE 4990 Undergraduate Research. Application received by Commissioner of Customs: May 11, 1987.

Docket number: 87–187. Applicant: University of Tennessee, Department of Geological Sciences, Knoxville, TN 37996–1410. Instrument: Electron Microprobe. Manufacturer: Cameca Instruments Inc., France. Intended use: studies of rocks, minerals, lunar samples, meteorites, synthetic phases. Experiments will involve measurement of X-ray intensity emitted by samples when bombarded by a focussed electrton beam. The data obtained forms the basis for studying the formation of various rocks and minerals on the Moon, in meteorites, as well as in ore deposits, and other mineral occurrences on Earth. The instrument will also be used for instruction in its use and operation. Application received by Commissioner of Customs: May 11, 1987.

Docket number: 87–188. Applicant: University of Michigan, Department of Geological Sciences, 1006 C. C. Little Building, 425 East University, Ann Arbor, MI 48109–1063. Instrument: Thermal Ionisation Mass Spectrometer, Model VG Sector. Manufacturer: VG Isotope Limited, United Kingdom. Intended use: The instrument is intended to be used to measure isotopic compositions of the elements rubidium (Rb), strontium (Sr), samarium (Sm), neodymium (Nd), lead (Pb), and uranium (u) interrestrial rocks, minerals, and other natural materials (e.g., water). The experiments will consist of chemically extracting exceedingly small quantities of the elements in question from the samples, with or without isotopic tracers as needed, in order to determine the concentrations of the parent radioactive elements (Rb, U) and the stable daughter products (Sr, Pb) to better than 0.1 percent and to determine critical isotopic rations $^{206}Pb/^{204}Pb$ and $^{87}Sr/^{86}Sr$ as accurately as possible. Educational purposes will consist of training graduate students for the Ph. D. degree in which a major part of the research involves radiogenic isotope geochemistry and training of graduate and undergraduate students in the principles of isotope geochemistry. Application received by Commissioner of Customs: May 12, 1987.

Docket number: 87–189. Applicant: Washington State University, Department of Chemistry, Pullman, WA 99164–4630. Applicant: High Pressure Stopped Flow Spectrometer. Manufacturer: Hi-Tech Scientific Ltd., United Kingdom. Intended use: Study reactions of inorganic, organometallic, and biological molecules in solution at high and varied pressure. Typically, the reactions involve highly colored compounds containing ions of elements such as colbalt, iron, manganese and copper. The objective of the experiments conducted is the use pressure dependence of the reaction rates to better understand the mechansims by which the reactions take place. Application received by Commissioner of Customs: May 12, 1987.

Docket number: 87–190. Applicant: University of Montana, Lodge, Room 113, Missoula, MT 59812. Instrument: Magnetic Susceptibility Meter System, Model M.S.2. Manufacturer: Bartington Instruments, United Kingdom. Intended use: Studies of samples of rock from various regions in the western United States. The rock property which will be investigated is magnetic susceptibility and its changes with heating of the sample. The heating experiments are general paleomagnetic techniques to determine the stability of measured magnetic moments over geologic time. In addition, the instrument will be used to teach students the fundamentals of paleomagnetisms, get them to a level where they can read the professional literature in paleomagnetism and teach them how to design scientific experiments. Application received by Commissioner of Customs: May 12, 1987.

Docket number: 87–191. Applicant: Columbia University in the City of New York, Microelectronic Sciences Laboratory, Pupin Hall, 538 West 120th Street, New York, NY 10027. Instrument: Surface Analysis System. Manufacturer: Kratos Analytical, United Kingdom. Intended use: The instrument will be used for studies of materials used in the microelectronics industry. The phenomenon studied is the formation of metal-semiconductor interfaces. A large variety of metal overlayers and the effect of thin interfacial layers will be investigated. Laser induced chemistry on semiconductor surfaces and the effect of such chemistry on interfacial reactions will also be studied. The objectives pursued in these investigations are to understand the fundamentals of interface formation as well as to find ways to modify interface properties.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 87–16301 Filed 7–16–87; 8:45 am]

BILLING CODE 3510–DS–M

Minority Business Development Agency Financial Assistance Application Announcement; New York

AGENCY: Minority Business Development Agency, Commerce.

ACTION: Notice.

SUMMARY: The Minority Business Development Agency (MBDA) announces that it is soliciting competitive applications under its Minority Business Development Center (MBDC) Program to operate a MBDC for a three (3) year period, subject to available funds. The cost of performance for the first twelve months is etimated atr $165,000 for the project performance of December 1, 1987 to November 30, 1988. The MBDC will operate in the Rochester Standard Metropolitan Statistical Area (SMSA). The first year cost for the MBDC will consist of $165,000 in Federal funds and a minimum of $29,118 in Non-Federal funds (which can be a combination of cash, in-kind contribution and fees for services).

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

The MBDC will provide management and technical assistance to eligible clients for the establishment and operation of businesses. The MBDC program is designed to assist those minority businesses that have the highest potential for success. In order to accomplish this, MBDA supports MBDC programs that can: coordinate and broker public and private sector resources on behalf of minority

individuals and firms; offer them a full range of management and technical assistance; and serve as a conduit of information and assistance regarding minority business.

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

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

CLOSING DATE: The closing date for applications is August 20, 1987. Applications must be postmarked on or before August 20, 1987.

ADDRESS: New York Regional Office, Minority Business Development Agency, Jacob K. Javits Federal Building, Room 3720, New York, New York 10278, (212) 264–3262.

FOR FURTHER INFORMATION CONTACT: Gina A. Sanchez, Regional Director, New York Regional Office at (212) 264–3262.

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

Dated: July 13, 1987.

Gina A. Sanchez,

Regional Director, New York Regional Office.

[FR Doc. 87–16190 Filed 7–16–87; 8:45 am]

BILLING CODE 3510-21-M

COMMISSION ON MERCHANT MARINE AND DEFENSE

Meeting

SUMMARY: The Commission on Merchant Marine and Defense was established by Pub. L. 98–525 (as amended), and the Commission was constituted in December 1986. The Commission's mandate is to study and report on problems relating to transportation of cargo and personnel for national defense purposes in time of war or national emergency, the capability of the Marchant Marine to meet the need for such transportation, and the adequacy of the shipbuilding mobilization base to support naval and merchant ship construction. In accordance with the Federal Advisory Committee Act, Pub. L. 92–463, as amended, the Commission announces the following meeting.

DATES AND TIMES: Monday, July 27, 1987; Beginning 9:00 a.m.; Tuesday, July 28, 1987, Beginning 9:00 a.m.

Place: Suite 520, 4401 Ford Avenue, Alexandria, Virginia, 22301–0268;

Type of Meeting: Closed.

Contact Person: Allan W. Cameron, Executive Director, Commission on Merchant Marine and Defense, Suite 520, 4401 Ford Avenue, Alexandria, Virginia 22301–0268, Telephone (202) 756–0411.

Purpose of Meeting: To receive additional information pertaining to the needs of the national defense for the Merchant Marine and the shipbuilding industry, and to discuss and to deliberate facts and opinions obtained from briefings and public hearings.

SUPPLEMENTARY INFORMATION: The executive meetings of the Commission will be closed to the public pursuant to 5 U.S.C. 552b(c)(1) and 552b(c)(9) in the interests of national security and to protect proprietary information provided to the Commission in confidence. A public meeting and hearing for the shipyard and ship operators supplier industry, announced earlier in the **Federal Register**, will be held at 2:00 p.m. on Monday, July 28, 1987, in the Center for Naval Analyses Auditorium, First Floor, 4401 Ford Avenue, Alexandria, Virginia.

Allan W. Cameron

Executive Director, Commission on Merchant Marine and Defense.

[FR Doc. 87–16195 Filed 7–16–87; 8:45 am]

BILLING CODE 3820-01-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Request for Public Comment on Bilateral Textile Consultations With the Government of Bangladesh on Category 342/642

July 14, 1987.

FOR FURTHER INFORMATION CONTACT: Kim Pham, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, Washington, DC (202) 377–4212. For information on categories on which consultations have been requested call (202) 377–3740.

On June 22, 1987, the United States Government, under Article 3 of the Arrangement Regarding International Trade in Textiles and in accordance with section 204 of the Agricultural Act of 1956, requested the Government of Bangladesh to enter into consultations concerning exports to the United States of certain cotton and man-made fiber textile products, produced or manufactured in Bangladesh.

The purpose of this notice is to advise that, if no solution is agreed upon in consultations with Bangladesh, the Committee for the Implementation of Textile Agreements may later establish a limit for the entry and withdrawal from warehouse for consumption of cotton and man-made fiber skirts in Category 342/642, produced or manufactured in Bangladesh and exported to the United States during the twelve-month period which began on June 22, 1987 and extends through June 21, 1988, at a level of 111,761 dozen.

A summary market statement for this category follows this notice.

Anyone wishing to comment or provide data or information regarding the treatment of category is invited to submit such comments or information in ten copies to Mr. Ronald I. Levin, Acting Chairman, Committee for the Implementation of Textile Agreements, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230. Because the exact timing of the consultations is not yet certain, comments should be submitted promptly. Comments or information submitted in response to this notice will be available for public inspection in the Office of Textiles and Apparel, Room 3100, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC, and may be obtained upon request.

Further comment may be invited regarding particular comments or information received from the public which the Committee for the Implementation of Textile Agreements considers appropriate for further consideration.

The solicitation of comments regarding any aspect of the agreement or the implementation thereof is not a waiver in any respect of the exemption contained in 5 U.S.C. 553(a)(1) relating to matters which constitute "a foreign affairs function of the United States."

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983 (48 FR 55607), December 30, 1983

(48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), July 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).

Adoption by the United States of the Harmonized Commodity Code (HCC) may result in some changes in the categorization of textile products covered by this notice. Notice of any necessary adjustments to the limits affected by adoption of the HCC will be published in the **Federal Register.**

Arthur Garel,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Bangladesh—Market Statement

Category 342/642—Cotton and Man-Made Fiber Skirts

June 1987.

Summary and Conclusions

U.S. imports of Category 342/642 from Bangladesh were 111,761 dozen during the year ending March 1987, nearly three and one half times the 32,517 dozen imported a year earlier. During the first three months of 1987, imports of Category 342/642 from Bangladesh reached 71,626 dozen, more than four times the 17,328 dozen imported during the same period of 1986 and 25 percent above the amount imported during calendar year 1986.

The market for Cateogry 342/642 has been disrupted by imports. The sharp and substantial increase in imports from Bangladesh has contributed to this disruption.

U.S. Production and Market Share

U.S. production of cotton and man-made fiber skirts declined five percent from 8,233 thousand dozen in 1983 to 7,805 thosand dozen in 1985. Comparison of government cuttings [1] data for 1986 and 1985 indicate that 1986 production will be down four percent. The domestic manufacturers' share of this market fell from 75 percent in 1983 to 67 percent in 1985. The U.S. market share is expected to decrease further in 1986, to around 57 percent.

U.S. Imports and Import Penetration

U.S. imports of Category 342/642 doubled between 1983 and 1986, growing from 2,798 thosand dozen in 1983 to 5,995 thousand dozen in 1986. During the first three months of 1987, imports of Category 342/642 reached 2,335 thousand dozen, 17 percent above the level imported during the same period in 1986. The ratio of imports to domestic peoduction increaed from 34 percent in 1983 to 49 percent in 1985. The ratio is expected to reach 77 percent in 1986.

Duty Paid Value and U.S. Producers' Price

Approximately 82 percent of Category 342/642 imports from Bangladesh during the first three months of 1987 entered under TSUSA numbers 384.5251—women's cotton woven skirts, not of corduroy, denim or velveteen, not ornamented; and 384.9445—women's man-made fiber woven skirts, not ornamented. TSUSA number 384.5251 alone represents 67 percent of Category 342/642 imports from Bangladesh.

These skirts entered the U.S. at landed duty-paid values below U.S. producers' prices for comparable skirts.

[1] U.S. cuttings data are for women's cotton, wool and man-made fiber skirts and include both woven and knit skirts.

[FR Doc. 87-16270 Filed 7-16-87; 8:45 am]

BILLING CODE 3510-DR-M

Request for Public Comment on Bilateral Consultations With the Government of Turkey

July 14, 1987.

FOR FURTHER INFORMATION CONTACT: Ross Arnold, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212. For information on categories on which consultations have been requested call (202) 377-3740.

On June 24, 1987, the United States Government, under Article 3 of the Arrangement Regarding International Trade in Textiles and in accordance with section 204 of the Agricultural Act of 1956, requested the Government of Turkey to enter into consultations concerning exports to the United States of certain cotton textile products in Categories 337 and 347, produced or manufactured in Turkey.

The purpose of this notice is to advise that, if no solution is agreed upon in consultations with Turkey, the Committee for the Implementation of Textile Agreements may later establish limits for the entry and withdrawal from warehouse for consumption of cotton playsuits in Category 337, and cotton trousers, slacks and shorts in Category 347, produced or manufactured in Turkey and exported to the United States during the twelve-month period which began on June 24, 1987 and extends through June 23, 1988, at levels of 39,527 dozen of category 337, and 307,845 dozen for category 347.

Summary market statements for these categories follow this notice.

Anyone wishing to comment or provide data or information regarding the treatment of Categories 337 and 347 or to comment on domestic production or availability of textile products included in those categories, is invited to submit such comments or information in ten copies to Mr. Ronald I. Levin, Acting Chairman, Committee for the Implementation of Textile Agreements, International Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230. Because the exact timing of the consultations is not yet certain, comments should be submitted promptly. Comments or information submitted in response to this notice will be available for public inspection in the Office of Textiles and Apparel, Room 3100, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC, and may be obtained upon request.

Further comment may be invited regarding particular comments or information received from the public which the Committee for the Implementation of Textile Agreements considers appropriate for further consideration.

The solicitation of comments regarding any aspect of the agreement or the implementation thereof is not a waiver in any respect of the exemption contained in 5 U.S.C. 553(a)(1) relating to matters which constitute "a foreign affairs function of the United States."

The United States remains committed to finding a solution concerning these categories. Should such a solution be reached in consultations with the Government of Turkey, further notice will be published in the **Federal Register.**

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 27069) and in Statistical Headnote 5, Schedule 3 of the *Tariff Schedules of the United States Annotated* (1987).

Adoption by the United States of the Harmonized Commodity Code (HCC) may result in some changes in the categorization of textile products covered by this notice. Notice of any necessary adjustments to the limits affected by adoption of the HCC will be published in the **Federal Register.**

Arthur Garel,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Turkey—Market Statement

Category 337—Cotton Playsuits, Sunsuits and Washsuits

June 1987.

Summary and Conclusions

U.S. imports of Category 337 from Turkey were 39,527 dozen during the year ending March 1987, nearly 27 times the 1,482 dozen imported a year earlier. In the first quarter of 1987 imports from Turkey were 28,908 dozen,

nearly two and a half times the amount important during full year 1986. In 1986, imports of Category 337 reached 11,627 dozen, more than six times the 1985 level.

The market for Category 337 has been disrupted by imports. The sharp and substantial increase of Category 337 imports from Turkey are contributing to this disruption.

U.S. Production and Market Share

U.S. production of cotton playsuits, sunsuits, and washsuits declined 20 percent from 2,983 thousand dozen in 1983 to 2,381 thousand dozen in 1985. The U.S. producers' share of this market declined from 62 percent in 1983 to 44 percent in 1985.

U.S. Imports and Import Penetration

U.S. imports of Category 337 grew from 1,829 thousand dozen in 1983 to 3,017 thousand dozen in 1985, a 65 percent increase. Imports continued to grow in 1986 reaching 3,462 thousand dozen, 15 percent above the 1985 level. During the first quarter of 1987, imports of Category 337 were 1,553 thousand dozen, 10 percent above the first quarter 1986 level. The ratio of imports to domestic production increased from 61 percent in 1983 to 127 percent in 1985.

Duty Paid Value and U.S. Producers' Price

Approximately 81 percent of Category 337 imports from Turkey during the first three months of 1987 entered under TSUSA number 384.5234—women's and girls' cotton woven playsuits, sunsuits and washsuits other than those of corduroy or yarn-dyed fabric, not ornamented. These garments entered the U.S. at duty-paid landed values below U.S. producers' prices for comparable playsuits.

Summary and Conclusions

U.S. imports of Category 347 from Turkey were 307,845 dozen during the year ending March 1987, over two and one half times the 116,453 dozen imported a year earlier. During the first three months of 1987, imports of Category 347 from Turkey reached 166,629 dozen, more then two times the 75,150 dozen imported during the same period of 1986. In 1986, Category 347 trouser, slack and short imports from Turkey were 216,366 dozen; in 1985, imports totaled 57,730 dozen.

The market for Category 347 has been disrupted by imports. The sharp and substantial increase in imports from Turkey has contributed to this disruption.

U.S. Production and Market Share

The U.S. production of men's and boys' cotton trousers, slacks and shorts has remained relatively flat since 1982, averaging 24,993 thousand dozen annually during the period.

Comparison of government cuttings [1] data for 1986 and 1985 indicate that for 1986, men's trousers and slack production will be flat. The domestic manufacturers' share of this market declined from an 84 percent share during 1982 to a 78 percent share during 1985. A further erosion of U.S. market share is expected in 1986, to around 73 percent.

[1] U.S. cuttings data are for cotton, wool and man-made fiber mens's trousers and slacks.

U.S. Imports and Import Penetration

U.S. imports of Category 347 grew from 4,902 thousand dozen in 1982 to 9,525 thousand dozen in 1986, a 94 percent increase. During the first three months of 1987, imports of Category 347 reached 3,992 thousand dozen, 42 percent above the level imported during the same period in 1986. The ratio of imports to domestic production increased from 20 percent in 1982 to 29 percent in 1985. The ratio is expected to reach 38 percent in 1986.

Duty-Paid Value and U.S. Producers' Price

Approximately 76 percent of Category 347 imports from Turkey during the first three months of 1987 entered under TSUSA number 381.6210—men's and boys' cotton woven shorts, not ornamented. These garments entered the U.S. at duty-paid landed values below U.S. producers' prices for comparable garments.

[FR Doc. 87-16269 Filed 7-16-87; 8:45 am]
BILLING CODE 3510-DR-M

COPYRIGHT ROYALTY TRIBUNAL

[Docket No. 87-2-85CD]

1985 Cable Distribution Proceeding

AGENCY: Copyright Royalty Tribunal.

ACTION: Notice Terminating Phase I of 1985 Cable Royalty Proceeding; Partial Distribution of 1985 Cable Royalty Fund.

FOR FURTHER INFORMATION CONTACT: J. C. Argetsinger, Chairman, Copyright Royalty Tribunal, 1111 20th Street, NW., Suite 450, Washington, DC 20036, [202] 653-5175.

SUMMARY: The Copyright Royalty Tribunal announces the termination of a controversy in the 1985 Phase I allocation of the royalties paid by cable operators. The Tribunal also announces it will make a partial distribution of the cable royalty fund for 1985.

EFFECTIVE DATE: The termination of the 1985 Phase I cable distribution controversy is effective immediately. The partial distribution of the 1985 cable copyright royalty fund shall take place on July 23, 1987.

SUPPLEMENTARY INFORMATION: On April 21, 1987, (52 FR 13118) the Copyright Royalty Tribunal announced that a controversy existed in both Phase I and II regarding the distribution of the royalties paid by cable operators for the calendar year 1985. The Tribunal also announced certain procedural dates. On June 16, 1987 Program Suppliers filed a motion requesting the Tribunal to extend the date for filing direct cases in Phase I in the 1985 cable royalty distribution proceeding from June 22, 1987 to July 6, 1987 in order to pursue settlements. The motion was granted by Order of the Tribunal on June 17, 1987.

On July 2, 1987 Motion Picture Association of America, Inc., the Joint Sports Claimants, the Public Broadcasting Service, the Music Claimants, the Canadian Claimants, the National Association of Broadcasters, the Devotional Claimants, and National Public Radio (the Settling Parties), representing all parties who have filed notice of intent to participate in Phase I of the 1985 proceeding, informed the Tribunal that they had reached an agreement to settle their differences, eliminate the controversy among them with respect to Phase I of the 1985 Proceeding and to expedite the distribution of the 1985 cable copyright royalty fees by the Tribunal.

Each of the Phase I Settling Parties has agreed to accept the same Phase I shares as allocated in the Tribunal's final determination in the 1983 cable distribution proceeding, 51 FR 12792 (April 15, 1986). Further, each Phase I party has made separate request for distribution of the royalties within its Phase I allocation, advising the Tribunal of the existence and extent of any Phase II controversies and the extent of any proposed holdbacks to accommodate such controversies. The Settling Parties agree that National Public Radio (NPR) shall be allocated 0.18% of the entire 1985 cable royalty fund.

The Settling Parties have requested an expedited distribution of 100% of the Phase I 1985 Basic, 3.75% and Syndex funds, that are not subject to Phase II controversies, according to the terms outlined in the settlement agreement filed with the Tribunal on July 2, 1987, a copy of which may be examiend at the Tribunal's offices.

The settling music claimants, ASCAP, BMI, and SESAC, citing a Phase II controversy, seek partial distribution of 99% of the 1985 royalty fund distributable to the music category. ACEMLA, a Phase II music claimant, seeks that the Tribunal withhold 4% of the total amount, pending determination of its Phase II claim. The Devotional Claimants, claimant in Phase II music category, indicate no objection to a 99% distribution of the music category.

The Tribunal is also advised that the settling Devotional Claimants seek temporary delay in the immediate distribution of Phase I funds attributable to the Devotional category. One of the settling Devotional Claimants is currently in Chapter 11 bankruptcy procedings and the Tribunal is informed that the court has to date not appointed counsel for that party. Additionally, the Tribunal is aware that there is a yet unresolved controversy in the Devotional Phase II category.

The Tribunal thus determines that it will distribute, on July 23rd, 100% of the royalty funds attributable to all categories except Music and Devotional.

Regarding the music category, the Tribunal will distribute 99% of the funds attributable to that category on July 23rd, reserving 1% until completion of Phase II. The Tribunal notes that although there has been no previous finding of entitlement for ACEMLA and Devotional Claimants in Phase II, based upon the Tribunal's experience in previous proceedings, both in jukebox and cable distributions, that this is an adequate reserve. It is further noted that the Tribunal is in receipt of the Music Settling Parties' Joint Stipulation, that should the Tribunal ultimately award Phase II parties a greater percentage, the Music Settling Parties will refund the difference, with appropriate interest. This procedure has long been employed by the Tribunal and applies to all distributions made to all parties in these proceedings, prior to the final determination in Phase II.

Regarding the distribution of the Devotional Phase I claim, the Tribunal will make distribution of funds attributable to that claim, upon notice from the Devotional Claimants in the manner to which they may agree or, if the Phase II dispute is not resolved, as the Tribunal best determines.

Procedural dates for the 1985 Phase II proceeding will be issued by Order to the parties involved at a later date.

Dated: July 14, 1987.

J.C. Argetsinger,

Chairman.

[FR Doc. 87-16272 Filed 7-16-87; 8:45 am]

BILLING CODE 1410-09-M

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Advisory Committee on Women in the Service; Meeting

AGENCY: Defense Advisory Committee on Women in the Services (SACOWITS), DOD.

ACTION: Notice of meeting.

SUMMARY: Pursuant to Pub. L. 92-463, notice is hereby given of a forthcoming meeting of the Executive Committee of the Defense Advisory Committee on Women in the Services (SACOWITS). The purpose of the meeting is to review the responses to the Recommendations, Requests for Information, and Continuing Concerns made by the Committee at the 1987 Spring Meeting; review the Subcommittee Issue Agendas; discuss current issues relevant to women in the Services; and finalize the program for the next semiannual meeting scheduled for October 25-29, 1987, in Killeen, Texas.

All meeting sessions will be open to the public.

DATE: September 21, 1987, 9:30 a.m.-5:00 p.m.

ADDRESS: SecDef Conference Room 3E869, The Pentagon, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Major Ilona E. Prewitt, Director, DACOWITS and Military Women Matters, OASD (Force Management and Personnel), The Pentagon, Room 3D769, Washington, DC 20301-4000; telephone (202) 697-2122.

Linda M. Lawson,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

July 14, 1987.

[FR Doc. 87-16312 Filed 7-16-87; 8:45 am]

BILLING CODE 3810-01-M

Corps of Engineers, Department of the Army

Chief of Engineers Environmental Advisory Board Meeting

AGENCY: U.S. Army Corps of Engineers, DOD.

ACTION: Notice of open meeting.

SUMMARY: Under section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463) this notice sets forth the schedule and proposed agenda of the forthcoming meeting of the Chief of Engineers Environmental Advisory Board (EAB). The meeting is to be jointly chaired by Dr. Evan C. Vlachos, Chairman, EAB, and Lieutenant General E.R. Heiberg III, Chief of Engineers, U.S. Army. The meeting is open to the public.

DATE: The meeting will be held from 8:00 a.m., Tuesday, August 4, 1987, to 4:30 p.m., Thursday, August 6, 1987.

Place: The meeting will be held at the Fort Collins Marriott Hotel, Fort Collins, Colorado.

FOR FURTHER INFORMATION CONTACT: Lieutenant Colonel Kit J. Valentine, Chief, Office of Environmental Overview, Washington, DC 20314-1000, (202) 272-0166.

SUPPLEMENTARY INFORMATION: The schedule and proposed agenda of the Environmental Advisory Board meeting is:

Installation Restoration Program

August 4, Tuesday A.M. Session

8:00—Meeting convened—Opening remarks
10:00—Program Overview
- OSD Policies/Perspective
- Secretariat Policies
- ARSTAF Program Management

P.M. Session

12:30—Project Implementation
- Site ID through ROD
- Public Involvement
- Remedial Action
- Comparison of SARA Process to RCRA Process

2:30—Regulatory Compliance
- EPA Enforcement
- OTJAG Perspective
- Status of Interagency Agreements
- Application of State Standards

4:30—Meeting Recess

August 5, Wednesday A.M. Session

8:00—IRP Accomplishments and Direction
- OSD Perspective
- Army Direction
- Litigation Synopsis
- SARA Impact on Real Estate Transaction

10:20—Superfund Program Management
- EPA Superfund Program
- Air Force IRP
- Navy IRP

P.M. Session

1:00—Organizational Capabilities
- THAMA Mission
- USACE Superfund & Former DOD Sites IRP
- AEHA Mission
- MACOM/Installations

3:00—IRP Contacts
- AMC IRP Procurement
- USACE IRP Procurement
- AMC IRP Contractor
- USACE IRP Contractor

4:30—Meeting Recess

August 6, Thursday A.M. Session

8:00—IRP Technical Support
- Project Management
- Chemistry Data Management
- Innovative
- Public Health Evaluation Technology

10:00—Rocky Mountain Arsenal
- Program Manager
- Project Status
- Litigation

P.M. Session

2:00—EAB Report to the Chief of Engineers
3:00—Chief of Engineers Response
4:00—Public Comments
4:30—Meeting Adjournment

Kit J. Valentine,

LTC, Corps of Engineers, Chief, Office of Environmental Overview.

[FR Doc. 87-16363 Filed 7-16-87; 8:45 am]

BILLING CODE 3710-08-M

DEPARTMENT OF ENERGY

Proposed Subsequent Arrangement; International Atomic Energy Agreements; Peaceful Uses; Euratom and Norway

Pursuant to section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160) notice is hereby given of a proposed "subsequent arrangement" under the Agreement for Cooperation between the Government of the United States of America and the Government of Norway concerning Peaceful Uses of Nuclear Energy, and the Additional Agreement for Cooperation between the Government of the United States of America and the European Atomic Energy Community (EURATOM) concerning Peaceful Uses of Atomic Energy, as amended.

The subsequent arrangement to be carried out under the above-mentioned agreements involves approval of the following retransfer:

RTD/EU (NO)–40, for the retransfer of 8 irradiated test fuel rods containing 3,018 grams of uranium enriched to approximately 7.6 percent in the isotope uranium-235 and 21.3 grams of plutonium from Norway to the United Kingdom Atomic Energy Authority for post-irradiation examination and subsequent storage.

In accordance with section 131 of the Atomic Energy Act of 1954, as amended, it has been determined that this subsequent arrangement will not be inimical to the common defense and security.

This subsequent arrangement will take effect no sooner than fifteen days after the date of publication of this notice.

Dated: July 13, 1987.

For the Department of Energy.

David B. Waller,

Assistant Secretary for International Affairs and Energy Emergencies.

[FR Doc. 87–16292 Filed 7–16–87; 8:45 am]

BILLING CODE 6450–01–M

Alternative Dry Spent Nuclear Fuel Storage Technologies; Solicitation for a Cooperative Agreement Proposal

AGENCY: U.S. Department of Energy, Richland Operations Office.

ACTION: Notice of Solicitation for a Cooperative Agreement Proposal (SCAP).

SUMMARY: In accordance with the DOE Financial Assistance Rules 10 CFR 600.9, the Department of Energy, Richland Operations Office announces that it intends to support and stimulate the development of alternative dry spent nuclear fuel storage technologies by issuing a solicitation for cooperative agreement proposal to design, construct, and test concrete storage modules or modules significantly different than those previously tested in other DOE programs for dry storage of unconsolidated and/or consolidated spent nuclear fuel.

Cooperative Agreement Number: DE–SC06–87RL11394.

Scope of Project: The Department of Energy (DOE) is seeking sources that are interested in entering into cost sharing cooperative agreements with DOE for providing and testing spent fuel storage modules. The participant(s) would design, fabricate, and provide to the Idaho National Engineering Laboratory, the module(s) for unlicensed testing and demonstration of the dry storage of unconsolidated and/or consolidated spent nuclear fuel. The modules will be similar to those that could be used at a reactor or as lag storage at a regional or central receiving and handling facility.

It is anticipated that firms in this business will provide their modules to DOE together with design data reports, Topical Safety Analysis Reports (TSAR's) as-built drawings, and title to the modules. DOE, in cooperation with participant(s), will performance test (heat transfer and shielding) the modules for suitability for dry storage of unconsolidated and/or consolidated spent nuclear fuel and will provide the participant(s) with operational experience, performance analyses, and test data obtained by a DOE contractor. It is the intent that the test information will support the participant's effort to receive Nuclear Regulatory Commission certification of the storage module(s). It is anticipated that one to four cooperative agreements will be awarded. Required module delivery date is October 15, 1988.

The SCAP is expected to be issued on or about July 6, 1987, and will call for proposals to be submitted by August 31, 1987. Written requests to receive a copy of the solicitation should be directed to the contact person shown below.

Reference should be made to DE–SC06–87RL11394.

FOR FURTHER INFORMATION CONTACT: Mr. R. P. Angulo, U.S. Department of Energy, Richland Operations Office, P.O. Box 550, Richland, WA 99352 (509) 376–4320.

Issued in Richland, WA.

Dated: June 22, 1987.

Robert D. Larson,

Director, Procurement Division.

[FR Doc. 87–16293 Filed 7–16–87; 8:45 am]

BILLING CODE 6540–01–M

Restriction of Eligibility for Grant Award; Procurement and Assistance Management Directorate

AGENCY: Department of Energy (DOE).

ACTION: Notice.

SUMMARY: DOE announces that pursuant to 10 CFR 600.7 (b), it intends to renew on a restricted eligibility basis a grant to the Council of Great Lakes Governors to organize and carry out a Regional Biomass Program in the Great Lakes Area of the Northern Tier States.

The grant is being renewed for a 1-year period beginning September 1, 1987. The estimated amount is $500,000.

Procurement Request No.: 870R21390.001.

Project Scope: This grant renewal is to continue a Regional Biomass Program in the Great Lakes Area of the Northern Tier States. The primary purpose is to implement biomass research and development, technology utilization, and technology transfer on a regional basis in a manner which will maximize the participation of the public and private sectors of each state. CGLG has the unique capability to equally represent all of the states in the Great Lakes subregion and involve the appropriate private and public interest groups in the states. CGLG is an existing, regionally organized consortium with background experience in management of similar activities. Eligibility for this study is, therefore, restricted to CGLG.

FOR FURTHER INFORMATION CONTACT: Bryan D. Walker, Research Management Branch, Research and Waste Management Division, U.S. Department of Energy, Oak Ridge, TN 37831, (615–576–0716).

Issued in Oak Ridge, Tennessee, on July 8, 1987.

Peter D. Dayton,

Director, Procurement and Contracts Division, Oak Ridge Operations.

[FR Doc. 87–16294 Filed 7–16–87; 8:45 am]

BILLING CODE 6450–01–M

Economic Regulatory Administration

[Docket No. ERA C&E–87–21; OFP Case No. 67058–9354–20–24]

Order Granting an Exemption Pursuant to the Powerplant and Industrial Fuel Use Act of 1978 to San Joaquin Cogen, Inc.

AGENCY: Economic Regulatory Administration, Department of Engergy.

ACTION: Order Granting Exemption.

SUMMARY: On February 17, 1987, San Joaquin Cogen, Inc. (San Joaquin or

petitioner) filed a petition with the Economic Regulatory Administration (ERA) of the Department of Energy (DOE) requesting a permanent exemption from the provisions of the Powerplant and Industrial Fuel Use Act of 1978 ("FUA" or "the Act") (42 U.S.C. 8301 *et seq.*) for a congeneration facility to be located in San Joaquin County, California.

Title II of the Act prohibits the construction or operation of a baseload powerplant without the capability to use coal or another alternate fuel as a primary energy source. The exemption petition was based on cogeneration. The final rule containing the criteria and procedure for petitioning for exemptions from the prohibitions of Title II of FUA are found in 10 CFR Parts 500, 501, and 503. Final rules setting forth criteria and procedures for petitioning for this type exemption are found at 10 CFR 503.37.

Pursuant to section 212(c) of the Act and 10 CFR 503.37, ERA hereby issues this order granting a permanent exemption from the prohibitions of FUA for the proposed powerplant at the aforementioned installation.

The basis for ERA's order is provided in the **SUPPLEMENTARY INFORMATION** section below.

DATES: In accordance with section 702(a) of FUA, this order and its provisions shall take effect on September 15, 1987.

FOR FURTHER INFORMATION CONTACT:

John Boyd, Coal and Electricity Division, Office of Fuels Programs, Economic Regulatory Administration, 1000 Independence Avenue, SW, Room GA–093, Washington, DC 20585, Telephone (202) 586–4523.

Steven E. Ferguson, Esq., Office of General Counsel, Department of Energy, Room 6A–113, 1000 Independence Avenue, SW, Washington, DC 20585, Telephone (202) 586–6947.

The public file containing a copy of this order and other documents and supporting materials on this proceeding is available on request from DOE, Freedom of Information Reading Room, 1000 Independence Avenue, SW, Room 1E–190, Washington, DC 20585, Monday through Friday, 9:00 a.m. to 4:00 p.m., except Federal holidays.

SUPPLEMENTARY INFORMATION: FUA prohibits the construction and operation of certain new baseload powerplants without the capability to use coal or alternate fuel unless an exemption for has been granted by ERA. The petitioner has filed a petition for a permanent exemption to use natural gas or oil as a primary energy source in its facility located in San Joaquin County, California.

Procedural Requirements

In accordance with the procedural requirements of FUA and 10 CFR 501.3(d), ERA published its Notice of Acceptance of Petition for Exemption and Availability of Certification relating to this petition in the **Federal Register** on April 3 1987 (52 FR 10794), commencing a 45-day public comment period pursuant to section 701(c) of FUA. Copies of the petition were provided to the Environmental Protection Agency as required by section 701(f). During the comment period, interested persons were afforded an opportunity to request a public hearing. The comment period closed on May 18, 1987; no comments were received and no hearing was requested.

Order Granting Permanent Exemption

Based upon the entire record of this proceeding, ERA has determined that the petitioner has satisfied all of the eligibility requirements for the requested exemption as set forth in 10 CFR 503.37, and pursuant to section 212(c) of FUA, ERA hereby grants the petitioner's permanent exemption for the powerplant to be installed at its facility in San Joaquin County, California, permitting the use of natural gas or oil as a primary energy source in the unit(s).

Pursuant to section 702(c) of the Act and 10 CFR 501.69 any person aggrieved by this order may petition for judicial review at any time before the 60th day following the publication of this order in the **Federal Register.**

Issued in Washington, DC, on July 7, 1987.

Robert L. Davies,

Director, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 87–16295 Filed 7–16–87; 8:45 am]

BILLING CODE 6450–01–M

Petroleum Violation Escrow Funds; Correction; Warner Amendment Distribution to States, Territories and Possessions and the District of Columbia

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Notice of distribution of $301,400 to correct error in initial distribution pursuant to The Further Continuing Appropriations Act, 1983, Pub. L. 97–377, section 155, ("Warner Amendment").

SUMMARY: Pursuant to The Further Continuing Appropriations Act, 1983, Pub. L. 97–377, section 155, ("the Statute"), the Secretary of Energy, on February 4, 1983, disbursed $200,000,000 to the states, District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, the Territory of Guam, the U.S. Virgin Islands and American Samoa (hereafter referred to as "jurisdictions"). The $200,000,000 was derived from judgments and settlements of alleged petroleum pricing and allocation violations and held in trust accounts administered by the Department of Energy (DOE) on December 17, 1982. The Economic Regulatory Administration (ERA) hereby gives notice, on behalf of the Secretary of Energy, of the distribution of a total of $301,400 to correct a previous error in distribution. *See,* Table 1.

In accordance with the terms of the Statute, $200,000,000 was distributed to the Governors of each of the fifty-six jurisdictions on February 4, 1983, in the amounts listed in Table A, Distribution of $200,000,000 in Escrowed Funds to the States, District, Territories and Possessions (48 FR 5293, February 4, 1983). As provided for in the Statute the funds were pro rated on the basis of each jurisdiction's consumption of certain petroleum products compared to the total U.S. consumption of such petroleum products during the period September 1, 1973, through January 28, 1981. The February 4, 1983, disbursement reflected the calculations of each jurisdiction's share by the ERA. While the calculations themselves were correct, the transposition of consumption figures used in making the calculations resulted in small errors in the allocations to all jurisdictions.

ERA's error resulted in underpayments to all jurisdictions except Guam, Idaho, the Virgin Islands and Puerto Rico. Conversely, the February 4, 1983, payments to Guam, Idaho, the Virgin Islands and Puerto Rico were in excess of the authorized levels. In order to fulfill the pro rata distribution mandated by the Statute, a correcting redistribution of the funds was necessary.

An initial redistribution of these funds was made on July 17, 1986, and the final correcting redistribution was accomplished on July 15, 1987.

The amounts redistributed to the jurisdictions are subject to the restrictions on use and all other provisions of the Statute as discussed in 48 FR 5293 (1983).

FOR FURTHER INFORMATION CONTACT: Thom Sacco, Acting Deputy Solicitor, Economic Regulatory Administration, Department of Energy, Washington, DC 20585, telephone: 202–586–2012.

SUPPLEMENTARY INFORMATION:

I. Background

The amounts overpaid to Guam, Idaho, the Virgin Islands and the Commonwealth of Puerto Rico on February 4, 1983, were recouped by ERA pursuant to agreements with these four recipients. The overpayment distributed to the Commonwealth of Puerto Rico on February 4, 1983, was deducted from the amount of funds due that jurisdiction in the distribution made on July 17, 1986, pursuant to *Diamond Shamrock Refining and Marketing Company* v. *Standard Oil Co., et al.*, C.A. No. C2–84–1432 (S.D. Ohio). The amount deducted from Puerto Rico's share of funds was redistributed in the July 17, 1986, distribution to the jurisdictions which were underpaid on February 4, 1983.

The state of Idaho repaid the overpayment of $129,000, plus interest, directly to ERA by State warrant dated July 23, 1986. On August 1, 1986, that amount was deposited in an escrow account established expressly for the recouped overpayments. On April 23, 1987, $1,600 representing the overpayment recouped from Guam and $170,800 representing the overpayment recouped from the Virgin Islands were obtained and deposited in the established escrow account. *See, A. Tarricone, Inc., et al.*, 15 DOE ¶85,495 (1986).

The $301,400, plus accrued interest, has now been disbursed to the remaining fifty-two jurisdictions from the escrow account established for the recouped funds. Payment of the funds was made by check sent to the Governor of each jurisdiction.

The amounts redistributed to the remaining fifty-two jurisdictions were determined by recalculating the ratios for the February 4, 1983, distribution, correcting ERA's computational error in the process. These new ratios were then applied to the $200,000,000. The amounts thus calculated were subtracted from the February 4, 1983, distribution amounts in order to determine the amount of the respective underpayments. The ratio of each jurisdiction's underpayment to the total underpayment was then calculated in order to determine the "correction ratio". This correction ratio has been applied to the present redistribution to assure that each jurisdiction received the correct allocation of the $200,000,000.

Table 1 lists the correction ratio and the amount redistributed on July 15, 1987.

II. Statute

The Statute specifies that the funds received by the jurisdictions be used only for the following energy conservation programs:

(1) The program under Part A of the Energy Conservation in Existing Buildings Act of 1976 (relating to weatherization of buildings; 42 U.S.C. 6861 and following);

(2) The programs under Part D of Title III of the Energy Policy and Conservation Act (relating to primary and supplemental State energy conservation programs; 42 U.S.C. 6321 and following);

(3) The program under Part G of Title III of the Energy Policy and Conservation Act (relating to energy conservation for schools and hospitals; 42 U.S.C. 6371 and following);

(4) Programs under the National Energy Extension Service Act (relating to the promotion of conservation by small businesses and individuals; 42 U.S.C. 7001 and following); and

(5) The program under the Low-Income Home Energy Assistance Act of 1981 (relating to financial assistance to low income households for utility bills; 42 U.S.C. 8621 and following).

The funds disbursed pursuant to the status may not supplant funds otherwise available for such programs, nor be used by any jurisdiction for administrative expenses. Additional information regarding limitations on use of these funds may be found in Ruling 1983–1, 48 FR 6082 (1983).

III. Conclusion

The amounts distributed to the jurisdictions on February 4, 1983, were incorrect due to inadvertent transposition of figures. The ratios computed based on consumption of certain petroleum products, as required by the statute, resulted in slight errors in the amounts distributed to the jurisdictions. A correction ratio was calculated and as a result of the redistributions of July 17, 1986, and July 15, 1987, all jurisdictions have received the correct amount of funds. These redistributions did not exceed the maximum amount for disbursement mandated by the statute plus accrued interest on the recouped overpayments.

Issued in Washington, D.C. on June 25, 1987.

Marshall A. Staunton,

Administrator, Economic Regulatory Administration.

TABLE I.—REDISTRIBUTION OF FUNDS JULY 15, 1987

State	Correction Ratio	Redistribution $301,400
Alabama	0.009548	$2,877.77
Alaska	.003182	959.05
American Samoa	.005092	1,534.73
Arizona	.006365	1,918.41
Arkansas	.007002	2,110.40
California	.061744	18,609.64
Colorado	.006365	1,918.41
Connecticut	.010821	3,261.45
Delaware	.003182	959.05
District of Columbia	.001273	383.68
Florida	.029280	8,824.99
Georgia	.014004	4,220.81
Guam	.000000	0.00
Hawaii	.006365	1,918.41
Idaho	.000000	0.00
Illinois	.089752	27,051.25
Indiana	.035646	10,743.70
Iowa	.017186	5,179.86
Kansas	.022279	6,714.89
Kentucky	.008275	2,494.09
Louisiana	.131763	39,713.41
Maine	.006365	1,918.41
Maryland	.007002	2,110.40
Massachusetts	.117123	35,300.87
Michigan	.036919	11,127.39
Minnesota	.010821	3,261.45
Mississippi	.007638	2,302.09
Missouri	.012094	3,645.13
Montana	.002546	767.36
Nebraska	.004456	1,343.04
Nevada	.002546	767.36
New Hampshire	.003183	959.36
New Jersey	.040738	12,278.43
New Mexico	.012094	3,645.13
New York	.050286	15,156.20
No. Mariana Islands	.002546	767.36
North Carolina	.014004	4,220.81
North Dakota	.006365	1,918.41
Ohio	.022915	6,906.58
Oklahoma	.007638	2,302.09
Oregon	.006365	1,918.41
Pennsylvania	.029927	9,020.00
Puerto Rico	.000000	0.00
Rhode Island	.002546	767.36
South Carolina	.007638	2,302.09
South Dakota	.001910	575.67
Tennessee	.010184	3,069.46
Texas	.056015	16,882.92
Utah	.003819	1,151.05
Vermont	.001273	383.68
Virgin Islands	.000000	0.00
Virginia	.016550	4,988.17
Washington	.010184	3,069.46
West Virginia	.003819	1,151.05
Wisconsin	.010821	3,261.45
Wyoming	.002546	767.36
Totals	1.000000	301,400.00

[FR Doc. 87–15954 Filed 7–16–87; 8:45 am]

BILLING CODE 6450–01–M

Federal Energy Regulatory Commission

[Docket Nos. ER87–526–000 et al.]

Electric Rate and Corporate Regulation Filings; Arizona Public Service Co. et al.

July 13, 1987.

Take notice that the following filings have been made with the Commission:

1. Arizona Public Service Company

[Docket No. ER87–526–000]

Take notice that on July 6, 1987, Arizona Public Service Company (APS) tendered for filing a proposed Amendment (dated May 27, 1987) to the Letter Agreement Revision (dated

November 10, 1983) to Service Schedule D of the Power Coordination Agreement (PCA) between APS and Plains Electric Generation and Transmission Cooperative, Inc. (Plains).

Plains is now ready to provide dynamic load control for the Navopache Electric Cooperative (NEC), load served out of the Showlow and Coronado substations. Plains wished to continue the present agreement for the NEC loads at Zeniff and Linden. This Amendment allows Plains to provide dynamic load control for the Showlow and Coronado delivery points while APS will provide load control for the Zeniff and Linden delivery points plus losses for the entire Navopache Electric Cooperative (NEC) load.

APS requests that this Letter Agreement become effective as of June 1, 1987, as stipulated therein and, therefore, requests waiver of the notice requirements under 18 CFR 35.11.

Copies of this filing were served upon Plains and the Arizona Corporation Commission.

Comment date: July 27, 1987, in accordance with Standard Paragraph E at the end of this notice.

2. Commonwealth Edison Company

[Docket No. ER87-527-000]

Take notice that on July 7, 1987, Commonwealth Edison Company tendered for filing Amendment No. 2 dated December 31, 1986, to an Agreement, dated August 15, 1985, among Commonwealth Edison Company (Commonwealth), Consumers Power Company (Consumers), and the Detroit Edison Company (Detroit).

The Agreement provides for Commonwealth to make available to Consumers and Detroit Experimental Off-Peak Energy in order to effect economies of operation among the parties. This Amendment extends the duration of the Agreement through December 31, 1987, and from year to year thereafter until cancelled by mutual consent of the parties or upon two months written notice given at any time by any party.

Copies of the filing were served upon Consumers Power Company, the Detroit Edison Company, the Ilinois Commerce Commission, and the Michigan Public Service Commission.

Comment date: July 29, 1987, in accordance with Standard Paragraph E at the end of this notice.

3. Florida Power Corporation

[Docket No. ER87-490-000]

Take notice that on July 7, 1987, Florida Power Corporation (Florida Power) tendered for filing its presently effective "Transmission Service Resale Rate Schedule T-1" as a supplement to the transmission contract filed in this docket on June 15, 1987. The T-1 tariff, as amended from time to time, sets out the rates under which the transmission service will be rendered. Florida Power requests that the filing as supplemented be allowed to become effective on August 14, 1987, as originally requested, and asks waiver of notice requirements to achieve that effective date.

Copies of the filing have been sent to the Florida Crushed Stone Company and the Florida Public Service Commission.

Comment date: July 27, 1987, in accordance with Standard Paragraph E at the end of this notice.

4. Kansas Power and Light Company

[Docket No. ER87-525-000]

Take notice that on July 6, 1987, Kansas Power and Light Company (KPL) tendered for filing a newly executed renewal contract dated June 22, 1987, with the City of Stafford, Stafford, Kansas for wholesale service to that community. KPL states that this contract permits the City of Stafford to receive service under rate schedule WTU-12/83 designated Supplement No. 11 to R.S. FERC No. 193. The proposed effective date is July 1, 1987. The proposed contract change provides essentially for the ten year extension of the original terms of the presently approved contract. In addition, KPL states that copies of the contract have been mailed to the City of Stafford and the State Corporation Commission.

Comment date: July 27, 1987, in accordance with Standard Paragraph E at the end of this document.

5. New York State Electric & Gas Corporation

[Docket No. ER86-370-003]

Take notice that on June 30, 1987, New York State Electric & Gas Corp. (NYSEG) tendered for filing a supplemental settlement filing to reflect the effect on the settlements rates of the change in the federal income tax rate effective July 1, 1987.

A copy of the filing has been served upon the Public Service Commission of the State of New York, Public Utilities Commission of Ohio, and Pennsylvania Public Utilities Commission.

NYSEG requests waiver of any Commission filing requirements pursuant to § 35.13 of the Commission's Rules and Regulations that may be necessary to implement this supplemental settlement agreement.

Comment date: July 27, 1987, in accordance with Standard Paragraph E at the end of this notice.

6. Toledo Edison Company

[Docket No. ER87-528-000]

Take notice that on July 7, 1987, Toldeo Edison Company (Toledo Edison) tendered for filing the Third Addendum between Toledo Edison and American Municipal Power-Ohio, Inc. (AMP-Ohio).

Toledo Edison states that the Third Addendum to the Municipal Resale Service Rate Agreement provides for an increase in charges to AMP-Ohio of $329,000 annually, effective April 1, 1987, and an additional increase in charges of $345,000 annually, to be effective on the later of October 1, 1987, or the first date of the month following the month in which Toledo Edison's retail base rates are increased as a result of PUCO Case No. 86-2026-EL-AIR or a subsequently filed rate case. Toledo Edison states that such increase are consistent with the provisions of the Municipal Resale Service Rate Agreement and have been agreed upon by AMP-Ohio.

Toledo Edison requests waiver of the Commission's regulations in order to permit each step of the rates incorporated in the Third Addendum to become effective in accordance with its terms.

Comment date: July 27, 1987, in accordance with Standard Paragraph E at the end of this notice.

7. Utah Power & Light Company

[Docket No. ER87-529-000]

Take notice that on July 8, 1987, Utah Power & Light Company (UP&L) tendered for filing an amendment to the Bananza Project Interconnection Agreement among UP&L, Deseret Generation and Transmission Cooperative (DG&T) and Utah Associated Municipal Power System (UAMPS). The changes to the Agreement were negotiated by the parties to resolve issues currently pending in Docket Nos. ER84-571-001 (Phase II), ER85-486-001 and ER86-300-001. The proposed agreement also reflects compliance with the rate design adopted by the Administrative Law Judge in his Initial Decision at 38 FERC ¶ 63.038 (1987), subject to final determination by the Commission.

UP&L request that the notice requirements of 18 CFR 35.3 be waived, as provided in 18 CFR 35.11, and that the scheduling and accounting provisions of the Agreement be made effective retroactively as of July 1, 1987.

Copies of this filing have been served upon DG&T, UAMPS and the Utah Public Service Commission.

Comment date: July 27, 1987, in accordance with Standard Paragraph E at the end of this notice.

8. Tucson Electric Power Company

[Docket No. ER87-524-000]

Take notice that on July 6, 1987, Tucson Electric Power Company (Tucson) tendered for filing an Interconnection Agreement (the Agreement) between Tucson and the Imperial Irrigation District (IID). The primary purpose of the Agreement is to establish the terms and conditions for the interconnection of the electrical systems of Tucson and IID and the exchange of economy energy between the two systems. Tucson states that service may be provided under Service Schedule A to the Agreement entitled "Economy Energy Interchange."

Tucson requests an effective date of June 16, 1987, and therefore requests waived of the Commission's notice requirements.

Tucson states that copies of the filing were served upon IID.

Comment date: July 29, 1987, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87-16310 Filed 7-16-87 8:45 am]

BILLING CODE 6717-01-M

Application Filed with the Commission

July 13, 1987.

Take notice that the following hydroelectric application has been filed with the Federal Energy Regulatory Commission and is available for public inspection:

a. Type of Application: Declaration of Intention.

b. Project No: EL87-48.

c. Date Filed: June 25, 1987.

d. Applicant: Clatsop Economic Development Committee.

e. Name of Project: CEDC Fisheries Project.

f. Location: On the South Fork Klaskanine River, Clatsop County, Oregon.

g. Filed Pursuant to: Section 23(b) of the Federal Power Act, 16 U.S.C. 817(b).

h. Applicant Person: James Hill, Duncan Law, CEDC Fisheries Project, 250-36th Street, Astoria, Oregon 97103.

i. FERC Contact: Diane Scire, (202) 376-9758.

j. Comment Date: August 10, 1987.

k. Description of Project: The proposed run-of-river project would consist of: (1) An intake; (2) a 2,500-foot-long, 8-inch penstock; (3) a powerhouse containing one generating unit with the capacity of 12kW; (4) a transmission line; and (5) appurtenant facilities.

When a Declaration of Intention is filed with the Federal Energy Regulatory Commission, the Federal Power Act requires the Commission to investigate and determine if the interests of interstate or foreign commerce would be affected by the project. The Commission also determines whether or not the project: (1) Would be located on a navigable waterway; (2) would occupy or affect public lands or reservations of the United States; (3) would utilize surplus water or water power from a government dam; or (4) if applicable, has involved or would involve any construction subsequent to 1935 that may have increased or would increase the project's head or generating capacity, or have otherwise significantly modified the project's pre-1935 design or operation.

l. Purpose of Project: The project is being constructed to furnish electric power for the applicant's fish hatchery, which is at least 2 miles from the nearest electrical service. Power will be wholly consumed on the property.

m. This notice also consists of the following standard paragraphs B, C, and D2.

B. *Comments, Protests, or Motions to Intervene*—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of the Rules of Practice and Procedure, 18 CFR 385.210, 385.211, 385.214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

C. *Filing and Service of Responsive Documents*—Any filings must bear in all capital letters the title "COMMENTS", "RECOMMENDATIONS FOR TERMS AND CONDITIONS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST" or "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing is in response. Any of the above named documents must be filed by providing the original and the number of copies required by the Commission's regulations to: Kenneth F. Plumb, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. An additional copy must be sent to: Mr. Fred E. Springer, Director, Division of Project Management, Federal Energy Regulatory Commission, Room 203-RB, at the above address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

D. *Agency Comments*—Federal, State, and local agencies are invited to file comments on the described application. (A copy of the application may be obtained by agencies directly from the Applicant.) If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87-16311 Filed 7-16-87; 8:45 am]

BILLING CODE 6717-01-M

ENVIRONMENTAL PROTECTION AGENCY

[ER-FRL-3231-1]

Intent To Prepare an Environmental Impact Statement; City of Durham, NC, Eno River Wastewater Treatment Plant Service Area

AGENCY: U.S. Environmental Protection Agency (EPA).

ACTION: Notice of Intent to prepare an Environmental Impact Statement (EIS) to examine wastewater management alternatives and their impacts for the City of Durham, North Caroline; Eno River Wastewater Treatment Plant and service area.

Purpose: In accordance with section 511(c) of the Clean Water Act (CWA) and section 102(2)(c) of the National Environmental Policy Act (NEPA), EPA has identified a need to prepare an EIS and therefore issues this Notice of Intent pursuant to 40 CFR 1507.7.

For Further Information and to be Placed on the Project Mailing List Contact: Robert C. Cooper, Environemntal Assessment Branch, EAB–4, US EPA Region IV, 345 Courtland Street NE, Atlanta, Georgia, 30365 Telephone (404) 347–3776 or (FTS) 257–3776.

Need for action: The EPA and the North Caroline Division of Environmental Management (DEM) have determined the need to examine wastewater management alternatives for the City of Durham-Eno River Wastewater Treatment Plant (WWTP) and service area. This area is undergoing rapid development and the City of Durham has determined the need to replace the present Eno River facility which has an interim capacity of 2.5 MGD (million gallons per day) with a new 10 MGD facility to accommodate existing needs and future growth through 1999. Soon after 1999, additional expansions to 20 MGD and 30 MGD are planned. The facility discharges to the Eno River several miles upstream of the headwaters of the Falls of the Neuse Reservoir (Falls Lake). Falls Lake is an important regional drinking water supply source.

The EIS will examine the potential impacts of alternative wastewater management strategies on the water quality of the Eno River and Falls Lake. The EIS will also address secondary impacts of potential growth in the immediate drainage basis of the lake (and attendant potential non-point source impacts) that will result from expansion of the WWTP. The results of the EIS will be used in determining EPA 201 Construction Grant funding for the facility and projects in the service area.

Alternatives: The EIS will examine all feasible long term alternatives for wastewater treatment and disposal in the service area. The EIS will address alternatives proposed in the draft Eno River WWIP supplement to the Durham 201 Facilities Plan and in the draft scoping report written by DEM. There will be particular emphasis on alternatives that minimize impacts to Falls Lake and secondary impacts in the service area.

Scoping: Participation in the EIS process is invited from individuals, organizations, and government agencies. Preliminary project scoping is underway. EPA will prepare and circulate a draft scoping report for the EIS prior to the public scoping meeting. Key government agencies and other interested parties are being designated for membership in an EIS advisory committee. The public scoping meeting will be held jointly with DEM on August 13, 1987 at 7:30 p.m. in the Durham City Hall. Input to the EIS may also be addressed to the contact person listed above. Persons wishing to be included on the mailing list to receive a copy of the draft EIS should write to the same address.

Estimated date of draft EIS release: December 1, 1988.

Responsible Official: Jack E. Ravan, Regional Administrator.

Dated: July 14, 1987.

Richard E. Sanderson,

Director, Office of Federal Activities.

[FR Doc. 87–16382 Filed 7–16–87; 8:45 am]

BILLING CODE 6560–50–17

[ER-FRL-3234-2]

Environmental Impact Statements; Notice of Availability

Responsible agency: Office of Federal Activities, General Information (202) 382–5073 or (202) 382–5075.

Availability of Environmental Impact Statements Filed July 6, 1987 Through July 10, 1987 Pursuant to 40 CFR 1506.9.

EIS No. 870236, Final, BLM, ND, North Dakota Resource Management Plan, Dunn and Bowman Counties, Due: August 17, 1987, Contact: Mark Stiles (701) 225–9140.

EIS No. 870237, Final, FHW, HI, Moanalua Road Improvements, Pali Momi Street to Aiea Interchange, City and County of Honolulu, Due: August 17, 1987, Contact William Lake (808) 541–2700.

EIS No. 870238, DSuppl, COE, CA, Marathon Industrial/Commercial Businesses Park Development, Fill Permit, Additional Information, Alameda County, Due: August 31, 1987, Contact: Les Tong (415) 974–0439.

EIS No. 870239, Draft, UMT, FL, Metromover Automated Transportation System, Construction and Improvement, Omni and Brickell Legs, Dade County, Due: August 31, 1987, Contact Peter Stowell (404) 347–39448.

EIS No. 870240, Final COE, CA, Santa Barbara County Streams, Flood Control Plan, Lower Mission Creek, Santa Barbara County, Due: August 17, 1987, Contact: John Kennedy (213) 894–2314.

EIS No. 870242, Draft, FHW, FL, Apollo Hickory Corridor/Bridge Construction and Improvements, US 1 at Apollo II Boulevard to US 1 at Aurora Road, Crane Creek and Eau Gallie River, Brevard County, Due: September 8, 1987, Contact: James Skinner (904) 681–7223.

EIS No. 870243, Draft, COE, CA, Caliente Creek Stream Groups, Flood Control Plan, Kern Coutry, Due: August 31, 1987, Contact: Jeff Groska (916) 551–1860.

EIS No. 870244, Final, DOE, MT, Conrad-Shelby 230kV Transmission Line Project, Construction, Operation, and Maintenance, Pondera and Tooele Counties, Due: August 17, 1987, Contact: James Davies (406) 657–6532.

Amended Notice

EIS No. 870235, Draft, BIA, WA, Swinomish Marina and Associated Facilities Development, Lease Approval, Skagit County, Due: September 8, 1987, Published FR 7–10–87—Review period extended.

Dated: July 14, 1987.

Richard E. Sanderson,

Director, Office of Federal Activities.

[FR Doc. 87–16383 Filed 7–16–87; 8:45 am]

BILLING CODE 6560–50–M

[ER-FRL-3234-3]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared June 29, 1987 through July 2, 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 the **Federal Register** dated April 24, 1987 (52 FR 13749).

Draft EISs

ERP No. D–AFS–K03017–CA, Rating EC2, Angeles Pipeline Project, Construction, Operation, Maintenance, and Abandonment, Emidio Pump Station and Tank Farm to Los Angeles Basin, CA. Summary: EPA requested that the final EIS demonstrate the project's compliance with Section 404 of the Clean Water Act. EPA also requested that the final EIS analyze the project's potential impacts on two sites on the Superfund National Priority List, and requested more information on the feasibility of installing shutoff valves

where the pipelines cross streams, to reduce the impacts of oil spills.

ERP No. D–AFS–L61167–OR, Rating EC2, Mt. Ashland Ski Area Development Plan, Improvements, Rogue River Nat'l Forest, OR. SUMMARY: EPA recommended that quantitative support is needed in order to fully assess water quality effects of new soil disturbances from ski area expansion and effluent from the new wastewater disposal system. Water quality in Ashland Creek, Reeder Reservoir, and Bear Creek could be adversely affected.

ERP No. D–COE–C36062–00, Rating EO3, Passaic River Basin Flood Control Plan, NJ and NY. SUMMARY: EPA has environmental objections to the proposed project based on impacts to wetlands and aquatic environments, groundwater, hazardous waste sites and water quality. In addition, EPA believes there is inadequate information to complete our review. EPA requests that a supplemental or revised draft EIS is presented prior to preparation of the final EIS.

ERP No. D–FHW–D40226–MD, Rating EC2, MD–5/Branch Ave. Improvement, North of I–97 to South of US 301, MD. SUMMARY: EPA feels that the project may have significant impacts to surface water quality, ground water, and to wetlands in adjacent areas. Therefore, EPA recommends thorough evaluation and mitigation for each of the alternatives, prior to the issuance of the final EIS.

ERP No. DS–FHW–F40239–MN, Rating EC1, MN–TH–33 Improvements, I–35 to US TH–53 Urban Section Alternatives, 404 Permit, MN. EPA expressed concerns regarding wetland, groundwater, and secondary impacts and recommended the "through Town" route as the preferred alternative.

ERP No. D–NOA–B90008–NH, Rating LO, Great Bay Nat'l Estuarine Research Reserve Designation and Mgmt. Plan Preparation, NH. SUMMARY: EPA supports the proposed acquisition and development of the Great Bay National Estuarine Research Reserve. Furthermore, EPA believes that the proposed plan will not cause significant adverse impact on the environment.

Final EISs.

ERP No. F–COE–E32065–FL, Port Sutton Channel Navigation Improvements, Hillsborough Bay, FL. SUMMARY: Based on the review of the final EIS, EPA does not anticipate any significant/or long-term adverse consequences related to this action.

ERP No. F–COE–J01069–CO, Parachute Creek Shale Oil Program, Phase II, Expansion, 404 Permit, CO. SUMMARY: EPA's review found that the final EIS addressed most of EPA's concerns expressed regarding the draft EIS. However, EPA suggested that the 404 dredge and fill permit require construction of the proposed action within 10 years and requested again a mass balance of trace constituents. EPA also stated it was inappropriate for the Corps to avoid describing the alternatives for hazardous waste treatment and disposal by deferring the discussion until EPA administers a permit.

ERP No. F–FHW–E40692–GA, I–20 Widening, Hill St. to Columbia Drive, 404 Permits, GA. SUMMARY: EPA's primary concern is that intersectional modeling, which was requested at the draft EIS stage, was not provided in the final EIS. A clear description of the scope of the proposed project relative to ramp/intersectional improvements was also lacking. All this is needed to verify compliance with the National Ambient Air Quality Standards for carbon monoxide (CO), especially since the proposed project area is a nonattainment area for both CO and ozone (O3). EPA considers the final EIS unresponsive and inadequate, and recommends the document be withdrawn or supplemental draft and final EISs be developed.

ERP No. F–SFW–C64001–NJ, Great Swamp Nat'l Wildlife Refuge Master Plan, NJ. SUMMARY: EPA believes that the project as proposed will not result in significant adverse environmental impacts and has no objection to its implementation. EPA requests the opportunity to review further information concerning hazardous waste sites and water quality monitoring as it becomes available.

ERP No. F–UAF–J10007–00, Central Radar Systems, Over-the-Horizon Backscatter Radar System, Construction and Operation, MN, SD, and ND. SUMMARY: The final EIS has selected preferred further study areas for receive and transmit sites. EPA recommends that the Record of Decision direct that EPA will be given the opportunity to review a comparative study of possible sites in each study area in order to confirm that the preferred site would minimize adverse environmental impacts.

Amended Notice

The following review should have appeared in the Federal Register Notice published on July 2, 1987.

ERP No. D–BLM–J61070–00, Rating EC2, Centennial Mtns. Wilderness Study Recommendations, Targhee and Beaverhead Nat'l Forests, ID and MT. SUMMARY: EPA's review finds that the information presented does not support the preferred alternative identified in the draft EIS as Alternative 1. EPA states that the EIS is informationally insufficient regarding potential air and water quality impacts from development, and mitigation of potential impacts from existing sources and future development. Furthermore, the value of Environmental Quality, i.e. fish, wildlife, drinking water, archeological sites, scenic and aesthetic attributes, is not adequately addressed or related to the commodity values presented in this draft EIS.

Dated: July 14, 1987.

Richard E. Sanderson,

Director, Office of Federal Activities.

[FR Doc. 87–16384 Filed 7–16–87; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collection Requirements Submitted to the Office of Management and Budget for Review

July 9, 1987.

The Federal Communications Commission has submitted the following information collection requirements to OMB for review and clearance under the Paperwork Reduction Act of 1980, 44 U.S.C. 3507.

Copies of these submissions may be purchased from the Commission's duplicating contractor, International Transcription Service, 2100 M Street, NW., Suite 140, Washington, DC 20037, or telephone (202) 857–3815. Persons wishing to comment on an information collection should contact J. Timothy Sprehe, Office of Management and Budget, Room 3235 NEOB, Washington, DC 20503, telephone (202) 395–4814. Copies of these comments should also be sent to the Commission. For further information contact Doris Benz, Federal Communications Commission, Telephone (202) 632–7513.

OMB no.: 3060–0090

Title: Registration of Canadian Radio Station Licensee and Application for Permit to Operate, and Certificate of Registration

Form no.: FCC 410

Action: Extension (Renewal)

Estimated annual burden: 223 Responses; 19 Hours

Needs and uses: Filing is required by Canadian licensees to request permission to operate mobile units or an amateur station in the United States. Data is used to establish eligibility for permit, and is used for legal and enforcement purposes.

OMB no.: 3060–0039
Title: Application for a New or Modified Common Carrier Microwave Radio Station License Under Part 21
Form no.: FCC 436
Action: Extension (Renewal)
Estimated annual burden: 3,200 Responses; 1,600 Hours
Needs and uses: Filing is required of common carriers when applying for a new or modified common carrier microwave radio station license. The data is used to evaluate construction status and authorize the operation of point-to-point microwave, local TV transmission, multipoint distribution radio stations, and digital electronic message services.

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc. 87–16281 Filed 7–16–87; 8:45 am]

BILLING CODE 6712-01-M

Lottery Rankings of 900 MHz SMRS Applicants for the Miami, Cleveland, St. Louis, Atlanta and Pittsburgh Designated Filing Areas

July 9, 1987.

On June 26, 1987, the Federal Communications Commission conducted its third round of lotteries to select applicants to provide 900 MHz Specialized Mobile Radio (SMR) Service. These lotteries were used to rank applications in each of the following Designated Filing Areas (DFAs):

#11 Miami
#12 Cleveland
#13 St. Louis
#14 Atlanta
#15 Pittsburgh

Lists of the forty top-ranked applications in each of these Designated Filing Areas are attached to this Public Notice. The top 20 selectees in each DFA will be granted authorizations to provide SMR service. The next 20 ranked applicants will be alternate selectees should it be determined that any of the winners are not qualified to be licensees, or if any of the winners fail to provide the Commission with required transmitter site information within the specified time period. Within 30 days of the publication of this Public Notice in the Federal Register, interested parties may advise the Commission of any matter that may reflect on an applicant's qualifications to be a licensee. A copy of any such pleading must be served on the applicant in question on or before the day on which the document is filed with the Commission. *See* § 1.47(b) of the Commission's rules, 47 CFR 1.47(b). Service can be accomplished pursuant to § 1.47(d) of the Commission's rules, 47 CFR 1.47(d). Matters raised in such pleadings will be resolved prior to issuance of any license to the applicant. Individual applications may be examined at the Private Radio Bureau's Public Reference Room in Gettysburg, PA. Copies of individual applications may be ordered from the Commission's copy contractor, International Transcription Services, at (717) 337–1433.

All applications ranked below number 40 are hereby dismissed and will not be returned to the applicants. There will be no individual notices of dismissal mailed to applicants. The Lottery Notice of June 4, 1987 contains the names and addresses of lottery participants.

For further information regarding the selection procedures, consult the November 4, 1986 Public Notice (1 FCC Rcd 543 (1986), 52 FR 1302 (January 12, 1987)) or contact Betty Woolford of the Land Mobile and Microwave Division at (202) 632–7125.

Attachments:

900 MHz SMR Applications In The Miami DFA

Rand and applicant name	Lottery code	File No.
Winners:		
1. CW Telecommunications Inc	0235	030504
2. McCart Communications	1061	026052
3. Snow, Robert B	1574	018558
4. Highway Safety	0737	020855
5. Word, Jon D	1821	033018
6. Tornincasa, John	1687	018671
7. Miami Beach Electric	1109	034311
8. Berryman, Gene C	0140	030797
9. Williams, Leroy	1801	018690
10. Catapano, Gary	0266	028428
11. Tucker, Daniel	1701	031098
12. Communications Engineering, Inc	0324	027051
13. Jordan, Jerrell J	0837	018380
14. Electronic Distributing Corp	0480	022120
15. Stuart, Drry W	1630	020875
16. Holohan, William	0761	024563
17. Sharff, Margaret H	1511	018550
18. Paoli, Richard D	1241	020085
19. Rajala, A.I	1349	029045
20. Everest, Andrew S	0508	022750
Alternates:		
21. Dhue, Robert W	0434	019481
22. Richardson, Regis	1382	027703
23. Omni Communications	1216	025642
24. Sound Electronics	1582	024054
25. Page, Norman R	1232	031468
26. Smith, James	1566	028751
27. Kanter, Joseph H	0847	032040
28. McCrary, Glyn	1068	018401
29. Venya, Arthur D	1726	032978
30. Franklin, John P	0564	027625
31. Joyce Jr, William J	0839	031632
32. Beck, Harold	0126	022383
33. Fields, David	0530	018281
34. Williams Trunking Co., Inc	1805	018691
35. American Mobile Phone Paging Inc	0045	025502
36. B&G Electric	0092	034304
37. Capitol Radio Communications, Inc	0249	029795
38. Alert Electronics, Inc	0026	029901
39. Fisher, Marion J	0539	022980
40. Forster, Robert W	0556	025266

900 MHz SMR Applications in the Cleveland DFA

Rank and applicant name	Lottery code	File No.
Winners:		
1. Shotey, Michael J	1122	031572
2. Telecommunications Network, Inc	1213	031343
3. Jackson, Dallas M	0592	030738
4. AMK Communications	0035	032806
5. Epperson Communications	0367	026087
6. Roberts, William E	1036	021711
7. Raiser III, C. Victor	0998	032045
8. Cohen, Judith S	0231	028297
9. Sedley, Craig Andrews	1093	028151
10. Comven, Inc	0244	021527
11. Nashawaty, Thomas	0879	020758
12. Wettlaufer Jr., Harry L	1306	021028
13. Motorola, Inc	0867	032796
14. Johnson, Sue	0607	024944
15. King James Partnership	0635	028475
16. Vanguard Cellular Systems Inc	1256	031818
17. Hollon Jr., Noah	0557	021662
18. Metracom Trunked Radio Communications SY	0820	030101
19. Wills, Barbara D	1323	020936
20. Newell, Robert C	0886	027053
Alternates:		
21. Sudell, Robert	1198	019406
22. Westel Communication Inc	1304	018904
23. KRA Partnership	0659	030451
24. Eargle Jr., Guy H	0345	032263
25. Advanced Mobile Communications Inc	0013	029828
26. Casciato, Peter A	0194	031809
27. Smith, Dayton W	1148	029608
28. Gaeta, Edwin L	0438	032818
29. Kelley, R. Ryan	0625	024806
30. Stewart, Robert T	1186	033943
31. Lynch Jr., Hugh J	0740	027810
32. Tuttle, Carl W	1243	021272
33. Kanter, Joseph H	0617	034772
34. Kneipper, Richard K	0651	027142
35. Caplow, Barbara L	0184	033466
36. RB Management Services Inc	1008	021917
37. Jameson, Gene L	0595	033950
38. Wachtang, Korishell	1269	023468
39. Pounds, Gary S	0966	021215
40. Wilderotter, James A	1311	029371

900 MHz SMR Applications in the St. Louis DFA

Rank and applicant name	Lottery Code	File No.
Winners:		
1. Danoff, Ed	0296	020867
2. Thornton, David Lee	1233	024015
3. Landsberger III, John	0684	021914
4. LMR International Inc	0720	026408
5. Plisko, John	0955	030256
6. Strenge, William A	1199	025904
7. Savoie Sr., Donald L	1087	022958
8. Munch, John	0877	034263
9. Liccardi, William	0710	032688
10. Dalton, John J	0290	028306
11. Ullanthorne, Ian	1256	020981
12. Pettey, Donald P., Herzog, Kenneth M	0951	033800
13. KRA Partnership	0662	030450
14. Gordon, Mark A	0478	032098
15. Pratt, Mary W	0977	032066
16. Motor Carrier Radio Network Inc	0869	029814
17. Handley Company	0504	026206
18. Wycoff, Dean G	1341	026429
19. Martin, Ron	0770	031507
20. Gist & Harriss	0467	028720
Alternates:		
21. Lomijah Partnership	0724	024471
22. French, Perry	0424	033171
23. Parkhurst, Mark	0925	030528
24. Miloro, Jesse	0841	030146
25. Shorelands Water Company Inc	1132	032327
26. Condon, Thomas J	0246	023288
27. Williams, Graydon	1317	023476
28. Shenn, Jen; Song, Sue Jen	1125	033183
29. Powell Jr., Harry C	0972	022737
30. Holohan, William J	0561	024596
31. Stern, Todd	1186	019790
32. Boyd, Claudia G	0126	032521
33. Duffield, George E	0344	034262

900 MHz SMR Applications in the St. Louis DFA—Continued

Rank and applicant name	Lottery Code	File No.
34. Lesser, David	0704	030234
35. Crystal Communications	0274	033302
36. Maxwell, Earl A	0780	027749
37. Russ Miller Communications Inc	1062	021438
38. Huffman Communications Sales Inc	0572	019609
39. Louisiana Cellular Services Inc	0732	026604
40. Rapid Radio Access Inc	1009	027322

900 MHz SMR Applications in the St. Louis DFA

Rank and applicant name	Lottery code	File No.
Winners:		
1. Hubbard, L Evans	0748	034472
2. Gregory, Lynn	0625	018403
3. Cotone, Timothy	0339	022206
4. Forschner, Richard	0529	018297
5. Wilder, Jon A	1724	031694
6. Helsel, David	0690	028232
7. Bryant, John B	0203	019357
8. Atlantic Excavating	0078	032449
9. Stone, Maurice Leon	1570	027919
10. Fedility Systems Company	0504	029868
11. Reese, Wayne S	1332	030287
12. Lomijah Partnership	0951	024470
13. Hankins, Elizabeth J	0655	028533
14. Riggs, Eddie	1353	034479
15. Partridge III, B. Waring	1228	019148
16. Grayley, Jeff	0621	034586
17. Hayden, Sandra	0683	018411
18. Palazza, John	1204	018077
19. Golden Electric	0609	034589
20. Hudson, N.Y. Bud	0750	034717
Alternates:		
21. Lee, Robbie S	0920	018037
22. Plumb, Thomas E	1260	022358
23. Electrocom Inc	0459	018881
24. Kralowetz Joseph	0675	033039
25. Johnson, Trudy	0797	018010
26. Bay Area Trunking Inc	0116	030055
27. Howe, Delores M	0746	026662
28. Burdick, Rita A	0211	027456
29. Upwardly Mobile Communications Corp	1654	026292
30. Gerber, Bob	0584	024791
31. Keyes, Harvey	0841	031963
32. Maxwell, Earl A	1020	027748
33. Williams, Robert R	1736	022143
34. Ferguson, Lowell E	0499	021376
35. Anderson, David S	0051	026132
36. California Mobile Communications	1802	029442
37. Eichberg, Robert	0456	020145
38. Evans, Charles W	0462	034635
39. Metrowest Systems, Inc	1075	024006
40. Eargle Jr., Guy H	0450	032264

900 MHz SMR Applications in the Pittsburgh DFA

Rank and applicant name	Lottery code	File No.
Winners:		
1. Caruthers, Joe R	0183	022927
2. Ferrazza, Carl	0375	024490
3. Barreca Sr., Frank J	0086	022837
4. Pro Network	0917	019374
5. McIntyre, Lois	0756	034347
6. Fitzgerald, Ronald J	0385	033194
7. Vargo, Richard A	1175	020080
8. Henschel, Benjamin L	0502	029351
9. A.L. Ingersoll	0543	031055
10. Arnold, Greg	0054	023229
11. Mazzei, Petra H	0737	032427
12. Cleveland Mobile Radio Sales Inc	0213	025052
13. Hussain, Wasif	0541	031055
14. Fontacom	0389	034756
15. Zia, Amer	1264	031108
16. Driesbach, Charles R	0324	021830
17. Lynch Jr., Hugh J	0691	027813

900 MHz SMR Applications in the Pittsburgh DFA—Continued

Rank and applicant name	Lottery code	File No.
18. Linnabary, Judson R	0666	020500
19. Carter, George H	0181	021624
20. Takaya, Cheri	1127	028980
Alternatives:		
21. Ginn, Ross	0438	021991
22. Spencer, Joe E	1088	022284
23. Steuart, Robert E	1104	033503
24. S&S Associates	0991	028560
25. Rosone, Robert J	0976	026140
26. TRS Inc	1124	034114
27. Epperson Communications	0351	026088
28. Wilmont, David	1237	027482
29. Lenzner Coach Lines Inc	0657	018454
30. Maxwell, Earl A	0729	033976
31. Cunniff, Richard	0265	020958
32. Loc Rad, Inc	1273	031144
33. WHK Cell Inc	1242	021555
34. Krouss, Stephen R	0625	025035
35. Crawford, William Roger	1277	021740
36. Williams, Robert R	1234	022619
37. Forkish, Joseph	0391	031972
38. Madigan, David M	0700	025393
39. Radecki, John J	0930	020013
40. Blasucci, Daniel	0112	020106

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc. 87-16283 Filed 7-16-87; 8:45 am]

BILLING CODE 6712-01-M

[Report No. VV-18]

Window Notice for the Filing of FM Broadcast Applications

Released: July 10, 1987.

Notice is hereby given that applications for vacant FM broadcast allotments listed below may be submitted for filing during the period beginning July 10, 1987 and ending August 20, 1987 inclusive. Selection of a permittee from a group of acceptable applicants will be by the Comparative Hearing process.

Channel—279 A

San Carlos, AZ
Irwinton, GA
Leesburg, GA
Royston, GA
Hartford, MI
Wilburton, OK
McConnellsburg, PA
Fisher, WV

Channel—279 C1

Alamogordo, NM

Channel—275 C2

Shreveport, LA

Channel—232 A

Kingman, KS
Eldorado, OK

William J. Tricarico,

Secretary.

[FR Doc. 87-16285 Filed 7-16-87; 8:45 am]

BILLING CODE 6712-01-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA-794-DR]

Major Disaster and Related Determinations; Oklahoma

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Oklahoma, (FEMA-794-DR), dated July 9, 1987, and related determinations.

DATED: July 9, 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 July 9, 1987, the President declared a major disaster under the authority of the Disaster Releif 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 Oklahoma due to severe storms and flooding from May 19 to 31, 1987, is of sufficient severity and magnitude to warrant a major-disaster declaration under Public Law 93-288. I therefore declare that such a major disaster exists in the State of Oklahoma.

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 PL 93-288 for Public Assistance will be limited to 75 percent of total eligible costs in the disignated area.

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. Lonnie R. Chant of the Federal Emergency Management Agency to act as the Federal

Coordinating Office for this declared disaster.

I do hereby determine the following areas of the State of Oklahoma to have been affected adversely by this declared major disaster and are designated eligible as follows:

Caddo, Canadian, Carter, Comanche, Cotton, Custer, Grady, Kay, Kiowa, Logan, McClain, Stephens, and Tillman counties for Public Assistance only.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance.)

Julius W. Becton, Jr.,

Director.

[FR Doc. 87-16245 Filed 7-16-87; 8:45 am]

BILLING CODE 6718-01-M

FEDERAL MARITIME COMMISSION

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 206-011137
Title: Pacific Coast/Australia-New Zealand Discussion Agreement
Parties: Pacific Coast/Australia-New Zealand Tariff Bureau, Hong Kong Islands Line America S.A.
Synopsis: The proposed agreement would permit the parties to discuss and agree upon rates and practices in the trade from United States and Canadian Pacific Coast ports (excluding Alaska) to ports and points in Australia and New Zealand and, via transshipment, islands in the South Pacific.

Agreement No.: 207-011138
Title: Bali Hai Service
Parties: Mitsui O.S.K. Lines, Ltd., Nippon Yusen Kaisha/NYK, The China Navigation Company Limited
Synopsis: The proposed agreement would establish a joint service by the parties in the trade between ports and inland points in Japan and Korea and the port of Pago Pago, American Samoa, and between Pago Pago and other South Pacific ports.

By Order of the Federal Maritime Commission.

Dated: July 14, 1987.

Joseph C. Polking,

Secretary.

[FR Doc. 87-16277 Filed 7-16-87 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

Change in Bank Control Notice, Acquisition of Shares of Banks or Bank Holding Companies; Columbus Television, Inc.

The notificant listed below has 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 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 August 3, 1987.

A. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *Columbus Television, Inc.;* Birney Imes, Jr.; Birney Imes, Jr., Custodian for children; Nancy Imes; Nancy Imes, Custodian for children; Imes Trust, Birney Imes, Jr., Trustee; WBOY TV, Inc., and Mr. Birney Imes—Columbus, Mississippi; to acquire .31 percent of the voting shares of First Columbus Financial Corporation, Columbus, Mississippi.

Board of Governors of the Federal Reserve System, July 13, 1987.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 87-16202 Filed 7-16-87; 8:45 am]

BILLING CODE 6210-01-M

Formation of, Acquisition by, or Merger of Bank Holding Companies; and Acquisition of Nonbanking Company; Dominion Bankshares Corp.

The company listed in this notice has applied under § 225.14 of the Board's Regulation Y (12 CFR 225.14) for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) to become a bank holding company or to acquire voting securities of a bank or bank holding company. The listed company has also applied under § 225.23(a)(2) of Regulation Y (12 CFR 225.23(a)(2)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies, or to engage in such an activity. Unless otherwise noted, these activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than August 10, 1987.

A. Federal Reserve Bank of Richmond (Lloyd W. Bostian, Jr., Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. *Dominion Bankshares Corporation,* Roanoke, Virginia; to merge with First Springfield National Corporation, Springfield, Tennessee, and thereby indirectly acquire The First National Bank of Springfield, Springfield, Tennessee.

In connection with this application, Applicant also proposes to acquire First

Trust Company, Springfield, Tennessee, and thereby engage in general trust functions including activities of a fiduciary, agency, or custodial nature pursuant to § 225.25 (b)(3) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, July 13, 1987.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 87-16204 Filed 7-16-87; 8:45 am]

BILLING CODE 6210-01-M

Formation of, Acquisition by, or Merger of Bank Holding Companies; and Acquisition of Nonbanking Company; First Interstate Bancorp

The company listed in this notice has applied under § 225.14 of the Board's Regulation Y (12 CFR 225.14) for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) to become a bank holding company or to acquire voting securities of a bank or bank holding company. The listed company has also applied under § 225.23(a)(2) of Regulation Y (12 CFR 225.23(a)(2)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and §225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies, or to engage in such an activity. Unless otherwise noted, these activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than August 3, 1987.

A. Federal Reserve Bank of San Francisco (Harry W. Green, Vice President) 101 Market Street, San Francisco, California 94105:

1. *First Interstate Bancorp*, Los Angeles, California, and First Interstate Bancorp of Texas, Inc., Los Angeles, California; to become a bank holding company and to acquire 100 percent of the voting shares of Allied Bancshares, Inc., Houston, Texas, and thereby indirectly acquire Allied Bank Austin, Austin, Texas; Allied Bank North Austin, Austin, Texas; Allied Bank South Austin, Austin, Texas; Allied Bank of Marble Falls, Marble Falls, Texas; Allied Bank Beaumont, N.A., Beaumont, Texas; Allied Merchants Bank, Port Arthur, Texas; Allied Nederland Bank, Port Arthur, Texas; Allied American Bank, Dallas, Texas; Allied Bank Arlington, Arlington, Texas; Allied Bank Bedford, Bedford, Texas; Allied Bank Cedar Hill, N.A., Cedar Hill, Texas; Allied Bank of Dallas, Dallas, Texas; Allied First National Bank of Mesquite, Mesquite, Texas; Allied Bank Fort Worth, Fort Worth, Texas; Allied Bank Irving, Irving, Texas; Allied Bank Keller, N.A., Keller, Texas; Allied Bank Mockingbird, Dallas, Texas; Allied Bank North Central, N.A., Dallas, Texas; Allied Northeast Bank, N.A., Fort Worth, Texas; Allied Bank Oak Cliff, Dallas, Texas; Allied Bank Plano, N.A., Plano, Texas; Allied Bank Waxahachie, N.A., Waxahachie, Texas; Allied Addicks Bank, Houston, Texas; Allied Beltway Bank, Houston, Texas; Allied Champions Bank, Houston, Texas; Allied Conroe Bank, Conroe, Texas; Allied Cypress Bank, Houston, Texas; Allied Deer Park Bank, Deer Park, Texas; Allied Fairbanks Bank, Houston, Texas; Allied First National Bank, Angleton, Texas; Allied Bank Gulf Freeway, Houston, Texas; Allied Bank—Interstate 10, Houston, Texas; Allied Jetero Bank, Houston, Texas; Allied Bank Memorial, Houston, Texas; Allied Mercantile Bank, Houston, Texas; Allied Mission Bend Bank, Houston, Texas; Allied Bank Missouri City, Missouri City, Texas; Allied Bank North Belt, N.A., Houston, Texas; Allied Pasadena National Bank, Pasadena, Texas; Allied Seabrook Bank, Seabrook, Texas; Allied Bank Southwest Freeway, Houston, Texas; Allied Spring Bank, Spring, Texas; Allied Bank of Texas, Houston, Texas; Allied Bank West, Houston, Texas; Allied Bank Longview, Longview, Texas; Allied Marshall Bank, Marshall, Texas; Allied American Bank of San Antonio, San Antonio, Texas; Allied Bank Northwest, N.A., San Antonio, Texas; Allied Live Oak Bank, Rockport, Texas; and Allied Texas Bank, Jacksonville, Texas.

In connection with this application, Applicants also propose to acquire Allied Agency, Inc., Houston, Texas, and thereby engage in credit-related insurance agency activities pursuant to § 225.25(b)(8); Allied Bancshares Brokerage, Inc., Houston, Texas, and thereby engage in discount brokerage activities pursuant to § 225.25(b)(15); Allied Bancshares Leasing, Inc., Houston, Texas, and thereby engage in single investor and leveraged lease financing pursuant to § 225.25(b)(5); Allied Life Insurance Company of Texas, Houston, Texas, and thereby engage in underwriting and reinsuring credit-related life, accident and health insurance pursuant to § 225.25(b)(8); and Allied Trust Company, Houston, Texas, and thereby engage in corporate and institutional trust services pursuant to § 225.25(b)(3) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, July 13, 1987.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 87-16205 Filed 7-16-87; 8:45 am]

BILLING CODE 6210-01-M

Change in Bank Control Notice; Acquisition of Shares of Banks or Bank Holding Companies; Harvey Polly

The notificant listed below has 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 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 August 3, 1987.

A. Federal Reserve Bank of Atlanta (Robert E. Heck, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. *Harvey Polly*, Highland Beach, Florida; Nathan Phillips, Westport, Connecticut; Lawrence Kaplan, Woodbury, New York; and Leo Yarfitz, Delray Beach, Florida; to acquire 79.9 percent of the voting shares of Hanover Financial Corporation, Plantation, Florida, and thereby indirectly acquire Hanover Bank of Florida, Plantation, Florida.

Board of Governors of the Federal Reserve System, July 13, 1987.

James AcAfee,

Associate Secretary of the Board.

[FR Doc. 87-16203 Filed 7-16-87;8:45am]

BILLING CODE 6210-01-M

Acquisition of Company Engaged in Permissible Nonbanking Activities; Huntley Bancshares, Inc.

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 outweight 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 July 29, 1987.

A. **Federal Reserve Bank of Chicago** (David S. Epstein, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Huntley Bancshares, Inc.*, Huntley, Illinois; to acquire Rohrson Insurance Agency, Hampshire, Illinois, and thereby engage in the sale and servicing of all types of insurance to the general public in the surrounding area of Huntley, Illinois, and Hampshire, Illinois, purusant to § 225.25(b)(8)(vi) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, July 13, 1987.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 87-16206 Filed 7-16-87; 8:45 am]

BILLING CODE 6210-01-M

Formation of, Acquisition by, or Merger of Bank Holding Companies; KD Bancshares, Inc., et al.

The company listed in this notice has applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842), and § 225.14 of the Board's Regulation Y (12 CFR 225.24) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that application or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Comments regarding this application must be received not later than Augut 7, 1987.

A. **Federal Reserve Bank of Chicago** (David S. Epstein, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. KD Bancshares, Inc., Edgerton, Wisconsin; to become a bank holding company by acquiring at least 80 percent of the voting shares of Kingston-Dalton State Bank, Kingston, Wisconsin.

Board of Governors of the Federal Reserve System, July 13, 1987.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 87-16207 Filed 7-16-87; 8:45 am]

BILLIND CODE 6210-01-M

Formation of; Acquisition by; or Mergers of Bank Holding Companies; NESB Corp., et al.

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 255.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than August 7, 1987.

A. **Federal Reserve Bank of Boston** (Robert M. Brady, Vice President) 600 Atlantic Avenue, Boston, Massachusetts 02106:

1. *NESB Corp.*, New London, Connecticut; to become a bank holding company by acquiring 100 percent of the voting shares of New England Savings Bank, New London, Connecticut, and 8.97 percent of the voting shares of the state-chartered successor to Tolland Bank, FSB, Tolland, Connecticut.

B. **Federal Reserve Bank of Dallas** (W. Arthur Tribble, Vice President) 400 South Akard Street, Dallas, Texas 74222:

1. *Vidor Bancshares, Inc.*, Vidor, Texas; to acquire 100 percent of the voting shares of Plaza National Bank, Beaumont, Texas.

Board of Governors of the Federal Reserve System, July 13, 1987.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 87-16208 Filed 7-16-87; 8:45 am]

BILLING CODE 6210-01-M

Application to Engage de Novo in Permissible Nonbanking Activities; Security Pacific Corp.

The company lsited in this notice has filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo,* either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than August 7, 1987.

A. **Federal Reserve Bank of San Francisco** (Harry W. Green, Vice President) 101 Market Street, San Francisco, California 95105:

(1) *Security Pacific Corporation,* Los Angeles, California; to engage *de novo* through its subsidiary, SP Investment Strategies Corp., San Diego, California, in providing investment advice on financial futures and options on futures to the extent permitted pursuant to § 225.25(b)(19); providing advice, including counsel, publications, written analyses and reports as a futures commission merchant pursuant to § 225.25(b)(18); and providing portfolio investment advice pursuant to § 225.25(b)(4)(iii) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, July 13, 1987.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 87-16209 Filed 7-16-87; 8:45 am]

BILLING CODE 6210-01-M

Applications to Engage de Novo in Permissible Nonbanking Activities; Shawmut Corp., et al.

The companies listed in this notice have filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12CFR 225.21(a)) to commence or to engage *de novo,* either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are indispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than August 10, 1987.

A. **Federal Reserve Bank of Boston** (Robert M. Brady, Vice President) 600 Atlantic Avenue, Boston, Massachusetts 02106:

1. *Shawmut Corporation,* Boston, Massachusetts; to engage *de novo* through its subsidiary, Shawmut Insurance Agency, Inc., Boston, Massachusetts, in acting as principal, agent or broker for insurance (including mortgage redemption insurance) that is (A) directly related to an extension of credit by Applicant or any of its subsidiaries and (B) limited to assuring repayment of the outstanding balance due on the extension of credit in the event of death, disability or involuntary unemployment of the debtor pursuant to § 1225.25(b)(8) of the Board's Regulation Y. Comments on this application must be received by August 7, 1987.

B. **Federal Reserve Bank of Cleveland** (John J. Wixted, Jr., Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. *National City Corporation,* Cleveland, Ohio; to engage *de novo* through its subsidiary, NCC Brokerage Company, Columbus, Ohio, in providing securities brokerage services and related securities credit activities pursuant to § 225.25(b)(15) of the Board's Regulation Y. These activities will be conducted in the states of Ohio, Michigan, Indiana, West Virginia, Kentucky, Pennsylvania, and Florida.

C. **Federal Reserve Bank of Minneapolis** (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. *Otto Bremer Foundation,* St. Paul, Minnesota, and Bremer Financial Corporation, St. Paul, Minnesota; to engage *de novo* through its subsidiary, Bremer First American Life Insurance Company, St. Paul, Minnesota, in the underwriting of credit life insurance and credit accident and health insurance pursuant to § 225.25(b)(8)(i) of the Board's Regulation Y.

D. **Federal Reserve Bank of Dallas** (W. Arthur Tribble, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *Fidelity Resources Company,* Dallas, Texas; to engage *de novo* in making, acquiring and/or servicing loans fo itself or for others of the type made by a mortgage companay, consumer finance and commercial finance company pursuant to § 225.25(b)(1) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System. July 13, 1987.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 87-16210 Filed 7-16-87; 8:45 am]

BILLING CODE 6210-01-M

FEDERAL TRADE COMMISSION

Trade Regulation Information Collection Request

AGENCY: Federal Trade Commission.

ACTION: Application to OMB under the Paperwork Reduction Act 44 U.S.C. 3501-3518, for clearance of a consumer survey concerning the impact of the Federal Trade Commission Mail Order Rule.

SUMMARY: The information collected in this consumer survey will be used as part of an assessment of the FTC Mail Order Rule, 16 CFR Part 435. The results of the study will be used by the Commission to determine whether there is a continuing need for the rule and if so, whether the rule should be amended to include orders placed by phone where the merchandise is to be delivered to the home after payment. The survey will be conducted by telephone of two groups of 200 consumers—respective random samples that will be representative of consumers who have purchased by mail and by telephone in the last twelve months. The total burden of this voluntary survey, including screening, will be less than 175 hours.

DATE: Comments on this application must be submitted on or before August 17, 1987.

ADDRESS: Send comments to Don Arbuckle, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3228, Washington, DC 20503. Copies of this application may be obtained from: Public Reference Branch, Room 130, Federal Trade Commission, Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Thomas J. Maronick, Office of Impact Evaluation, Bureau of Consumer Protection, Federal Trade Commission, Washington, DC 20580, (202) 326-2291.

Robert D. Paul,

General Counsel.

[FR Doc. 87-16255 Filed 7-16-87; 8:45 am]

BILLING CODE 6750-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

OFFICE OF THE SECRETARY

Agency Forms Submitted to the Office of Management and Budget for Clearance

Each Friday the Department of Health and Human Services (HHS) publishes a list of information collection packages it has submitted to the Office of Management and Budget (OMB) for clearance in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). The following are those packages submitted to OMB since the last list was published on July 10, 1987.

Health Care Financing Administration

1. Skilled Nursing Facility Prospective Payment Cost Report—Concept Clearance—This form is to be used by Skilled Nursing Facilities with less than 1500 Medicare-patient days, at their option, to report costs incurred for providing services to Medicare patients. Respondents: Nonprofit institutions, Small businesses or organizations.

2. Home Health Plan of Treatment and Medical Information Forms—0938-0357—These forms are used to provide medical data to the fiscal intermediary. The plan of Treatment and Home Health Certification form contain the physician's orders and signature. The Medical Information Form describes the patients condition and the addendum contains optional data. Respondents: Businesses or other for-profit. Number of Respondents: 5903; Frequency of Response: Occasionally; Estimated Annual Burden: 1,475,342 hours.

OMB Desk Officer: Allison Herron.

Social Security Administration

(Call Reports Clearance Officer on 301-594-5706 for copies of package)

1. Statement of Care and Responsibility for Beneficiary—0960-0109—This form is used by the Social Security Administration to evaluate the concern shown by a potential representative payee toward a Social Security beneficiary. Respondents: Individuals or households, Businesses or other for-profit, Non-profit institutions, Small businesses or organizations. Number of Respondents: 130,000; Frequency of Response: Occasionally; Estimated Annual Burden: 21,667 hours.

2. Black Lung Student's Statement Regarding Resumption of School Attendance—0960-0314—The information collected by use of the form SSA-2602 is needed to determine whether or not a student beneficiary will resume full-time school attendance after the end of the regular school year and be entitled to additional benefits. The affected public is comprised of students who are children of deceased coal miners. Respondents: Individuals or households. Number of Respondents: 8,000; Frequency of Response: Annually; Estimated Annual Burden: 666 hours.

3. Application for Survivor's Benefits—0960-0062—The information collected by the use of the form SSA-24 is needed to satisfy the "jointly prescribed application" provision that survivors of veterans who file with either the VA or SSA shall also be deemed to have filed with both Agencies and that each Agency's forms must request sufficient information to constitute an application for the other Agency. Respondents: Individuals or households. Number of Respondents: 3,200; Frequency of Response: Occasionally; Estimated Annual Burden: 800 hours.

OMB Desk Officer: Elaina Norden.

Public Health Service

(Call Reports Clearance Officer on 202-245-2100 for copies of package)

National Institutes of Health

1. Research and Research Training Grant Application and Related Forms—0925-0001—PHS 398 and PHS 2590 are used to apply for new, renewal, noncompeting continuation and supplemental support for research, Institutional National Research Service Awards, and Research Career Development Awards. PHS 2271 is used to activate all trainee appointments receiving funds under an NRSA training grant. PHS 3734 is used when research project is transferring from one institution to another. Respondents: State or local governments, Businesses or other for-profit, Federal agencies or employees, Non-profit institutions, Small businesses or organizations. Number of Respondents: 71,736; Frequency of Response: Occasionally; Estimated Annual Burden: 670,514 hours.

2. Survey of Physician Attitudes, Knowledge, and Practice Behaviors Related to the Diagnosis and Treatment of Coronary Heart Disease Risk Factors in Children—NEW—Data will be collected on representative sample of 1500 general and family practitioners and pediatricians to provide information on their attitudes, knowledge, and practice behaviors related to managing Coronary Heart Disease risk factors in children. Information will be used to assist in the development of programs for more effective dissemination of research results. Respondents: Businesses or other for-profit, Small

businesses or organizations. Number of Respondents: 1800; Frequency of Response: 1; Estimated Annual Burden: 525 hours.

3. Biological Effects of Dietary Estrogens in Postmenopausal Women—NEW—Exposure to highly estrogenic substances can affect reproduction, cancer risk, bone metabolism, and cardiovascular health. Human health effects of weak environmental estrogens are unknown. Seventy postmenopausal volunteers will eat a soy rich diet and the biological effects of plan estrogens will be measured. If changes occur, further investigation is warranted. Respondents: Individuals or households. Number of Respondents: 70; Frequency of Response: Single-time; Estimated Annual Burden 1768 hours.

Office of the Assistant Secretary for Health

1. 1987 National Health Interview Survey—Revision—0937-0021—The National Health Interview Survey AIDS knowledge and Attitudes Questionnaire, conducted from August–December 1987, will assess the level of knowledge in the U.S. noninstitutionalized population age 18 and over about AIDS, its transmission, prevention, and health risks. Respondents: Individuals or households. Number of Respondents: 122,400; Frequency of Response: Occasionally; Estimated Annual Burden: 49,279 hours.

OMB Desk Officer: Shana Koss-McCallum.

As mentioned above, copies of the information collection clearance packages can be obtained by calling the Reports Clearance Officer, on one of the following numbers:

PHS: 202–245–2100

HCFA: 301–594–8650

SSA: 301–594–5706

Written comments and recommendations for the proposed information collections should be sent directly to the appropriate OMB Desk Officer designated above at the following address:

OMB Reports Management Branch, New Executive Office Building, Room 3208, Washington, DC 20503

ATTN: (name of OMB Desk Officer).

Date: July 13, 1987.

James F. Trickett,

Deputy Assistant Secretary, Administrative and Management Services.

[FR Doc. 87–16267 Filed 7–16–87; 8:45 am]

BILLING CODE 4150-04-M

Centers for Disease Control

Proposed Collection of Fees for Sanitation Inspections of Cruise Ships

AGENCY: Centers for Disease Control, Public Health Service, HHS.

ACTION: Request for public comment on proposed notice of collection of fees.

SUMMARY: The Public Health Service intends to begin charging fees to conduct sanitation inspections of cruise ships as part of the Vessel Sanitation Program. The purpose of these charges would be to recover full costs of operating the program. Public comment is requested on the proposed administrative policies for charges for Sanitation Inspections of cruise ships.

DATE: Comments must be received on or before August 17, 1987.

ADDRESS: Comments may be mailed to Director, Center for Environmental Health, Centers for Disease Control, 1600 Clifton Road, Atlanta, Georgia 30333.

FOR FURTHER INFORMATION CONTACT: Vernon N. Houk, M.D., Director, Center for Environmental Health, Centers for Disease Control, Atlanta, Georgia 30333, (404) 452–4111 or FTS 236–4111.

SUPPLEMENTARY INFORMATION: .

Purpose and Background

The purpose of this announcement is to set out for public comment proposed administrative policies for charges for vessel sanitation inspections conducted directly by CDC.

The Appropriations Act for the Departments of Labor, Health and Human Services, and Education, and related agencies, for the fiscal year ending September 30, 1987 (Pub. L. 99–591) authorizes CDC to collect fees for the full cost of services and to credit such fees to the appropriation. (See Pub. L. 99–591, section 101(i), which incorporates the provisions of H.R. 5233.)

The Centers for Disease Control (CDC) operates a vessel sanitation inspection program for cruise ships having international itineraries and calling at United States ports, under the Public Health Service Act (Sections 361–369, 42 U.S.C. 264–272). Regulations for the inspection program appear at 42 CFR Part 71.

Applicability

The fees would be applicable to all passenger cruise vessels for which sanitation inspections are conducted by CDC.

Proposed Fees

For vessels inspected by CDC as part of the Vessel Sanitation Program (VSP), proposed costs for each sanitation inspection have been determined by taking into account salaries, benefits, travel and per diem, supplies, contract services, printing, shipping, average equipment and instrument requirements, and appropriate support costs. These per annum costs have been divided by the estimated number of inspections, multiplied by a factor based on the ship size and estimated number of inspectors required for the inspection, to arrive at a per-ship inspection cost.

Reinspections would involve the same procedures and require the same time as original inspections.

The costs for the full year and the fee/inspection have been calculated as follows:

—Approximate number of ships in the program.....70
—Approximate number of periodic inspections annually.....140
—Approximate number of reinspections annually.....70
—Approximate number of total inspections/year.....210

$$\frac{\text{Total Cost of VSP}}{\text{Number of Inspections}} = \text{Average Cost per Inspection}$$

Factor (size/manpower)—
Small ship (<15,000 GRT [1]) requires 8 inspector-hours per inspection
Medium ship (15–30,000 GRT) requires 16 inspectror-hours per inspection
Large ship (30,001–65,000 GRT) requires 24 inspector-hours per inspection
Extra large ship (>65,000 GRT) requires 32 inspector-hours per inspection

Cost for small ship: Average cost × 0.5.

Cost for medium ship: Average cost × 1.0.

Cost for large ship: Average cost × 1.5.

[1] GRT-Gross register tonnage in cubic feet, as shown in Lloyd's Register of Shipping.

Cost for extra large ship: Average cost × 2.0.

Formula—

$$\text{Cost per inspection} = \frac{\text{Total VSP Cost}}{\text{No. of Inspections per year}} \times \text{Size/Manpower Factor}$$

The charge, for the first full year during which fees for inspections are assessed, would be $1,075 per inspection for a small ship, $2,150 per inspection for a medium ship, $3,225 per inspection for a large ship, and $4,300 per inspection for an extra large ship.

Dated: July 9, 1987.

Glenda S. Cowart,

Acting Director, Office of Program Support Centers for Disease Control.

[FR Doc. 87-16191 Filed 7-16-87; 8:45 am]

BILLING CODE 4160-18-M

Public Health Service

Statement of Organization, Functions, and Delegations of Authority; Food and Drug Administration

Part H, Chapter HF (Food and Drug Administration) of the Statement of Organization, Functions, and Delegations of Authority for the Department of Health and Human Services (35 FR 3685, February 25, 1970, as amended most recently in pertinent parts at 50 FR 36678, September 9, 1985) is amended to reflect the insertion of additional organizational functional statements.

Public Health Service (PHS) organizational guidelines require that functional statements for major organizations within the Office of the Commissioner be published in the **Federal Register**. Therefore, the Food and Drug Administration is publishing functional statements for the Office of the Administrative Law Judge, the Office of Orphan Products Development, and the Office of Equal Employment and Civil Rights.

Section HF-B, Organization and Functions is amended as follows:

1. Following paragraph (a-1) Office of the Executive Assistant (HFA-D) insert new subparagraphs (a-2) through (a-4) reading as follows:

(a-2) *Office of the Administrative Law Judge (HFA-B).* Schedules and conducts formal evidentiary public hearings under 21 CFR Part 12, pursuant to the Federal Food, Drug, and Cosmetic Act, as amended, as well as other related laws and the Administrative Procedure Act (5 U.S.C. 511 et seq.).

Issues Initial Decisions containing findings of fact and conclusions of law based on the independent review and evaluation of all evidence of record in formal hearings.

(a-3) *Office of Orphan Products Development (HFA-E).* Manages the implementation of the provisions of the Orphan Drug Act and its amendments and manages a program to encourage the development of drugs of limited commercial value for use in rare or common diseases and conditions.

Develops and communicates agency policy and makes decisions on approval of sponsor requests and incentives under the Federal Food, Drug, and Cosmetic Act, including orphan drug protocol assistance per section 525, orphan drug designation per section 526, orphan drug exclusivity per section 527, orphan drug grants and contracts to support clinical research and other areas of agency policy related to the development of products for rare disorders.

Represents the Commissioner or serves as the agency's principal authority and spokesperson to the PHS Orphan Products Board, other governmental committees and industry, professional, and consumer associations, requesting agency participation in orphan product development activities.

Reviews investigational new drug and biologics applications and investigational device exemptions to locate the existence of products under investigational study that show evidence of effectiveness for rare or common diseases but lack commercial sponsorship. Assists sponsors, researchers, and investigators in communicating with agency regulatory officials and expediting solutions to problems in obtaining investigational or market approval status.

Manages an extramural program of clinical research to evaluate safety and effectiveness of orphan products by funding grants and contracts, requesting applications for funding, organizing peer review of applications, monitoring and guiding investigators, and evaluating study results.

(a-4) *Office of Equal Employment and Civil Rights (HFA-3).* Advises and assists the Commissioner and other key officials on equal employment opportunity (EEO) and Civil Rights activities which impact on policy development and execution of program goals.

Serves as the agency focal point for EEO and Civil Rights activities.

Serves as the agency liaison with PHS, the Department, and other Federal agencies, State and local governments, and other organizations concerned with EEO and Civil Rights matters.

Develops and recommends policies and priorities designed to implement the intent of the Office of Personnel Management, Equal Employment Opportunity Commission, Office of Civil Rights, Department of Health and Human Services requirements under Executive Orders, regulations, EEO Civil Rights legislation, and Public Health Service guidances.

Provides leadership, direction, and technical guidance to the agency on EEO and Civil Rights matters.

Develops plans, programs, and procedures designed to assure the prompt adjudication of complaints of alleged discrimination based on race, color, sex, age, religion, national origin, and handicap.

Develops and maintains training and technical assistance programs for agency EEO and Civil Rights counselors, special emphasis representatives, employees, supervisory personnel, and other key officials.

Examines the use and impact of administrative mechanism on work assignments, pay systems, award systems, performance appraisal systems, promotion patterns, reorganizational impacts, delegations of authority, management controls, information and documentation systems, and similar functions of management as they impact upon equal employment opportunities for all employees within the agency.

Functionally supervised deputy EEO officers, EEO counselors, complaint investigators, special emphasis representatives, and such other assistants as may be needed for EEO activities.

Develops, implements, and monitors the agency Affirmative Action Plan and facilitates actions to achieve specific objectives.

Dated: June 25, 1987.

Wilford L. Forbush,

Director, Office of Management, PHS.

[FR Doc. 87-16185 Filed 7-16-87; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CO-050-4333-08]

Intent To Amend Royal Gorge Management Framework Plan; Canon City, CO

AGENCY: Bureau of Land Management (BLM), Canon City, Colorado, Interior.

ACTION: Notice of Intent to determine the necessity to amend the Royal Gorge Management Framework Plan (MFP) regarding recreation management along the Arkansas River.

SUMMARY: Notice is given to advise the public that the BLM Canon City District Office intends to make a determination if the Royal Gorge MFP should be amended to address primarily recreation management opportunities along the Arkansas River.

FOR FURTHER INFORMATION CONTACT: L. Mac Berta, Area Manager, Bureau of Land Management, Royal Gorge Resource Area, P.O. Box 1470, 3170 East Main, Canon City, Colorado 81212 Phone: (303) 275-0631.

SUPPLEMENTARY INFORMATION: The BLM proposes to decide if the 1979 Royal Gorge Planning Area MFP should be amended to address new issues and concerns regarding recreation management along the Arkansas River. The subject area lies along the Arkansas River corridor between Leadville and Canon City, Colorado.

Recreation use and use patterns along the Arkansas River have changed since the MFP was competed in 1979. Of particular concern is the growth in whitewater boating. Many questions have been raised about allocating recreation use along the river. Through an environmental process, a decision would be made as to whether or not the objectives and decisions set forth in the MFP should be changed or modified.

Some of the major issues that will be addressed in the plan amendment/environmental assessment process include 1) Allocation of recreational use, 2) possible study for the inclusion of the Arkansas River into the Wild and Scenic River System as a recreational river, and 3) possible change of river management objectives for various segments of the river. The BLM intends to combine the plan amendment as part of the recreation activity management plan amendment for recreation use along the river corridor. An environmental assessment will be prepared. Because other resources may be impacted by or cause impact to the decisions that are made, an interdisciplinary team will be utilized in preparing the environmental assessment. Resources that will be represented include: recreation, wildlife, minerals, lands and realty, and land use planning.

A task force comprised of county officials, representatives from commercial and private boating interests, and individuals representing other recreational interests has been formed to assist in issue indentification, alternative formulation, and information dissemination. Public meetings will also be conducted before the draft is completed. When completed, the draft plan amendment/EA will be mailed to known interested parties and will be available for review with the region.

Other public participation activities will include a 45-day review of the draft plan amendment/environmental assessment. Dates, times, and locations of meetings will be announced through the local media and mailings to interested parties.

Additional detailed information on planning issues, criteria, and preliminary alternatives is available at the Canon City Area Office between 7:45 a.m. and 4:30 p.m., Monday through Friday.

Donnie R. Sparks,

District Management.

[FR Doc. 87-16225 Filed 7-16-87; 8:45 am]

BILLING CODE 4310-JB

[CO-050-4410-08]

Preliminary Plan Alternatives Available on San Luis Resource Area Management Resource Plan

AGENCY: Bureau of Land Management (BLM), Interior.

ACTION: Notice of Availability of San Luis Resource Area Management Resource Plan Alternatives.

SUMMARY: Notice is hereby given of the completion of work on the preliminary plan alternatives for the San Luis Resource Management Plan (SLRMP).

Four preliminary alternatives have been developed. These consist of the following:

Alternative A—Analyze the existing mixture of natural resource values and commercial resource values, Alternative B—Analyze a mixture favoring natural resource values, Alternative C—Analyze a mixture favoring development of commercial resource values, and Alternative D—Analyze a balanced mixture of values. A preferred alternative will be developed in the near future after the public input has been obtained.

DATES: Four public open houses will be held during the first week of August. Two on August 4 at the Ramada Inn Foothills, 6th and Simms, Lakewood, Colorado, from 2 until 4 PM and from 7 until 9 PM and two on August 5 at the San Luis Area Office, 1921 State Street, Alamosa, Colorado, from 2 until 4 PM and from 7 until 9 PM.

FOR FURTHER INFORMATION CONTACT: Interested parties may obtain copies of these preliminary alternatives by contacting the following offices: Donnie R. Sparks, District Manager, BLM, 3170 East Main, P.O. Box 311, Canon City, Colorado 81212, (303) 275-0631.

Dennis Zachman, Area Manager, BLM, 1921 State Street, Alamosa, Colorado 81212, (303) 589-4975.

SUPPLEMENTARY INFORMATION: The plan will contain data collected from BLM and other sources, including information obtained in consultation with Federal, state, local, and other interested individuals and groups. The planning area includes BLM administered land in Alamosa, Conejos, Rio Grande, and Saguache counties. There are 516,231 acres of land and 101,926 of mineral estate involved in the plan area, 13,957 acres in Alamosa County, 185,547 acres in Conejos County, 54,996 acres in Rio Grand County, and 231,731 acres in Saguache County.

Donnie R. Sparks,

District Manager.

[FR Doc. 87-16231 Filed 7-16-87; 8:45 am]

BILLING CODE 4310-JB-M

[MT-930-07-4410-08]

Availability of Proposed Final Resource Management Plan/ Environmental Impact Statement; Dickinson District, ND

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Availability of Proposed Final Resource Management Plan/Environmental Impact Statement, Dickinson District, ND.

SUMMARY: In accordance with section 202(f) of the Federal Land Policy and Management Act of 1976 and section 102(2)(C) of the National Environmental Policy Act of 1969, a proposed final Resource Management Plan/Environmental Impact Statement (RMP/EIS) has been prepared for the Dickinson District. The RMP/EIS addresses future management options for approximately 67,571 surface acres and 4.8 million acres of Federal mineral estate administered by the Bureau of Land Management throughout North

Dakota. The RMP/EIS includes the application of the coal unsuitability criteria (43(CFR)3461) to approximately 1 million acres of Federal coal having potential for development. Decisions generated during this planning process will supercede land use planning guidance previously presented in four separate Management Framework Plans (MFP): Golden Valley, West-Central North Dakota, McKenzie-Williams, and Southwest North Dakota MFPs.

Public Participation: The draft RMP/EIS was available for public review from December 22, 1986, to March 25, 1987. Written comments were received from 36 agencies, organizations, and individuals. Oral comments were also received from persons attending four public meetings held in January and February 1987. All comments provided were considered during the preparation of the proposed final RMP/EIS.

Copies of the proposed final RMP/EIS are available for review in public libraries located throughout the planning area. Copies are also available from the Dickinson District Office, 202 East Villard, P.O. Box 1229, Dickinson, North Dakota 58602, phone (701) 225–9148. Public reading copies are available for review at the following locations:

BLM, Office of Public Affairs, Main Interior Building, Room 5600, 18th and C Streets, NW., Washington, DC 20240.

BLM, Montana State Office, Public Assistance, 222 N. 32nd Street, Billings, Montana 59107.

BLM, Dickinson District Office, 202 East Villard, Dickinson, North Dakota 58602.

Background information, including maps and overlays used in applying the coal unsuitability criteria and other coal screens, is available for review at the Dickinson District Office.

All parts of the proposed plan may be protested. Protests should be sent to the Director (760), Bureau of Land Management, U.S. Department of the Interior, 18th and C Streets NW., Washington, DC 20240, within the 30-day protest period ending August 18, 1987. Protest statements should include the following information:

The name, mailing address, telephone number, and interest of the person filing the protest;

A statement of the issue or issues being protested;

A statement of the part or parts of the plan being protested;

A copy of all documents addressing the issue or issues that were submitted during the planning process by the protesting party, or an indication of the date the issue or issues were discussed for the record; and

A concise statement explaining why the proposed decision is believed to be wrong.

At the end of the 30-day protest period, the proposed plan, excluding any portions under protest, will become final. Approval will be withheld on any portion of the plan under protest until final action has been completed. Any significant changes to the proposed plan made as a result of a protest will be made available for public review and comment prior to final approval and implementation.

FOR FURTHER INFORMATION CONTACT: Mark Stiles, Project Manager, North Dakota RMP/EIS, Dickinson District Office, 202 East Villard, P.O. Box 1229, Dickinson, North Dakota 58602, Telephone: (701) 225–9148.

SUPPLEMENTARY INFORMATION: The proposed RMP/EIS was developed following analysis of four alternatives including "no action" or the "continuation of present management." The other three alternatives provide a range from "maximum production of commodity resources" to the "general protection of amenity resources."

The proposed plan focuses on four broad resource management issues: coal leasing, land pattern adjustment, oil and gas leasing, and off-road vehicle use designations.

The RMP/EIS includes the application of the four land use planning coal screens to approximately 4.2 million acres of federal coal. Also, preliminary categorizations of all BLM-administered lands in North Dakota for either retention or disposal, and methods to be used in adjusting the public land pattern are presented. Approximately 460,400 acres of federal oil and gas are reviewed in the RMP/EIS for necessary special leasing stipulations. The RMP/EIS also analyzes the need for offroad vehicle restrictions on BLM-administered surface lands in North Dakota.

June 30, 1987.

Marvin LeNoue,

Acting State Director

[FR Doc. 87–16090 Filed 7–16–87; 8:45 am]

BILLING CODE 4310–DN–M

[AZ–040–07–4212–13 A 21806]

Realty Action; Exchange of Public Land in Cochise County, AZ

AGENCY: Bureau of Land Management, Interior.

ACTION: Exchange; Public Land in Cochise County, Arizona.

SUMMARY: The following described land is suitable for trransfer by exchange to Patrick and Judy Goosherst under the provisions of section 206 of the Federal Land Policy and Management Act of 1976:

Gila and Salt River Meridian, Arizona

T. 19 S., R. 25 E.,
Sec. 17, lot 7;
Sec. 18, S½SE¼NE¼.

The land described above comprises 62.22 acres, more or less, in Cochise County.

Patrick and Judy Goosherst have offered the surface estate of the following described land to the United States:

Gila and Salt River Meridian, Arizona

T. 19 N., R. 19 W.,
Sec. 23, SE¼SE¼.

The land described above comprises 40.00 acres, more or less, in Mohave County.

The surface estate of the above-identified non-federal land will be acquired to consolidate ownership and enhance resource management.

DATE: For a period of 45 days from date of publication in the **Federal Register**, interested parties may submit comments to the Safford District Manager, 425 E. 4th Street, Safford, Arizona 85546. Any adverse comments will be evaluated by the State Director, who may vacate or modify this realty action and issue a final determination. In the absence of any action by the State Director, this realty action will become the final determination of the Department of the Interior.

SUPPLEMENTARY INFORMATION: Detailed information concerning this exchange, including the land use plan supporting this exchange and the environmental considerations reviewed in making this decision to exchange, are available for review at the Safford District Office.

Dated: July 9, 1987.

LeRoy Cook,

Acting District Manager.

[FR Doc. 87–16228 Filed 7–16–87; 8:45 am]

BILLING CODE 4310–32–M

[AZ–040–07–4212–12; A 22435 and A 22436]

Realty Action; Exchange of Public Land in Graham, Greenlee, Cochise and Pinal Counties, AZ and Cancellation of Segregation

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action; exchange of public land in Graham, Greenlee, Cochise and Pinal Counties, Arizona and cancellation of segregation.

SUMMARY: Certain public lands within the following described sections have been determined to be suitable for disposal by exchange to the State of Arizona pursuant to section 206 of the Federal Land Policy and Management

Act of 1976 (90 Stat. 2756; 43 U.S.C. 1716).

Selected Public Lands

Gila and Salt River Meridian, Arizona

T. 4 S., R. 30 E.,
Sec. 25.
T. 4 S., R. 31 E.,
Sec. 30.
T. 6 S., R. 22 E.,
Sec. 26.
T. 6 S., R. 24 E.,
Secs. 25, 35.
T. 7 S., R. 24 E.,
Secs. 1, 2, 8–15, 17, 19, 20, 22–24.
T. 7 S., R. 25 E.,
Secs. 5, 7, 8, 17–20, 30.
T. 8 S., R. 16 E.,
Sec. 23.
T. 8 S., R. 30 E.,
Secs. 19, 30.
T. 8 S., R. 31 E.,
Sec. 22.
T. 8 S., R. 32 E.,
Secs. 3, 9, 10, 15.
T. 12 S., R. 27 E.,
Secs. 12, 13, 22–24, 26, 27.
T. 12 S., R. 28 E.,
Secs. 4–7, 13, 16, 19, 20, 24, 29–31.
T. 12 S., R. 29 E.,
Secs. 18, 19, 30–32.
T. 13 S., R. 25 E.,
Secs. 13, 24.
T. 13 S., R. 26 E.,
Secs. 11, 14, 15.
T. 13 S., R. 27 E.,
Secs. 1, 3, 10–13, 19, 24, 27.
T. 13 S., R. 28 E.,
Secs. 1, 5, 6, 8, 11, 12, 17–21, 25, 27–29, 34, 35.
T. 13 S., R. 29 E.,
Secs. 4, 5, 7–9, 17–19, 25–38, 30, 31, 33–35.
T. 13 S., R. 30 E.,
Sec. 30.
T. 14 S., R. 25 E.,
Sec. 4.
T. 14 S., R. 26 E.,
Secs. 23, 25, 26.
T. 14 S., R. 30 E.,
Secs. 13, 24.
T. 15 S., R. 19 E.,
Sec. 14.
T. 15 S., R. 22 E.,
Sec. 22.
T. 15 S., R. 30 E.,
Secs. 1, 12, 25.
T. 15 S., R. 31 E.,
Secs. 1, 3, 4, 8–10, 13, 15–17, 20–23, 25–27.
T. 15 S., R. 32 E.,
Secs. 6, 7, 18, 19, 30, 31.
T. 16 S., R. 30 E.,
Secs. 1, 11–14, 23–25.
T. 16 S., R. 31 E.,
Secs. 1, 4–8, 11–13, 17–21, 28–30, 33, 34.
T. 17 S., R. 20 E.,
Secs. 21, 22.
T. 17 S., R. 31 E.,
Sec. 22.
T. 17 S., R. 32 E.,
Secs. 6, 10, 11, 15, 21–23, 26, 27.
T. 18 S., R. 20 E.,
Secs. 13, 23, 24.
T. 18 S., R. 32 E.,
Sec. 8.
T. 19 S., R. 20 E.,
Sec. 5.
T. 19 S., R. 26 E.,
Sec. 16.
T. 20 S., R. 20 E.,
Secs. 13, 23, 24, 26.
T. 20 S., R. 21 E.,
Sec. 18.
T. 21 S., R. 26 E.,
Sec. 31.

The involved public lands within the townships described above comprise 66,684.87 acres, more or less.

In exchange, the State of Arizona has offered lands in the following described sections to the United States.

Offered State Lands

Gila and Salt River Meridian, Arizona

T. 4 S., R. 23 E.,
Sec. 32.
T. 4 S., R. 27 E.,
Secs. 26, 27, 35, 36.
T. 5 S., R. 22 E.,
Secs. 2, 24–26, 35, 36.
T. 5 S., R. 23 E.,
Secs. 9, 16, 17, 19, 20, 29, 30, 32–36.
T. 5 S., R. 26 E.,
Secs. 10, 15, 25.
T. 5 S., R. 27 E.,
Secs. 2, 12, 16, 35, 36.
T. 6 S., R. 22 E.,
Secs. 16, 20, 21, 28, 29.
T. 6 S., R. 23 E.,
Secs. 1–3, 11, 12, 29, 31, 32, 35.
T. 6 S., R. 24 E.,
Secs. 16, 17, 19, 20, 29–32.
T. 6 S., R. 27 E.,
Secs. 2, 36.
T. 7 S., R. 23 E.,
Secs. 2, 6.
T. 7 S., R. 24 E.,
Sec. 5.
T. 8 S., R. 26 E.,
Sec. 36.
T. 11 S., R. 28 E.,
Secs. 16, 21–25, 27, 28, 32, 35.
T. 11 S., R. 29 E.,
Secs. 3, 4, 11–14, 23.
T. 12 S., R. 32 E.,
Secs. 32, 33.
T. 13 S., R. 26 E.,
Secs. 19, 20, 27, 36.
T. 13 S., R. 27 E.,
Sec. 32.
T. 13 S., R. 28 E.,
Sec. 32.
T. 13 S., R. 29 E.,
Secs. 1, 12–16.
T. 13 S., R. 30 E.,
Secs. 8–10, 15–22.
T. 13 S., R. 31 E.,
Secs. 8, 16, 22, 36.
T. 13 S., R. 32 E.,
Secs. 4, 7–11, 14, 16, 17, 20, 26, 32, 34, 35.
T. 14 S., R. 26 E.,
Sec. 2.
T. 14 S., R. 27 E.,
Sec. 16.
T. 14 S., R. 31 E.,
Sec. 2.
T. 14 S., R. 32 E.,
Secs. 2, 16, 18–20, 32.
T. 15 S., R. 28 E.,
Sec. 14.
T. 15 S., R. 32 E.,
Sec. 2.
T. 24 S., R. 32 E.,
Secs. 2, 3, 10, 11, 14–16, 22, 23.

The involved State lands within the townships described above comprises 51,590.25 acres, more or less.

Certain public lands among those described above will be exchanged for certain lands owned by the State of Arizona among those described above. The actual parcels to be involved will be determined on the basis of appraised market value.

The above identified nonfederal lands are being acquired to enhance resource management programs and continue the land tenure adjustment program prescribed in the land use plan. The overall exchange program will block up Federal and State-owned lands, and consolidate ownership and management with the predominant land holder for the areas involved. The public interests will be well served.

The acreages of the lands to be exchanged will be adjusted to equalize values upon completion of the final appraisal of the lands.

Patents for the public lands, when issued, shall contain the following reservations:

1. A reservation to the United States of a right-of-way for ditches or canals constructed by the authority of the United States under the Act of August 30, 1890 (26 Stat. 391; 43 U.S.C. 945).

2. Reservations to the United States of rights-of-way granted for certain Federal Aid Highways and roads held by a federal agency.

The public lands shall also be patented subject to all valid existing rights and terms and conditions of the authorized uses.

The State lands, when conveyed to the United States, will be subject to such terms and conditions as are necessary to protect the permittees and lessees. The permittee/lessee will be able to either continue his/her use under the existing terms of the State's authorization or may be issued a new authorization by the Bureau of Land Management.

This will serve as notice that the segregative effect placed upon the following described public lands in the Notice found at 52 FR 1670, January 15, 1987, will be terminated upon publication of this Notice in the Federal Register.

Gila and Salt River Meridian, Arizona

T. 6 S., R. 24 E.,
Sec. 20, E½, E½W½;
Sec. 21, N½NW¼, SW¼NW¼, NW¼, SW¼;
Sec. 25, NW¼NW¼;
Sec. 26, SW¼, NW¼SE¼;
Sec. 27, all;

Sec. 28, all;
Sec. 29, E½, E½W½;
Sec. 30, lot 2
Sec. 31, lots 2, 3, 4, S½NE¼, SE¼NW¼, SE¼;
Sec. 32, W½, E½NE¼ (no U.S. Minerals);
Sec. 33, all;
Sec. 34, NE¼, W½, N½SE¼, SW¼SE¼;
Sec. 35, E½NE¼, NW¼, N½SW¼, NE¼SE¼, S½SE¼.
T. 7 S., R. 24 E.,
Sec. 1, lots 3 and 4;
Sec. 2, lots 1, 2, 3, S½N½, S½;
Sec. 3, lot 4, SW¼NW¼;
Sec. 4, lots 1–4 incl., SE¼NE¼, SW¼NW¼, NW¼SW¼;
Sec. 5, lots 1–4 incl., S½N½, N½SW¼, SW¼SW¼, N½SE¼;
Sec. 6, lots 1–5 incl., 7, S½NE¼, SE¼NW¼, E½SW¼, SE¼;
Sec. 7, lots 1–4 incl., N½NE¼, SW¼NE¼, E½W½, S½SE¼;
Sec. 8, NW¼NW¼, W½SW¼, S½SE¼;
Sec. 9, S½NE¼, W½;
Sec. 10, S½NE¼, NW¼, N½SW¼, SW¼SW¼, N½SE¼;
Sec. 11, all;
Sec. 12, W½SW½;
Sec. 13, NW¼NW¼;
Sec. 14, N½N½, S½NW¼, SW¼SW¼, NW¼SE¼;
Sec. 15, N½,SW¼, N½SE¼, SW¼SE¼;
Sec. 17, E½;
Sec. 19, lots 2, 3, 4, W½NE¼, E½W½, SE¼;
Sec. 20, NW¼SW¼;
Sec. 22 all;
Sec. 23, lots 1 and 2, W½NW¼.
T. 7 S., R. 25 E.,
Sec. 5, lots 1, 4, SE¼NE¼, E½SW¼, N½SE¼;
Sec. 7, SW¼SE¼;
Sec. 8, E½NE¼, E½W½, SW¼NW¼, SE¼;
Sec. 17, all;
Sec. 18, SE¼NE¼;
Sec. 19, lots 1–4 incl., E½, E½W½;
Sec. 20, W½NE¼, NW¼, N½SW¼, SW¼SW¼;
Sec. 30, lots 1–4 incl., N½NE¼, E½W½.

The lands described above comprise 15,041.24 acres, more or less, located in Graham County.

DATES: For a period of 45 days from the date of publication in the **Federal Register**, interested parties may submit comments to the Safford District Manager, 425 E. 4th Street, Safford, Arizona 85546. Any adverse comments will be evaluated by the State Director, who may sustain, vacate or modify this realty action, and issue a final determination. In the absence of any action by the State Director, this realty action will become the final determination of the Department of the Interior.

SUPPLEMENTARY INFORMATION: Detailed information concerning the exchange, including detailed legal descriptions of the lands involved, the land use plan supporting this exchange and the environmental considerations reviewed in making this decision to exchange, are available for review at the Safford District Office.

Dated: July 9, 1987.

LeRoy Cook,

Acting District Manager.

[FR Doc. 87–16227 Filed 7–16–87; 8:45 am]

BILLING CODE 4310–32–M

[CA–060–07–7122–10–1018; CA 20078]

Realty Action; Exchange of Public and Private Lands, Riverside County, CA

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action CA 20078.

SUMMARY: The following described public lands in Riverside County have been determined to be suitable for disposal by exchange under Section 206 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1716):

San Bernardino Meridian, California

T. 2S., R. 5E.
Section 36: Lots 1–6 and Lots 10–13 inclusive.

Containing 147.60 acres of public land, more or less.

In exchange for these lands, the United States wil acquire the following described lands in Riverside County from The Nature Conservancy:

San Bernardino Meridian, California

T. 4S., R. 6E.
Sec. 14: E½NE¼, NE¼NW¼NE¼.

Containing 90 acres of non-Federal lands, more or less.

SUPPLEMENTARY INFORMATION: The purpose of the exchange is to acquire a portion of the non-Federal lands within the proposed 13,030 acre preserve for the Coachella Valley fringe-toed lizard. The lizard is Federally listed as threatened and State listed as endangered. The Bureau of Land Management's goal is to acquire approximately 6,700 acres within the preserve. The land being acquired does not constitute habitat for the lizard, but provides a sand source required for the continuing production of actives and dune areas that are critical habitat for the lizard. Other State or Federal agencies will acquire the remaining portion for the preserve. The public interest will be well served by this exchange.

Publication of this notice in the **Federal Register** segregates the public lands from the operation of the public land laws, and the mining laws, except for mineral leasing. The segregative effect will end upon issuance of patent or two years from the date of publication, whichever occurs first.

The exchange will be on an equal value basis. Full equalization of value will be achieved by acreage adjusment or by a cash payment to the United States by The Nature Conervancy in an amount not to exceed 25 percent of the total value of the lands to be transferred out of Federal ownership.

Lands transferred out of public ownership will be subject to the following reservations:

1. A reservation of a right-of-way to the United States for ditches or canals constructed by the authority of the United States. Act of August 30, 1890 (43 U.S.C. 945).

2. All the Geothermal Steam and associated Geothermal Resources shall be reserved to the United States, together with the right to prospect for, mine and remove the minerals. A more detailed description of this reservation, which will be incorporated in the patent document is available for review at this BLM office.

FOR FURTHER INFORMATION CONTACT: John Sullivan, Indio Resource Area (619) 323–4421. Information relating to this exchange, including the environmental assessment and land report, is available for review at the California Desert District Office, 1695 Spruce Street, Riverside, California 92507.

DATE: For a period of 45 days from the date of publication of this notice in the **Federal Register**, interested parties may submit comments to the District Manager, California Desert District Office, Bureau of Land Management, at the above address. Objections will be reviewed by the State Director, who may sustain, vacate, or modify this realty action. In the absence of any objections, this realty action will become the final determination of the Department of Interior.

Dated: July 9, 1987.

H.W. Riecken,

Acting District Manager.

[FR Doc. 87–16229 Filed 7–16–87; 8:45 am]

BILLING CODE 4310–40–M

[MT–930–07–4212–13; M–72221]

Realty Action; Exchange of Public and Private Lands, Valley and Phillips Counties, MT

AGENCY: Bureau of Land Management, Lewistown District Office, Interior.

ACTION: Notice of realty action M–72221—Exchange of public and private

lands, Valley and Phillips Counties, Montana.

SUMMARY: This exchange is between the United States of America and the State of Montana. The following described lands have been determined to be suitable for disposal by exchange under section 206 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1716:

Principal Meridian Montana

T. 31 N., R. 39 E.
Sec. 2, Lots 1, and 2, S½NE¼;
Sec. 7, Lot 3, NE¼SW¼;
Sec. 8, SW¼NE¼,E½SW¼,SE¼;
Sec. 9, SW¼SW¼;
Sec. 11, NW¼;
Sec. 12, S½SE¼;
Sec. 13, E½NE¼;
Sec. 17, W½E½,W½;
Sec. 18, SE¼;
Sec. 23, E½SE¼;
Sec. 24, SE¼NE¼,SW¼,W½SE¼;
Sec. 25, W½NW¼,NE¼NW¼,E½SW¼, S½SE¼;
Sec. 26, E½NE¼;
Sec. 35, Lots 3, and 4, NE¼,N½SE¼.
T. 31 N., R. 40 E.
Sec. 4, SW¼NW¼;
Sec. 5, SE¼,NE¼;
Sec. 13, Lot 5;
Sec. 18, Lots 1, and 2.
T. 32 N., R. 39 E.
Sec. 8, SE¼SW¼;
Sec. 17, W½NE¼,W½,NW¼SE¼;
Sec. 20, W½;
Sec. 29,E½,NW¼;
Sec. 32, NE¼.
T. 33 N., R. 39 E.
Sec. 3, N½;
Sec. 4, N½,SW¼;
Sec. 5, E½;
Sec. 10, E½;
Sec. 31, Lots 7–11;
Sec. 32, Lot 4.

Containing/aggregating 5,754.26 acres of public land.

In exchange for these lands, the United States Government will acquire the surface and mineral estates in the following described land:

Principal Meridian Montana

T. 31 N., R. 39 E.
Sec. 6, Lots 1, 2, 3, and 5, SE¼NW¼, S½NE¼.
T. 31 N., R. 39 E.
Sec. 19, NE¼,E½SW¼W½SE¼;
Sec. 20, NE¼NE¼,SW¼NE¼,E½SW¼;
Sec. 21, W½SW¼;
Sec. 28, W½W½;
Sec. 29, E½NE¼,NE¼NW¼,SW¼NW¼, W½SW¼,SE¼;
Sec. 30, E½SW¼,W½,SE¼;
Sec. 32, Lots 1, 2, 3, and 4, NE¼,N½,S½;
Sec. 33, Lot 1, W½NW¼,NW¼SW¼.
T. 32 N., R. 38 E.
Sec. 36;
T. 32 N., 39 E.
Sec. 5, Lots 2–7, 10, 11, and 12, E½SW¼;
Sec. 8, NW¼,NW¼SW¼;
Sec. 18, Lots 1, and 2, E½NW¼;
Sec. 19, Lots 3, and 4, E½SW¼;
Sec. 30, Lots 3, and 4, E½SW¼,SE¼.
T. 33, N., R. 39 E.
Sec. 7, NE¼;
Sec. 8, NW¼,E½SW¼,SE¼;
Sec. 17, N½,SW¼;
Sec. 18, Lots 7, and 12, E½NE¼,SE¼.
T. 34 N., R. 39 E.
Sec. 16, N½NW¼,SW¼NW¼, NW¼SW¼.
T. 36 N., R. 39 E.
Sec. 16, W½W½,SE¼NE¼.

Containing/aggregating 5,761.36 acres of State land.

DATES: For a period of 45 days from the date of this notice, interested parties may submit comments to the Bureau of Land Management, at the address below. Any adverse comments will be evaluated by the BLM, Montana State Director, who may sustain, vacate or modify this realty action. In the absence of any objections this realty action will become the final determination of the Department of Interior.

FOR FURTHER INFORMAITON CONTACT: Information related to this exchange, including the environmental assessment and land report is available for review at the Lewistown District Office, Airport Road, Lewistown, Montana 59457.

SUPPLEMENTARY INFORMATION: The publication of this notice segregates public lands described above the settlement, sale, location an entry under the public laws, including the mining laws but not from exchange pursuant to section 206 of the Federal Land Policy and Management Act of 1976.

The exchange will be subject to:

1. A reservation to the United States of a right-of-way for ditches or canals constructed by the authority of the United States in accordance with 43 U.S.C. 945.

2. All valid existing rights and reservations of record including the following: Big Flat Electric M–57527; Cornwell Ranch M–049525; Lyman Pattison M–66575; Williston Basin Pipeline M–034027; Northern Electric Coop, M–60020 and M–49770; Valley Electric, M–60025.

3. This will be a equal value exchange.

4. The exchange must meet the requirements of 43 CFR 4110.4–2(b).

This exchange is consistent with Bureau of Land Management policies and planning and has been discussed with local officials. The public interest will be served by completion of this exchange as the repositioning of the land ownership will bring about more efficient management of the lands.

Dated: July 8, 1987.

B. Gene Miller,

Acting District Manager.

[FR Doc. 87–16230 Filed 7–16–87; 8:45 am]

BILLING CODE 4310–DN–M

[ID–020–07–4322–12]

Meeting and Agenda for Burley District Grazing Advisory Board

AGENCY: Bureau of Land Managment, Interior.

ACTION: Meeting and agenda for Burley District Grazing Advisory Board.

SUMMARY: Notice is hereby given that the Burley District Grazing Advisory Board will meet on August 28, 1987.

The meeting will convene at 10:00 a.m. on August 28, 1987 in the conference room of the Bureau of Land Management Office at 138 South Main, Malad, Idaho.

Agenda items for the meeting will include: (1) Use of 8100 funds for pre-project work; (2) Managment of the Samaria Allotment (including field trip to evaluate situation); (3) Items of information: (a) review of 1987 noxious weed control efforts; (b) status of 1987 grasshopper control efforts.

The public is invited to attend the meeting and field trip, however, those of the public who wish to attend must furnish their own transportation and food. Interested persons may make an oral statements to the Board beginning at 10:30 a.m. or they may file written statement for the Board's consideration. Depending on the number of persons wishing to make oral statements, a per person time limit may be established by the District Manager. Anyone wishing to make an oral statement or file a written statement must contract the District Manager by August 27, 1987 for inclusion in the meeting schedule.

Detailed minutes of the Board meeting will be maintained in the District Office, 200 South Oakley Highway, Burley, Idaho, and will be available for public inspection during regular business hours, (7:45 a.m. to 4:30 p.m., Monday thru Friday) within 30 days following the meeting.

DATE: August 28, 1987.

ADDRESS: Bureau of Land Management, Deep Creek Area Office, 138 South Main Street, Malad, Idaho 83252.

FOR FURTHER INFORMATION CONTACT: John Davis, Burley District Manager, (208) 678–5514.

Dated: July 10, 1987.

John S. Davis,

District Manager.

[FR Doc. 87–16226 Filed 7–16–87; 8:45 am]

BILLING CODE 4310–GG–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Marine Mammals; Application for Permit: All-Union Scientific Research Institute of Fisheries and Oceanography (P194D)

Notice is hereby given that an Applicant has applied in due form for a Permit to take marine mammals as authorized by the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361–1407), and the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR Part 216).

1. Applicant:
   All-Union Research Institute of Marine Fisheries and Oceanography, U.S.S.R. Ministry of Fisheries, 17, V. Krasnoselskaya, Moscow, B–140, 107140 USSR
2. Type of Permit: Scientific Research
3. Name and Number of Marine Mammals:
   Pacific walrus (*Odobenus rosmarus*)—200
   Bearded seal (*Erignathus barbatus*)—300
4. Type of Take: To collect from the wild by killing for the purpose of studying the abundance, distribution, and dynamics of rookeries under ice conditions, and the age-sex composition and reproductive capacity of walrus and ice seals.
5. Location of Activity: Eastern part of the Chukchi sea.
6. Period of Activity: 1 year.

Concurrent with the publication of this notice in the **Federal Register**, the Secretary of Commerce is forwarding copies of this application to the Marine Mammal Commission and the Committee of Scientific Advisors.

Written data or views, or requests for a public hearing on this application should be submitted to the Assistant Administrator for Fisheries, National Marine Fisheries Service, U.S. Department of Commerce, Washington, DC 20235, within 30 days of the publication of this notice. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular application would be appropriate. The holding of such hearing is at the discretion of the Assistant Administrator for Fisheries.

All statements and opinions contained in this application are summaries of those of the Applicant and do not necessarily reflect the views of the National Marine Fisheries Service.

Documents submitted in connection with the above application are 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, Alaska Region, National Marine Fisheries Service, 709 West 9th Street, Federal Building, Juneau, Alaska 99802; and

Chief, Wildlife Permit Office, U.S. Fish and Wildlife Service, 1000 North Glebe Road, Room 611, Arlington, Virginia 22203.

Dated: July 10, 1987.

Dr. Nancy Foster,

Director, Office of Protected Resources and Habitat Programs, National Marine Fisheries Service.

Dated: July 13, 1987.

Richard K. Robinson,

Chief, Branch of Permits, Federal Wildlife Permit Office, U.S. Fish and Wildlife Service.

[FR Doc. 87–16305 Filed 7–16–87; 8:45 am]

BILLING CODE 3510–22–M

Minerals Management Service

Development Operations Coordination Document

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the receipt of a Proposed Development Operations Coordination Document (DOCD).

SUMMARY: Notice is hereby given that Hall-Houston Oil Company has submitted a DOCD describing the activities it proposes to conduct on Lease OCS–G 7835, Block 31, Chandeleur Area, offshore Louisiana. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from an onshore base located at Hopedale, Louisiana.

DATE: The subject DOCD was deemed submitted on July 9, 1987.

ADDRESS: A copy of the subject DOCD is available for public review at the Public Information Office, Gulf of Mexico OCS Region, Minerals Management Service, 1201 Elmwood Park Boulevard, Room 114, New Orleans, Louisiana (Office Hours: 8 a.m. to 4:30 p.m., Monday through Friday).

FOR FURTHER INFORMATION CONTACT: Michael J. Tolbert; Minerals Management Service, Gulf of Mexico OCS Region, Field Operations, Plans, Platform and Pipeline Section, Exploration/Development Plans Unit; Telephone (504) 736–2867.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the public, pursuant to sec. 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected States, executives of affected local governments, and other interested parties became effective December 13, 1979 (44 FR 53685). Those practices and procedures are set out in revised § 250.34 of Title 30 of the CFR.

Dated: July 10, 1987.

J. Rogers Pearcy,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 87–16232 Filed 7–16–87; 8:45 am]

BILLING CODE 4310–MR–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: Ernst Enterprises, Inc., 3361 Successful Way, Dayton, OH 45414.

2. Wholly-owned Subsidiaries Which Will Participate In the Operations, and States of Incorporation:

(i) Bellbrook Transport, Inc., an Ohio corporation (hauling subsidiary).

(ii) Ernst Paving, Inc., an Ohio corporation (hauling subsidiary).

(iii) Ernst Enterprises, Inc., an Ohio corporation (will use the hauling service of both hauling subsidiaries).

(iv) Ernst Paving, Inc., an Ohio corporation (will also use the hauling services of Bellbrook Transport, Inc. in addition to its own hauling services).

B. 1. Parent corporation and address of principal office: Sammons Enterprises, Inc., 403 South Akard, P.O. Box 225235, Dallas, TX 75265–5235.

2. Wholly-owned subsidiaries which will participate in the operations, and States of incorporation:

(i) Mt. Valley Spring Company, State of Incorporation: Arkansas.

(ii) Diamond Water, Inc., State of Incorporation: Arkansas.

Noreta R. McGee,

Secretary.

[FR Doc. 87-16250 Filed 7-16-87; 8:45 am]

BILLING CODE 7035-01-M

[No. MC-F-18505]

Motor Carrier Control and Purchase Exemptions; GLI Acquisition Co., et al.

AGENCY: Interstate Commerce Commission.

ACTION: Notice of filing of application; notice of approval of grant of temporary authority; request for public comment; and waiver of requirement for an initial decision.

SUMMARY: GLI Acquisition Company (GLI Acquisition), 2400 InterFirst Plaza, 901 Main Street, Dallas, TX 75202, a noncarrier, seeks authority to purchase all the interstate and intrastate operating authorities of Trailways Lines, Inc. (Trailways), 13760 Noel Road, Dallas, TX 75240, together with its principal operating assets. Trailways operates as a motor common carrier of passengers in interstate commerce pursuant to MC-109780 and subnumbers, which embrace (a) nationwide authority (i) to conduct charter and special operations and (ii) to transport shipments weighing 100 pounds or less if transported in a motor vehicle in which no one package exceeds 100 pounds; and (b) regular-route authorities in the States described below. In addition, applicants seek approval for the transfer of the intrastate authorities and operations described below, pursuant to the plenary and exclusive jurisdiction provisions of 49 U.S.C. 11341(a).

GLI Acquisition is an indirect, wholly owned subsidiary of GLI Holding Company (Holding Company), which indirectly controls the following five motor passenger carriers through stock ownership: Eastern Greyhound Lines Co. (MC-195057) (Eastern), Central Greyhound Lines Co. (MC-194798) (Central), Southern Greyhound Lines Co. (MC-194551) (Southern), Western Greyhound Lines Co. (MC-194642) (Western), and Greyhound Travel Services, Inc. (MC-195605) (GTS). Applicant asserts that Eastern, Central, Southern, Western, and GTS are operationally integrated and, therefore, constitute a single system under applicable Commission precedents. Approval has been granted in MC-F-18260 for Holding Company's control of those five carriers in common with motor passenger carrier BusLease Contract Services, Inc. (BusLease) (MC-193190), upon termination of an independent voting trust informally approved by Commission staff under 49 CFR Part 1013, and with motor passenger carriers Vermont Transit Co., Inc. (MC-45626), and Texas, New Mexico, Oklahoma Coaches, Inc. (MC-61120), upon Holding Company's exercise of purchase options. As an incident to the proposed purchase, GLI Acquisition seeks authority to acquire Trailways' 50 percent stock interest in Continental Panhandle Lines, Inc. (Panhandle) (MC-8742), a motor passenger carrier operating principally over regular routes between Amarillo, TX, Oklahoma City, OK, and Liberal, KS. The Commission will consider the common control aspects of the transaction in connection with the purchase.

Corresponding temporary authority under 49 U.S.C. 11349 has been approved for the lease by GLI Acquisition of Trailways' assets; for immediate purchase of certain buses, contractual and stock interests, garage and terminal properties, and other assets of Trailways; and for control through management of Panhandle. Pursuant to 49 U.S.C. 11345a(d), the Commission has waived the requirement in 49 U.S.C. 10322 for an initial decision and will make the decision itself because the application is of major transportation importance and because of Trailways' deteriorating financial condition.

DATES: Comments in opposition must be filed by August 31, 1987. Replies in support of the application must be filed by September 22, 1987.

ADDRESSES: Send comments and replies (an original and 20 copies, if possible), referring to Docket No. MC-F-18505, to:

Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington DC 20423.

Send an additional copy of comments to applicants' representatives:

Fritz R. Kahn and Mark J. Andrews, 1660 L Street, NW., Suite 1000, Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: Andrew L. Lyon, (202) 275-7291 or Warren C. Wood, (202) 275-7977.

SUPPLEMENTARY INFORMATION: This application is governed by 49 U.S.C. 11343-11344 and by 49 CFR Parts 1182-1183 of the Commission's Rules of Practice (to the extent not superceded by this notice). *See Rules Governing Applics. Filed under sections 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 the notice of the filing of the application is published in the **Federal Register.** Failure to oppose will be construed as a waiver of opposition and of future participation in the proceeding. If the comments in opposition include a request for oral hearing, the request shall meet the requirements of 49 CFR 1182.3(a). The need for cross-examination through oral hearing will be determined after written submissions are reviewed.

Persons wishing to oppose the application must follow the rules set forth under 49 CFR 1182.2. A copy of the application, including applicants' supporting evidence, may be obtained from applicants' representatives upon payment of $10.00, in accordance with 49 CFR 1182.2(d).

Operating authority sought to be acquired. Trailways holds interstate regular-route authority and currently conducts operations in AL, AZ, AR, CA, CO, DE, FL, GA, IL, IN, KS, KY, LA, MD, MS, MO, NV, NJ, NM, NY, NC, OH, OK, PA, SC, TN, TX, UT, VA, WV, and DC. It also holds interstate regular-route authority that is not currently operated in CT, IA, MA, MI, MT, NE, OR, SD, WA, and WY. Trailways intrastate certificates are the following:

Alabama: 275, 325, 256, 321 (Docket C-4825)
Arkansas: M-508, B-253, 442, B-9 (Docket M-28293)
California: PSC-838, TCP-22A, TCP-146A, T-45681 (Resolution PE-2338)
Colorado: No. 1891 and I
Connecticut: No. 453
Georgia: MCA 5303, 23914, 3752, and 31281
Illinois: Nos. 28104, 34202, 34230, 38681, 47677, 50322, 58106, (Docket 86-0202); Nos. 47937, 47937 (Supp.), 51209, 51209 (Supp.), 56747 (Docket 86-0201); Nos. 770041, 77-0193, 56569, 56654, 55421, 24007
Indiana: PSCI No. 20536-A, No. 13703-A
Iowa: No. C-12P (Docket No. MC 479)
Kansas: Docket No. 7214
Kentucky: Nos. R92, R1069, 1214
Louisiana: Nos. 479-D, 479-C, 569-A, 570-O, 570-S, 570-T, 570-U, 570-K, 569, 371-B
Maryland: No Certificate Number
Massachusetts: Nos. 12521-1740, 337, 645, 1994, 3269, 3338, 3370, 1682, 1740, 1366, 3290, 3480, 3338-1740, 1774, 2018
Mississippi: Nos. 2549, 2510-T, 2507 (Docket Nos. MC-16844, MC-5630, MC-3286)
Missouri: Permit No. 147
Navada: CPC A-2467

New Jersey: Nos. 80–46, 82–91, 775–436, 782–143, 461 C
New Mexico: Nos. 45, 2946, 489, C687
North Carolina: No. B–69, Sub 144
Ohio: Permit No. 5124, Cert. Nos. 11458–R, 11584–B, 11693–B, 11574–B
Oklahoma: MC 21662, Sub 5 (Order No. 301964)
Pennsylvania: A.00106794, Folders 1 & 2
South Carolina: Docket No. 86–23–T, Order No. 86–94
South Dakota: Class A Permit Nos. 698–A, 697–A, 699–A, and 736–A, Class B Permit Nos. 5817–B and 5818–B
Tennessee: Docket No. MC–18638
Texas: Nos. 7B, 3979, and 976 B
Utah: No. 2184
Virginia: Nos. P–2034 and P–2554
West Virginia: P.S.C. M.C. No. 709

Trailways also conducts unregulated intrastate operations in Arizona, Florida, and Indiana.

Operating assest sought to be acquired. Greyhound proposes to purchase from Trailways: 450 buses; 17 real estate parcels (generally terminals and garages); its Brownsville, TX, bus manufacturing plant; all the stock of noncarrier Trailways Commuter Transit; all the assets of noncarrier Trailways Food Service; the operating rights described above; all interline and through service agreements, all of which shall be subject to cancellation upon 30 days' notice or less; Trailways' fuel and spare parts inventory; miscellaneous equipment; and other miscellaneous proprietary rights, including the trade names "Eagle" and "Trailways." The proposed acquisition also includes such leased assets s between 100 and 200 additional buses and 28 additional garages and terminals, and such subleased assets as 29 additional buses and 65 terminals or other real estate leaseholds. Title to the majority of these assets (but not Trailways' operating rights and its stock interest in Panhandle) will be acquired pursuant to temporary authority.

Stock interest sought to be acquired. Greyhound's proposed acquisition of all stock, equity, and other motor passenger carrier interests of Trailways and its subsidiaries in Panhandle is conditioned on a determination by Greyhound that this acquisition will not adversely affect it.

Description of proposed transaction. The agreed purchase price is $80 million, to be paid by Greyhound in cash, contingent upon the arranging of satisfactory bank financing, details of which are not yet available. The transferred assets are to be adjusted, based on independent appraisals, to ensure that the fair market value of the assets is as close as possible to the stated consideration. No substantial value is attached to the interstate operating authorities to be transferred.

Applicants represent that financial collapse is imminent for Trailways and that no alternative to this proposal has proven feasible. Through this application, they propose to avoid total financial collapse of the Trailways operations, in which case Trailways' buses would stop running, its drivers and other personnel would be terminated, its operating assets would be sold off piecemeal at a fraction of their value as a network, its numerous creditors would bear significant losses, and hundreds of points in 29 States would lose their last intercity bus service.

In addition, applicants assert: that intercity buses account for only a shrinking, and insignificant, portion of the intercity passenger travel industry in this country, facing intense competition from airplanes, railroads, and private automobiles; that the proposed acquisition does not include independent carriers comprising the National Trailways Bus Systems; that Trailways, especially in the wake of recent route abandonments, falls far short of being a nationwide competitor to Greyhound's route system; that Trailways is a "failing firm" whose business will collapse by the end of the year if this transaction does not go forward; and that the combined operations of Greyhound and Trailways could not possibly exert monopoly power, due both to intense competition from other intercity transportation modes and to the extremely low entry barriers in the bus industry and a regulatory rate structure that allows the Commission quickly to rectify unfair pricing practices.

GLI's corresponding request for temporary authority to lease certain of Trailways' assets during the pendency of the permanent application; to acquire immediate title to 450 buses, terminal and garage properties, contractual and stock interests and other assets of Trailways; and to control Panhandle through management has been approved by the Commission subject to conditions, as follows:

GLS shall not, prior to the effective date of a decision approving its permanent application to acquire control of Panhandle and to purchase Trailways' operating rights and other assets:

(1) Sell or otherwise permanently dispose of any interest in real property of Trailways of Panhandle without prior approval of the Commission.

(2) Engage in conduct which would cancel, close, hinder or prevent interline, interchange or access arrangements presently existing with independent members of the National Trailways Bus System and all other independent bus lines.

(3) Make other changes in Trailways or Panhandle of such permanent or irrevocable nature as to prevent the resumption of basic service by Trailways or Panhandle in the event the transaction is not consummated.

Major transportation importance. Applicants are the principal providers of intercity motor passenger transportation in the United States. This request for unification of their operations raises substantial issues relating to competition and adequacy of service to the public. Further, the deteriorating financial condition of Trailways requires that we act promptly. Accordingly, the Commission will waive the requirement that an initial decision be made under 49 U.S.C. 10322 (initial decision making authority has been delegated under 49 CFR 1182.1(f) pursuant to its authority under 49 U.S.C. 11345a(d)) and render a decision itself.

Request for comments: Interested parties may participate in the proceeding formally by submitting written comments within 45 days after notice is published. Comments should refer to No. MC–F–18505, and address:

(1) The effect of the proposed transaction on (a) the adequacy of transportation to the public; (b) competition in the intercity motor passenger industry; (c) the total fixed charges resulting from the proposed transaction; and (d) carrier employees. *See* 49 U.S.C. 11344(b)(2); and (2) any other issue relevant to the proceeding.

Decided: July 10, 1987.

By the Commission, Chairman Gradison, Vice Chairman Lamboley, Commissioners Sterrett, Andre, and Simmons. Commissioner Simmons would not have waived the requirement for an initial decision by an administrative law judge.

Noreta R. McGee,

Secretary.

[FR Doc. 87–16249 Filed 7–16–87; 8:45 am]

BILLING CODE 7035–01–M

[Finance Docket No. 31068]

Railroad Operation and Acquisition; TRAINS Unlimited, Inc., et al.

TRAINS Unlimited, Incorporated (TUI) and Charles City Railway Line, Inc. (CCR) have filed a joint notice of exemption. TUI seeks exemption to acquire the line of Iowa Terminal Railroad Company located in or near Charles City, IA, extending from milepost 0.0 to milepost 3.6, a total of aproximately 3.6 miles. CCR seeks exemption to lease the trackage from TUI and operate the line. Any comments

must be filed with the Commission and served on T. Scott Bannister, Hanson, Bjork & Russell, 1300 Des Moines Building, Des Moines, IA 50309; (515) 244–0177.

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 transaction.

Decided: July 7, 1987.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 87–16251 Filed 7–16–87; 8:45 am]

BILLING CODE 7035–01–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacture of Controlled Substances; Application; Abbott Laboratories

Pursuant to § 1301.43(a) of Title 21 of the Code of Federal Regulations (CFR), this is notice that on June 22, 1987, Abbott Laboratories, 14th Street and Sheridan Road, Attention: Customer Service D–345, North Chicago, Illinois 60064, made application to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of the Schedule II controlled substance Bulk dextropropoxyphene (non-dosage forms) (9273).

Any other such applicant and any person who is presently registered with DEA to manufacture such substance may file comments or objections to the issuance of the above application and may also file a written request for a hearing thereon in accordance with 21 CFR 1301.54 and in the form prescribed by 21 CFR 1316.47.

Any such comments, objections or requests for a hearing may be addressed to the Deputy Assistant Administrator, Drug Enforcement Administration, United States Department of Justice, 1405 I Street, NW., Washington, DC 20537, Attention: DEA Federal Register Representative (Room 1112), and must be filed no later than August 17, 1987.

Dated: July 9, 1987.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 87–16240 Filed 7–16–87; 8:45 am]

BILLING CODE 4410–09–M

Manufacturer of Controlled Substances; Registration; Smithkline Chemicals

By Notice dated March 25, 1987, and published in the **Federal Register** on April 1, 1987; (52 FR 10428), Smithkline Chemicals, Division Smithkline Beckman Company, 900 River Road, Conshohocken, Pennsylvania 12428, made application to the Drug Enforcement Administration to be registered as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
4-methoxyamphetamine (7411)	I
Amphetamine, its salts, optical isomers, and salts of its optical isomers (1100)	II
Phenylacetone (8501)	II

No comments or objections have been received. Therefore, pursuant to section 303 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 and Title 21, Code of Federal Regulations, § 1301.54(e), the Deputy Assistant Administrator hereby orders that the application submitted by the above firm for registration as a bulk manufacturer of the basic classes of controlled substances listed above is granted.

Dated: July 9 1987.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 87–16241 Filed 7–16–87; 8:45 am]

BILLING CODE 4410–09–M

[Docket No. 87–13]

Revocation of Registration; Wingfield Drugs, Inc.

On January 30, 1987, the Administrator of the Drug Enforcement Administration (DEA) issued to Wingfield Drugs, Inc. (Respondent), of 1814 Shady Lane Drive, Jackson, Mississippi 39204, an Order to Show Cause proposing to revoke DEA Certificate of Registration AW9710434. The Order to Show Cause alleged that the continued registration of Wingfield Drugs Inc., would be inconsistent with the public interest, as set forth in 21 U.S.C. 823(f). Additionally, citing his preliminary finding that Wingfield Drugs, Inc.'s continued registration posed an imminent danger to the public health and safety, the Administrator ordered the immediate suspension, pursuant to 21 U.S.C. 824(d), of DEA Certificate of Registration AW9710434.

The statutory predicate recited in the Order to Show Cause was that the continued registration of Respondent is inconsistent with the public interest in that: (1) An accountability audit of controlled substances by the Mississippi State Board of Pharmacy (Pharmacy Board) for the period January 26, 1985, through October 29, 1985, and January 26, 1985, through November 20, 1985, revealed that Respondent could not account for 63,434 dosage units of controlled substances which it had purchased; (2) based on the results of that audit, the Pharmacy Board ordered the suspension of Respondent's state controlled substance registration on March 13, 1986, effective March 17, 1986; such action was upheld on January 20, 1987, by the Chancery Court, Hinds County, Mississippi; and (3) on January 26, 1987, Pharmacy Board compliance agents conducted an inspection at Respondent's pharmacy, during which they discovered controlled substances, and received information that Alford Howard Graham, Respondent's managing pharmacist, was continuing to order and dispense controlled substances in violation of the Pharmacy Board's order.

The Order to Show Cause/Immediate Suspension was personally served on Wingfield Drugs, Inc. on February 3, 1987. On February 6, 1987, counsel for Wingfield Drugs, Inc. and Alford Howard Graham responded by letter with a Motion to Quash the Order to Show Cause/Immediate Suspension. As the Administrative Law Judge has no authority or jurisdiction to quash or dismiss an Order to Show Cause, the Administrative Law Judge determined to accept a "Notice of Hearing" provision appended to the motion as a request for a hearing and directed that the matter be docketed. Subsequently, counsel for the Government filed a Motion for Summary Disposition, alleging that Respondent is not authorized to possess, dispense, or otherwise handle controlled substances in the State of Mississippi. Respondent filed an Objection to DEA Motion for Summary Disposition and Motion to Dismiss Pleadings, to which Government counsel filed a response.

On April 22, 1987, Administrative Law Judge Mary Ellen Bittner issued her Opinion and Recommended Findings of Fact, Conclusions of Law and Decision. No exceptions were filed, and on May 29, 1987, the Administrative Law Judge transmitted the record to the Administrator. The Administrator has considered the record in its entirety, and pursuant to 21 CFR 1316.67, hereby issues his final order in this matter based upon findings of fact and conclusions of law as hereinafter set forth.

The Administrative Law Judge found that Miss. Code Ann., sections 41–29–131 (1) through (11) (1972), establishes a procedure for the Pharmacy Board to deny, revoke or suspend a controlled substance registration or to refuse a renewal of a registration. That procedure includes issuance of an Order to Show Cause, a hearing, a decision by the Pharmacy Board, and appeal to an appropriate court.

Section 41–29–131(10) specifically provides that:

> Any order, rule or decision of the board shall not take effect until after the time for appeal shall have expired. In the event of an appeal, such appeal shall act as a supersedeas * * *

Section 41–29–131(12) provides that the Pharmacy Board:

> may suspend, without an order to show cause, any registration simultaneously with the institution of proceedings under Section 41–29–129, * * * if it finds there is an imminent danger to the public health or safety which warrants this action. The suspension shall continue in effect until the conclusion of the proceedings, including judicial review thereof, unless sooner withdrawn by the suspending agency or dissolved by a court of competent jurisdiction.

On March 17, 1986, the Pharmacy Board issued an order suspending Graham's license to practice pharmacy for 12 months, but directed that the last 11 months of that suspension be held in abeyance, assessed him a monetary penalty of $1,000, and placed him on probation for 10 years. In addition, the Pharmacy Board, citing Miss. Code Ann., section 41–29–131(12) (1972), and finding "an imminent danger to the public health and safety," suspended Respondent's Mississippi controlled substance registration, effective immediately, and directed that all controlled substances of Respondent be placed in the Pharmacy Board's custody.

On March 20, 1986, the Circuit Court for the First Judicial District of Hinds County, Mississippi, issued an Order of Seizure of all controlled substances on the premises of Respondent, noting that the Pharmacy Board had ordered the immediate suspension of Respondent's controlled substance registration without supersedeas.

Graham and Respondent appealed the Pharmacy Board's action to the Chancery Court of the First Judicial District of Hinds County, Mississippi. On January 20, 1987, the Chancellor issued an opinion upholding the Pharmacy Board's action. On January 22, 1987, Graham filed a Notice of Appeal of the Chancellor's opinion with the Supreme Court of Mississippi.

Counsel for the Government argued that Respondent is not currently authorized to handle controlled substances and cited Miss. Code Ann., section 41—29—131(12) (1972), for the proposition that Respondent's suspension remains in effect until it is either withdrawn by the Pharmacy Board or dissolved by a court. Since the suspension has not been withdrawn or dissolved, Respondent is not authorized to dispense controlled substances in Mississippi and thus, is not eligible for registration by the DEA. Respondent, however, contended that its appeal of the suspension is not currently in effect; that Section 41—29—131(12) is inconsistent with section 41—29—131(10); that the inconsistency can be resolved only by Mississippi courts or a Federal district court; that DEA should await the outcome of the state proceedings; and that, in any event, the Pharmacy Board had an obligation to notify it that it was acting pursuant to section 41—29—131(12) and failed to do so.

The Administrative Law Judge concluded that there is no merit to Respondent's contentions. This determination is supported by the Miss. Code Ann., section 41—29—131(12), wherein it provides for an exception to the procedures stated in Section 41—29—131(1) through (11) and authorizes the Pharmacy Board to suspend a registration without an Order to Show Cause in cases where it finds "an imminent danger to the public health and safety * * *" and that a suspension under that section remains in effect until withdrawn by the Pharmacy Board or dissolved by a court of competent jurisdiction. It is clear that section 41—29—131(12) provides for an exception to the usual procedure in "imminent danger" cases, and is not inconsistent with the rest of the statute.

Further, as counsel for the Government emphasizes in her response to Respondent's objection to the motion for summary disposition: "It is incongruous to think that the drafters of this statute intended that once the Board of Pharmacy makes a finding of imminent danger to the public health and safety and thereby suspends a registrant's registration, all the registrant need do is appeal such suspension and its registration would be reinstated, thereby perpetuating the danger to the public health and safety."

Respondent's final contention was that the Pharmacy Board failed in its obligation to notify Respondent that it was proceeding under section 41—29—131(12). This argument is frivolous. Assuming that such an obligation existed, the Pharmacy Board clearly met it, for in its March 17, 1986, order suspending Respondent's controlled substances registration, the Pharmacy Board specified that it was acting in accordance with the provision of section 41—29—131(12). Thus, Respondent was on notice at all relevant times that the suspension of its state controlled substance registration was effective, notwithstanding any appeals.

The Administrative Law Judge concluded that Respondent is not currently authorized to handle controlled substances in the State of Mississippi.

As a matter of law, the Drug Enforcement Administration does not have statutory authority under the Controlled Substances Act to issue or maintain a registration for a practitioner if the applicant or registrant lacks State authority to dispense controlled substances. See 21 U.S.C. 823(f). This agency has consistently so held. See *Tony's Discount Store, Anthony Sekul, Proprietor,* Docket No. 85–60, 51 FR 12578 (1986), and cases cited therein.

The Administrative Law Judge also found that, in instances where the applicant or registrant is not authorized to handle controlled substances in the state in which he practices, a motion for summary disposition is properly entertained and must be granted. It is settled law that when no fact question is involved, or when the facts are agreed, a plenary, adversary administrative proceeding involving evidence and cross-examination of witnesses is not obligatory, even though a pertinent statute prescribes a hearing. In such situations, it has been concluded that Congress does not intend administrative agencies to perform meaningless tasks. *U.S. v. Consolidated Mines and Smelting Co., Ltd.,* 445 F.2d 432, 453 (9th Cir. 1971); see *NLRB v. International Association of Bridge, Structural and Ornamental Ironworkers, AFL–CIO,* 549 F.2d 634 (9th Cir. 1977); *Alfred Tennyson Smurthwaite, M.D.,* Docket No. 77–29, 43 FR 11873 (1978); *Phillip E. Kirk, M.D.,* Docket No. 82–36, 48 FR 32887 (1983), aff'd *sub nom Kirk v. Mullen,* 749 F.2d 297 (6th Cir. 1984).

The Administrator adopts the findings of fact, conclusions of law and recommendations of the Administrative Law Judge in its entirety.

The Administrator concludes that, given Respondent's lack of state authorization to handle controlled substances and the apparent diversion of controlled substances, there is no question that the continued registration of Wingfield Drugs, Inc. is inconsistent with the public interest. 21 U.S.C. 823(f) and 824(a)(4). Accordingly, the

Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b), hereby orders that DEA Certificate of Registration AW9710434, previously issued to Wingfield Drugs, Inc. be, and it hereby is, revoked. The Administrator further orders that any pending applications for registration be, and they hereby are, denied. This order is effective immediately.

When the Order to Show Cause/Immediate Suspension was served on Wingfield Drugs, Inc., all controlled substances possessed by the pharmacy under the authority of its registration were placed under seal and removed for safekeeping. 21 U.S.C. 824(f) provides that no disposition may be made of such controlled substances under seal until all appeals have been concluded or until the time for taking an appeal has elapsed. Accordingly, these controlled substances shall remain under seal until August 17, 1987 or until any appeal of the order has been concluded. At that time, all such controlled substances shall be forfeited to the United States and shall be disposed of pursuant to 21 U.S.C. 881(e).

Dated: July 2, 1987.

John C. Lawn,

Administrator.

[FR Doc. 87-16239 Filed 7-16-87; 8:45 am]

BILLING CODE 4410-09-M

DEPARTMENT OF LABOR

Employment and Training Administration

Federal-State Unemployment Compensation Program; Unemployment Insurance Program Letter No. 28-87, Interpreting Federal Law Provisions Relating to Coverage of Religiously-Oriented Entities

The Employment and Training Administration (ETA) interprets Federal law pertaining to unemployment insurance as part of the fulfillment of its role in administration of the Federal-State unemployment insurance system. These interpretations are issued in Unemployment Insurance Program Letters (UIOLs) to State Employment Security Agencies.

Section 3304(a)(6)(A) of the Federal Unemployment Tax Act (FUTA) requires, as one of several conditions for certain tax credits to employers, that individuals employed by State and local governmental entities and certain nonprofit organizations be covered by State unemployment insurance laws. However, section 3309(b)(1), FUTA, provides limited exceptions to this required coverage relating to services performed for religiously-oriented entities.

UIPL No. 28-87 restates ETA's interpretation regarding the exceptions from coverage contained in section 3309(b)(1) as they apply to nonaffiliated but religiously-oriented schools and other entities. The UIPL is published in the **Federal Register** to inform the public.

Dated: July 10, 1987.

Roberts T. Jones,

Deputy Assistant Secretary of Labor.

Unemployment Insurance Program Letter No. 28-87

To: All State Employment Security Agencies.
From: Donald J. Kulick, Administrator, for Regional Management.
Subject: Coverage of Nonaffiliated Religiously-Oriented Entities Under Section 3309(b)(1), FUTA.

1. *Purpose.* To advise the States of the Employment and Training Administration's (ETA) interpretation of section 3309(b)(1) of the Federal Employment Tax Act (FUTA), as it relates to coverage of nonaffiliated religiously-oriented schools and other entities.

2. *References.* Sections 3304(a)(6)(A), 3309(a)(1) and 3309(b)(1), FUTA.

3. *Background.* Section 3304(a)(6)(A), FUTA, requires, as a condition for certification of State laws, that States pay compensation based on services performed for certain governmental entities and nonprofit organizations designated in Section 3309(a)(1), FUTA. Section 3309(b)(1), FUTA, provides two exceptions to this required coverage relating to services performed for religiously-oriented entities. The exceptions are for services performed:

[I]n the employ of (A) a church or convention of association of churches, or (B) an organization which is operated primarily for religious purposes and which is operated, supervised, controlled, or principally supported by a church or convention of association of churches.

Questions have arisen as to how these exceptions apply to religiously-oriented schools and other entities. Following is a discussion of three categories of these religiously-oriented schools and other entities and their applicability to each of the exceptions provided in section 3309(b)(1), FUTA.

With respect the first category, litigation in Federal courts has established that coverage of employees of religious schools who are in the direct employ of a church or a convention or association of churches may be exempted under section 3309(b)(1)(A), FUTA. See *St. Martin Evangelical Lutheran Church* v. *South Dakota*, 101 S.Ct. 2142 (1981). This exemption applies to all individuals in the direct employ of a church.

The second category of services exempt from the required coverage are those performed in the employ of religious schools and other entities which, although separately incorporated from a church, are "operated, supervised, controlled or principally supported by a church or convention or association of churches" as provided by section 3309(b)(1)(B), FUTA.

The exemption does not, however, apply to the third category of services. These are services performed by individuals in the employ of entities with a religious orientation but which are *not* affiliated with a particular church, or convention or association of churches. For example, a nondenominational college which trains students to be missionaries or to perform other religious functions falls in this category as well as elementary schools created by members of a faith to teach in a manner consonant with their beliefs but independently or their church.

ETA's position is and has been that services performed for these nonaffiliated religiously-oriented entities may not be exempted under section 3309(b)(1)(B), FUTA, because these entities are not operated, supervised, controlled, or principally supported by a church or convention or association of churches. In anticipation of certain litigation ultimately resolving this matter, ETA held in abeyance the taking of action under section 3304(c), FUTA. However, this litigation was resolved without reaching the relevant Federal issues and ETA is unaware of any litigation currently pending which will definitively resolve this matter. Accordingly, this UIPL is issued to announce ETA's intention to resume the enforcement of the ETA interpretation of Section 3309(b)(1), FUTA, as it pertains to nonaffiliated religiously oriented schools and other entities.

4. *Interpretation of Federal Law.* Section 3309(b)(1), FUTA, creates only limited exceptions to the coverage requirements of sections 3304(a)(6)(A) and 3309(a)(1), FUTA. These exceptions apply only to services in the employ of a church or convention or association of churches, or to services for an entity operated for religious purposes and affiliated with (i.e., operated, supervised, controlled, or principally supported by) a church or convention or association of churches. The exception contained in section 3309(b)(1)(B), clearly does not apply to entities which do not meet its required affiliation test. Therefore, coverage of such entities is required by section 3304(a)(6)(A) and 3309(a)(1), FUTA, as condition of receiving credit against the Federal unemployment tax.

5. *Action Required.* States should review their laws and policy to ensure that services performed for nonaffiliated religiously-oriented entities are covered under State law.

6. *Inquiries.* Direct any inquiries to the appropriate Regional Office.

[FR Doc. 87-16302 Filed 7-16-87; 8:45 am]

BILLING CODE 4510-30-M

Program Guidance for the Calendar Year 1987 Title II-B Summer Youth Program

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice.

SUMMARY: This notice provides policy guidance to States and Service Delivery Areas (SDAs) regarding the changes to the Summer Youth Employment and Training Program (SYETP) resulting from the enactment of the Job Training Partnership Act (JTPA) Amendments of 1986. In addition, it informs States of the possibilities for interaction with the ongoing Youth:2000 initiative.

EFFECTIVE DATE: The policies described in this notice were sent out to the Governors by Training and Employment Guidance Letter No. 3–86, effective on March 19, 1987.

FOR FURTHER INFORMATION CONTACT: Mr. Robert N. Colombo, Director, Office of Employment and Training Programs, Room N4703, 200 Constitution Avenue, NW., Washington, DC 20210; Telephone: 202–535–0577.

SUPPLEMENTARY INFORMATION: The Department of Labor (DOL) is providing policy guidance regarding the changes to the SYETP resulting from the enactment of the JTPA Amendments of 1986.

1. *Background.* While the JTPA Amendments of 1986 do not change the basic structure of SYETP, they do provide emphasis to certain program elements such as youth literacy. The Amendments also provide more specific guidance regarding the purposes of the program as well as its goals and objectives. In the area of program planning and administration, this new legislation contains a 90 percent intra-State hold harmless provision for allocations and a provision for program operation during nonsummer months where schools run on a year round full-time basis.

It is anticipated that proposed rulemaking for the Amendments, including the provisions related to SYETP, will be published shortly. Since the Congress intended the Amendments related to SYETP to be implemented with the Summer 1987 program, this TEGL provides States with necessary guidance in sufficient time for planning and preparation.

In addition to the program changes which result from the Amendments, there is a youth initiative which will have an impact on local programs, Youth:2000.

2. *JTPA Amendments.* Following is a description of the JTPA Amendments with implementation actions pertaining to the operation of SYETP under Title II–B of the Act.

Section 5. Intra-State Hold Harmless Allocation Requirement

This section establishes a 90 percent substate hold-harmless for all SDAs within a State for Titles II–A and B of the Act for fiscal years beginning after September 30, 1986. No SDA is to be allocated an amount which is less than 90 percent of the average of its allocation precentage for the two perceding years, ratably reduced should funds allotted to the State be insufficient to meet this requirement. The House and Senate Manager's Report indicates that this requirement shall be satisfied after meeting the requirements of 201(b)(2) of the Act.

Implementation: The Department views the substate allocation of funds to be a State responsibility. States should take necessary actions to implement the provisions of this section for the Summer 1987 program. There will be no federal action beyond requirements for the allotment of funds pursuant to section 201(b) (1) and (2). It is the Department's interpretation that, since the allocations for the 1987 SYETP are to be made subsequent to September 30, 1986, that the provisions of this section are applicable to the 1987 SYETP.

Section 8. Summer Youth Employment Assessment and Goals

This section deals with the problem of youth literacy. It contains three requirements: (1) SDAs are to assess the reading and math levels of all SYETP participants; (2) SDAs are to expend funds for basic and remedial education, and (3) SDAs must develop written goals and objectives which will be for evaluating program effectiveness may include:

(1) Improvement in school retention and completion;

(2) Improvement in academic performance, including mathematics and reading comprehension; (3) improvement in employability skills; and (4) demonstrated coordination with other community service organizations such as local education agencies, law enforcement agencies, and drug and alcohol prevention and treatment programs.

The Managers' Report states that this amendment expresses strong concern about the problem of youth illiteracy which is underscored by including a statement of purpose for the Title II–B program as a whole. Clarification on the intent of Congress regarding this amendment is provided in the report. First, neither the Governor of the State, nor the Secretary of Labor, may require a specific service level or percentage requirement of funds to satisfy the mandate for basic and remedial education programs. Second, the requirements of section 141(b) of the Act prevail and the intent is not to supplant resources contributed for basic and remedial education programs by other sources. Third, in assessing the reading and math abilities of participants, an SDA is not required to conduct new tests or tests separate from local educational agencies. Existing data and information may be used.

Implementation. Since the Congress has strongly stated its concern about youth illiteracy, particularly by requiring the SDAs to develop written goals and objectives for the SYETP, the States should take immediate action to implement the provisions of this section to be effective for the planning and implementation of the 1987 SYETP.

Further, the State should review and approve modifications to the SDA plans which implement the statutory changes for the 1987 SYETP consistent with the provisions of this amendment.

Section 9. Availability of Summer Youth Programs During Nonsummer Months

This section provides that SDAs may offer the programs under Title II–B to participants during a vacation period treated as the *equivalent of a summer vacation* if the local education agency operates on a year-round calendar.

Implementation: States may take necessary action to implement the provisions of this section as appropriate. The Department emphasizes that this provision applies only to unique, year-round educational programs with vacation periods beyond the typical week or two at Christmas or Easter (Spring break). Where an SDA proposes to operate a Title II–B program during nonsummer months, it should describe this program in its plan.

3. *Youth: 2000.* The Department is currently actively involved with Youth: 2000, which is targeted at the Nation's at-risk youth. States and SDAs are encouraged to coordinate the planning and operation of their local SYEPT programs with this ongoing nationwide effort whenever possible in order to provide more effective services to eligible youth with the available funds.

A leadership initiative promoted by DOL and Health and Human Services (HHS) and the National Alliance of Business (NAB), Youth: 2000 is intended to focus national attention on the problem of youth illiteracy and unemployment and its critical implications for present and future productivity, security and economic competitiveness, and social fabric. The goal of the initiative is to foster greater

involvement and commitment by both the private and public sectors in efforts to change the future education, employment and employability prospects for these at-risk youth by the year 2000. This approach is intended to involve all levels, including politicians, policymakers, practitioners, and participants, and would include all sectors within the social service and human resource sphere. In addition, the American Broadcasting Corporation and the Public Broadcsting System have mounted a joint campaign to increase public awareness of the problem of illiteracy among all age groups in America.

Following the Youth:2000 national kick-off conference in June 1986 which was cosponsored by Secretary Brock, Secretary Bowen, Department of Education Secretary Bennett and hosted by NAB, three followup strategies have been implemented. First, there is the Intensive Public Information Campaign where ETA Regional Administrators and the NAB Regional Vice Presidents, with the assistance of Regional HHS staff, have targeted up to 40 major cities to be saturated with information related to the demographic, economic, and social issues raised by the Youth:2000 dialogue. The Regional Administrators and NAB Vice Presidents will also actively seek involvement in already planned and scheduled meetings, conferences or other public forums or, at the request of and with the assistance of State and local officials, may plan special meetings, conferences or forums devoted to the Youth:2000 initiative.

Second, the NAB Vice Presidents and the ETA Regional Administrators will be encouraging a select number of Governors to convene State-level Youth:2000 conference/meetings as a means of focusing State-level leadership on Youth:2000 issues. Approximately 25 States have been targeted and are under consideration for the State-level strategy.

Third, the Regional strategy will aim to incorporate Youth:2000 issues in as many Regional meetings as possible. Almost all of the Regions have planned Regional meetings, mostly in conjunction with previously scheduled conferences and meetings such as those planned by the Public Health Service related to other social issues/concerns of youth.

As a result of this Youth:2000 initiative, States and SDAs should be able to utilize the increased public awareness of the needs of at-risk youth in order to solicit more commitment and support for SYETP activities from the public and private sectors in the local community. Communities may have organized, or may be in the process of organizing, initiatives to coordinate services or increase services to their youth population. In this case, SDAs will be able to build upon these programs to coordinate summer employment with the provision of basic and remedial education and support services by other agencies. In addition to creating a more comprehensive and unified response to the problems of economically disadvantaged youth, this kind of coordinated program eliminates duplication of services and contributes to a more effective use of services and contributes to a more effective use of limited resources.

4. *State Action.* States shall assure that all SDAs are promptly informed of this planning and policy guidance.

Signed at Washington, DC, this 10th day of July 1987.

Robert T. Jones,

Deputy Assistant Secretary of Labor.

[FR Doc. 87-16219 Filed 7-16-87; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-19,516]

CSX Oil and Gas Corp.; Negative Determination Regarding Application for Reconsideration

By an application dated June 8, 1987, one of the petitioners requested administrative reconsideration of the Department's negative determination on the subject petition for trade adjustment assistance for workers at the Denver District Office of CSX Oil and Gas Corporation (formerly Texas Gas Exploration Corporation), Denver, Colorado. The denial notice was signed on May 13, 1987 and published in the **Federal Register** on May 27, 1987 (52 FR 19783).

Pursuant to § 90.18(c) reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) If it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) If, in the opinion of the Certifying Officer, a misinterpretation of facts or of the law justified reconsideration of the decision.

The petitioner claims that workers at several Denver offices of oil and gas exploration companies were granted certification and that the circumstances surrounding the Denver office of CSX Oil & Gas Corporation do not differ from other companies whose workers were certified eligible to apply for adjustment assistance. The petitioner cites the following companies whose Colorado office employees have been certified eligible to apply for adjustment assistance benefits: Sonat Exploration, Cities Service, Exxon, Axem Resources, Fuel Resources, Conoco, J.M. Huber, Fina, Champlin, Total Petroleum, Tenneco and Midcon Corporation. Petitioner also claims that cheap oil imports contributed significantly to worker separations in the Denver area by causing oil prices to fall. Falling oil prices caused reduced revenues and a cost reduction program at the Denver District Office.

Petitioner implies that the Department's investigation was off its mark when it invesatigated the production of crude oil and natural gas at CSX Oil & Gas instead of looking at the relationship between oil prices and exploration budgets. The Department investigated the entire CSX Corporation in order to determine whether the support workers at the Denver District Office could qualify for adjustment assistance. Under certain conditions, service or support workers may become eligible for benefits. In general, the conditions are that the reduction in demand for services must be determined to have originated at a production facility related to the workers' firm by ownership whose workers independently meet the statutory criteria for certification. However, these conditions do not exist for workers of the Denver District Office since there are no CSX Oil & Gas Corporation facilities where workers are certified eligible to apply for adjustment assistance.

CSX is mainly a dry gas and natural gas liquids producer; a minor percentage of its production in 1986 was crude oil. Findings in the investigation show that production workers at CSX did not meet the worker group certification criteria of Section 222 of the Trade Act of 1974. CSX experienced an increase in sales and production of natural gas liquids and crude oil in 1986 compared to 1985. U.S. imports of dry natural gas decreased absolutely and relative to domestic shipments in 1986 compared to 1985.

With respect to petitioner's claim that workers at several Denver offices of other oil and gas exploration companies were certified eligible to apply for adjustment assistance and workers at CSX were not, the Department's records show that workers at other oil and gas exploration companies in the Denver area met the statutory worker group

certification criteria of section 222 of the Trade Act.

Investigation findings for Axem Resources TA-W-17,502; Cities Service TA-W-18,064; Tenneco TA-W-18,503; Fuel Resources TA-W-19,017; J.M. Huber TA-W-19,266E; Champlin Petroleum TA-W-19,369; Midcon Exploration TA-W-19,396 and Sonat TA-W-19,562 showed that their customers had increased purchases of imported crude oil while decreasing purchases of crude oil from them. Investigation findings for Conoco TA-W-18,115; Fina TA-W-18,541; Exxon TA-W-19,193 showed increased company imports of crude oil or as in the case of Total Petroleum TA-W-19,322 increased reliance on crude oil during the period applicable to their petitions. Worker separations at the Denver District Office were part of a corporate-wide cost reduction program implemented in April 1986. Also, workers at the Oklahoma City District Office of CSX Oil & Gas were denied eligibility to apply for adjustment assistance on April 17, 1987 (TA-W-19,136).

Finally, decreased revenues and declining crude oil prices, in themselves, would not form a basis for certification. Revenues and prices are not criteria for a worker group certification under the Trade Act.

Conclusion

After review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decision. Accordingly, the application is denied. Signed at Washington, DC, this 8th day of July 1987.

Carolyn M. Golding,

Director, Office of Unemployment Insurance Services.

[FR Doc. 87-16220 Filed 7-16-87; 8:45 am]

BILLING CODE 4510-30-M

DEPARTMENT OF LABOR

Employment Standards Administration, Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR Part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR Part 1, Appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedeas decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR Parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be 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 (GOP) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts," shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue NW., Room S-3504, Washington, DC 20210.

New General Wage Determination Decisions

The numbers of the decisions being added to the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" are listed by Volume, State, and page number(s).

Volume II

Oklahoma:
OK87-20 ..... pp. 912m-912n.

Modifications to General Wage Determination Decisions

The numbers of the decisions listed in the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" being modified are listed by Volume, State, and page number(s). Dates of publication in the **Federal Register** are in parentheses following the decisions being modified.

Volume I

New York:
NY87-1 (January 2, 1987)..... pp. 682-683.
Pennsylvania:
PA87-5 (January 2, 1987)..... pp. 884-888.
PA87-6 (January 2, 1987)..... pp. 898-899, p. 901.
PA87-14 (January 2, 1987).... pp. 949, 951, p. 954.
Rhode Island:
RI87-1 (January 2, 1987)..... pp. 1024-1026.
Tennessee:
TN87-4 (January 2, 1987)..... pp. 1090-1093.

Volume II

Illinois:
IL87-1 (January 2, 1987)..... pp. 75-76, 83.
IL87-9 (January 2, 1987)..... pp. 148-153.
IN87-11 (January 2, 1987)..... pp. 158.
Indiana:
IN87-1 (January 2, 1987)..... p. 236, pp. 238-245
IN87-2 (January 2, 1987)..... 251.
IN87-3 (January 2, 1987)..... pp. 268.
IN87-4 (January 2, 1987)..... pp. 280.
IN87-5 (January 2, 1987)..... pp. 292.
IN87-6 (January 2, 1987)..... pp. 302-303, pp. 310-312.

Kansas:
KS87-3 (January 2, 1987)..... pp. 342.
KS87-4 (January 2, 1987)..... pp. 344.
KS87-5 (January 2, 1987)..... pp. 346.
Oklahoma:
OK87-13 (January 2, 1987)... pp. 891-893, pp. 895-897, and p. 899.
Listing by Location (index)..... p.xlvii.
Listing by Decision (index)..... pp.lxi-lxii.

Volume III

Arizona:
AZ87-4 (January 2, 1987)..... p. 34b.
Idaho:
ID87-2 (January 2, 1987)..... p. 154.
Utah:
UT87-1 (January 2, 1987)..... p. 306.

General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts". This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the Country. Subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 783-3238.

When ordering subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the three separate volumes, arranged by State. Subscriptions include an annual edition (issued on or about January 1) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates will be distributed to subscribers.

Signed at Washington, DC, this 10th day of July 6, 1987.

Alan L. Moss,

Director, Division of Wage Determinations.

[FR Doc. 87-16093 Filed 7-16-87; 8:45 am]

BILLING CODE 4510-27-M

Occupational Safety and Health Administration

Oregon State Standards; Notice of Approval

1. *Background.* Part 1953 of Title 29, Code of Federal Regulations, prescribes procedures under section 18 of the Occupational Safety and Health Act of 1970 (hereinafter called the Act) by which the Regional Administrator for Occupational Safety and Health (hereinafter called Regional Administrator) under a delegation of authority from the Assistant Secretary of Labor for Occupational Safety and Health (hereinafter called the Assistant Secretary) (29 CFR 1953.4) will review and approve standards promulgated pursuant to a State plan which has been approved in accordance with section 18(c) of the Act and 29 CFR Part 1902. On December 28, 1972, notice was published in the **Federal Register** (37 FR 28628) of the approval of the Oregon plan and the adoption of Subpart D to Part 1952 containing the decision.

The Oregon plan provides for the adoption of State standards which are at least as effective as comparable Federal standards promulgated under section 6 of the Act. Section 1953.20 provides that where any alteration in the Federal program could have an adverse impact on the at least as effective as status of the State program, a program change supplement to a State plan shall be required.

The State has submitted by letter dated June 10, 1987, from William J. Brown, Director, to James W. Lake, Regional Administrator, and incorporated as part of the plan, a State initiated administrative amendment to renumber and recodify its rules in conformance with the Oregon Secretary of State's format for administrative rules. These rules received Federal Register approval during the State's developmental period commencing on July 22, 1973 through certification on September 4, 1982. The State's rules were redesignated and renumbered on June 18, 1984, August 10, 1984, and February 14, 1985 with no substantial changes in the standards. They are:

Former Designations	Adopted Redesignations
OAR 437, Chapter 22-015	OAR 437, Division 113, Warning Signs, Tags, and Labels.
OAR 437, Chapter 22-017(A)	OAR 437, Division 114, Air Contaminants.
OAR 437, Chapter 22-017(D)	OAR 437, Division 116, Carcinogens.
OAR 437, Chapter 22-018(A)(a)	OAR 437, Division 117, Abrasive Blasting.
OAR 437, Chapter 22-018(A)(b)	OAR 437, Division 118, Grinding, Polishing, and Buffing Operations.
OAR 437, Chapter 22-018(A)(c) and 22-056	OAR 437, Division 119, Spray Finishing.
OAR 437, Chapter 22-018(A)(d)	OAR 437, Division 120, Open Surface Tanks.
OAR 437, Chapter 22-050	OAR 437, Division 122, Compressed Gases.
OAR 437, Chapter 22-057	OAR 437, Division 124, Dip Tanks Containing Flammable or Combustible Liquids.
OAR 437, Chapter 22-065	OAR 437, Division 127, Medical Services and First Aid.
OAR 437, Chapter 22-067	OAR 437, Division 128, Subsurface Sewage and Non-Water Carried Toilet Facilities.
OAR 437, Chapter 22-069	OAR 437, Division 129, Protective Equipment, Apparel, and Respirators.
OAR 437, Division 110	OAR 437, Division 132, DBCP (1, 1-dibromo, 3-chloropropane).
OAR 437, Chapter 22-009, 22-011, 22-012, 22-026, 22-030, 22-038, 22-040, 22-042, 22-047, 22-062, 22-063, 22-066, and 22-078.	OAR 437, Division 136, General Occupational Health Regulations.
OAR 437, Chapter 22-017(C)	OAR 437, Division 137, Coal Tar Pitch Volatiles.
OAR 437, Chapter 22-020	OAR 437, Division 138, Ionizing Radiation.
OAR 437, Chapter 22-021	OAR 437, Division 139, Non-ionizing Radiation.
OAR 437, Chapter 22-024	OAR 437, Division 140, Fumigation.
OAR 437, Chapter 22-018(B) and 22-032	OAR 437, Division 141, Ventilation.
OAR 437, Chapter 22-051	OAR 437, Division 142, Acetylene.
OAR 437, Chapter 22-052	OAR 437, Division 143, Hydrogen.
OAR 437, Chapter 22-053	OAR 437, Division 144, Oxygen.
OAR 437, Chapter 22-054	OAR 437, Division 145, Nitrous Oxide.
OAR 437, Chapter 22-120	OAR 437, Division 147, Labor Camps.
OAR 437, Chapter 22-033, 22-035, 22-037, 22-049, and 22-060.	OAR 437, Division 112, Water and Sanitation.
OAR 437, Chapter 2	OAR 437, Division 41, Buildings, Structures and Workplaces.

Former Designations	Adopted Redesignations
OAR 437, Chapter 7	OAR 437, Division 50, Personal Protective Equipment.
OAR 437, Chapter 9	OAR 437, Division 63, Storing and Handling Materials and Materials Handling Equipment.
OAR 437, Chapter 11	OAR 437, Division 89, Cranes.
OAR 437, Chapter 13	OAR 437, Division 45, Handling and Use of Explosives and Blasting Agents.
OAR 437, Chapter 15	OAR 437, Division 79, Lumber, Plywood, and Shingle Manufacturing.
OAR 437, Chapter 17	OAR 437, Division 66, Gas and Electric Welding.
OAR 437, Chapter 19	OAR 437, Division 88, Ladders and Scaffolds.
OAR 437, Chapter 20	OAR 437, Division 92, Abrasive Wheel Machinery.
OAR 437, Chapter 24	OAR 437, Division 85, Mining, Tunneling, and Quarrying.
OAR 437, Chapter 28	OAR 437, Division 54, Accident Prevention Signs, Symbols, and Tags.
OAR 437, Chapter 29	OAR 437, Division 76, Textiles.
OAR 437, Chapter 31	OAR 437, Division 78, Laundry Machinery and Operations.
OAR 437, Chapter 32	OAR 437, Division 75, Pulp, Paper, and Paperboard Mills.

The State's rules were administratively recodified in accordance with Oregon State Statutes ORS 654.025(2) and ORS 656.726(3) without substantial change, therefore hearings were not held.

2. *Decision.* Having reviewed the State's submission, it has been determined that the State's rules continue to be as effective as previously approved in the **Federal Register.**

3. *Location of supplement for inspection and copying.* A copy of the standards' supplement, along with the approved plan, may be inspected and copied during normal business hours at the following locations: Office of the Regional Administrator, Occupational Safety and Health Administration, Room 6003, Federal Office Building, 909 First Avenue, Seattle, Washington 98174; Workers' Compensation Department, Labor and Industries Building, Salem, Oregon 97310; and the Office of State Programs, Room N–3476, 200 Constitution Avenue NW, Washington, D.C. 20210.

4. *Public participation.* Under 29 CFR 1953.2(c), the Assistant Secretary may prescribe alternative procedures to expedite the review process or for other good cause which may be consistent with applicable laws. The Assistant Secretary finds that good cause exists for not publishing the supplement to the Oregon State Plan as a proposed change and making the Regional Administrator's approval effective upon publication for the following reasons:

1. The rules are redesignated and renumbered without substantial change and continue to be as effective as previously published in the **Federal Register.**

2. The rules were administratively filed in accordance with the procedural requirements of State law and further participation would be unnecessary.

This decision is effective July 17, 1987.

(Section 18, Pub. L. 91–596, 84 Stat. 1608 [29 U.S.C. 667])

Signed at Seattle, Washington, this 25th day of June 1987.

Carl A. Halgren,

Acting Regional Administrator.

[FR Doc. 87–16216 Filed 7–16–87; 8:45 am]

BILLING CODE 4510–26–M

Oregon State Standards; Notice of Approval

1. *Background.* Part 1953 of Title 29, Code of Federal Regulations prescribes procedures under section 18 of the Occupational Safety and Health Act of 1970 (hereinafter called the Act) by which the Regional Administrator for Occupational Safety and Health (hereinafter called the Regional Administrator) under a delegation of authority from the Assistant Secretary of Labor for Occupational Safety and Health (hereinafter called the Assistant Secretary) (29 CFR 1953.4) will review and approve standards promulgated pursuant to a State Plan which has been approved in accordance with section 18(c) of the Act and 29 CFR Part 1902. On December 28, 1972, notice was published in the **Federal Register** (37 FR 28628) of the approval of the Oregon plan and the adoption of Subpart D to Part 1952 containing the decision.

The Oregon plan provides for the adoption of State standards which are at least as effective as comparable Federal standards promulgated under section 6 of the Occupational Safety and Health Act of 1970.

On October 19, 1972, the Occupational Safety and Health Administration promulgated its original standards for Maritime Employment as 29 Parts CFR 1915, 1961, 1917, 1981 as published in the **Federal Register** (37 FR 22458). The Occupational Safety and Health Administration consolidated parts 29 CFR Parts 1915, Ship Repairing, 1916, Ship Building; and 1917, Ship Breaking into one standard, 29 Part CFR 1915, Shipyard Employment. The consolidated standard appeared in the Federal Register (47 FR 16984) on April 20, 1982.

By letter dated August 30, 1983 from Roy G. Green, Director, to James W. Lake, Regional Administrator, the State submitted for approval amendments in response to the revised Federal standard. Changes were made in OAR 437, Division 70, Recodifying and Renumbering to OAR 437, Division 94. Notice of Proposed Amendment of Rules was mailed on August 27, 1982 to those on the Workers' Compensation Board mailing list which was established pursuant to OAR 436–90–505 and to other interested parties. No written comments or requests for a public hearing regarding the consolidated Shipyard Employment Standards were received. The rules were adopted on October 20, 1982 and were effective November 1, 1982.

2. *Decision.* Having reviewed the State submission in comparison with the Federal standards, it has been determined that the State standards continue to be at least as effective as the comparable Federal standards and accordingly should be approved. Significant differences are: (a) The State has changed references from the masculine gender to the neuter gender. (b) Numbering of standards has been changed to accommodate the State's codification scheme. (c) Editorial changes to correct errors in the Federal standard.

3. *Location of supplement for inspection of copying.* A copy of the standards supplement, along with the approved plan, may be inspected and copied during normal business hours at the following locations: Office of the Regional Administrator, Occupational Safety and Health Administration, Room 6003, Federal Office Building, 909 First Avenue, Seattle, Washington 98174; Workers' Compensation Department, Labor and Industries Building, Salem, Oregon 97310; and the

Office of State Programs, Room N-3613, 200 Constitution Avenue NW, Washington, DC 20210.

4. *Public participation.* Under 29 CFR 1953.2(c) the Assistant Secretary may prescribe procedures to expendite the review process or for other good cause which may be consistent with applicable laws. The Assistant Secretary finds that good cause exists for not publishing the supplement to the Oregon plan as a proposed change and making the Regional Administrator's approval effective upon publication for the following reason:

The standards were adopted in accordance with the procedural requirement of State law which included public comment and further public participation would be repetitious.

This decision is effective July 17, 1987.

(Sec. 18, Pub. L. 91-596, 84 Stat. 1608 (29 U.S.C. 667))

Signed at Seattle, Washington, this 16th day of May 1984.

Ronald T. Tsunehara,

Acting Regional Administrator.

[FR Doc. 87-16216 Filed 7-16-87; 8:45 am]

BILLING CODE 4510-26-M

Utah State Standards; Notice of Approval

1. *Background.* Part 1953 of Title 29, Code of Federal Regulations, prescribes procedures under section 18 of the Occupational Safety and Health Act of 1970 (hereinafter called the Act) by which the Regional Administrator for Occupational Safety and Health (hereinafter called the Regional Administrator) under delegation of authority from the Assistant Secretary of Labor for Occupational Safety and Health (hereinafter called the Assistant Secretary) (29 CFR 1953.4), will review and approve standards promulgated pursuant to a State Plan which has been approved in accordance with section 18(c) of the Act and 29 CFR Part 1902. On January 10, 1973, notice was published in the **Federal Register** (38 FR 1178) of the approval of the Utah Plan and adoption of Subpart E to Part 1952 containing the decision.

The Plan provides for the adoption of Federal Standards as State Standards by:

1. Advisory Committee recommendation.

2. Publication in newspapers of general/major circulation with a 30-day waiting period for public comment and hearings.

3. Commission order adopting and designating an effective date.

4. Provision of certified copies of Rules and Regulations or Standards to the Office of the State Archivist.

OSHA regulations (29 CFR 1953.22 and .23) require that States respond to the adoption of new or revised permanent Federal standards by State promulgation of comparable standards within six months of OSHA publication in the **Federal Register**, and within 30 days for emergency temporary standards. Although adopted State standards or revisions to standards must be submitted for OSHA review and approval under procedures set forth in Part 1953, they are enforceable by the State prior to Federal review and approval. By letter dated February 2, 1987, from Douglas J. McVey, Administrator, Utah Occupational Safety and Health Division, to Byron R. Chadwick, OSHA Regional Administrator, the State submitted rules and regulations in response to Federal OSHA's General Industry Standards (29 CFR 1910.1001) and OSHA's Construction Standards (29 CFR 1926.58): Occupational Exposure to Asbestos, Tremolite, Anthophyllite, and Actinolite, 51 FR 22612, June 20, 1986.

The above adoptions of Federal standards have been incorporated in the State Plan, and are contained in the Utah Occupational Safety and Health Rules and Regulations for General Industry, as required by Utah Code annotated 1943, Title 63-46-1. In addition, the standards were published in newspapers of general/major circulation throughout the State. No public comments were received and no hearings were held.

State Standards for 29 CFR 1910.1001 and 29 CFR 1926.58: Occupational Exposure to Asbestos, Tremolite, Anthophyllite, and Actinolite, were adopted by the Industrial Commission of Utah, on November 15, 1986 (effective December 15, 1986, pursuant to Title 35-9-6, Utah Code, annotated 1953). The State Standards on Occupational Exposure to Asbestos, Tremolite, Anthophyllite, and Actinolite for Construction and General Industry are identical to the Federal standards.

2. *Decision.* Having reviewed the State submissions in comparison with the Federal standards, it has been determined that the State standards are identical to the Federal standards, and are accordingly approved.

3. *Location of Supplement for Inspection and Copying.* A copy of the standard supplement, along with the approved plan, may be inspected and copied during normal business hours at the following locations: Office of the Regional Administrator, Room 1554, Federal Office Building, 1961 Stout Street, Denver, Colorado 80294; Utah State Industrial Commission, UOSH Offices at 160 East 300 South, Salt Lake City, Utah 84111; and the Office of State Programs, Room N-3700, 200 Constitution Avenue, NW., Washington, DC 20210.

4. *Public Participation.* Under 29 CFR 1953.2(c), the Assistant Secretary may prescribe alternative procedures to expedite the review process or for any other good cause which may be consistent with applicable laws. The Assistant Secretary finds that good cause exists for not publishing the supplements to the Utah State Plan as a proposed change and making the Regional Administrator's approval effective upon publication for the following reason(s):

The standards were adopted in accordance with the procedural requirements of State law which included public comment and further public participation would be repetitious.

This decision is effective July 17, 1987.

(Sec. 18, Pub. L. 91-596, 84 Stat. 1608 (29 U.S.C. 667))

Signed at Denver, Colorado, this 31st day of March, 1987.

Harry C. Borchelt,

Acting Regional Administrator.

[FR Doc. 87-16218 Filed 7-16-87; 8:45 am]

BILLING CODE 4510-26-M

Utah State Standards; Notice of Approval

1. *Background.* Part 1953 of Title 29, Code of Federal Regulations, prescribes procedures under Section 18 of the Occupational Safety and Health Act of 1970 (hereinafter called the Act) by which the Regional Administrator for Occupational Safety and Health (hereinafter called the Regional Administrator) under delegation of authority from the Assistant Secretary of Labor for Occupational Safety and Health (hereinafter called the Assistant Secretary), (29 CFR 1953.4) will review and approve standards promulgated pursuant to a State Plan which has been approved in accordance with Section 18(c) of the Act and 29 CFR Part 1902. On January 10, 1973, notice was published in the **Federal Register** (38 FR 1178) of the approval of the Utah Plan and adoption of Subpart E to Part 1952 containing the decision.

The Plan provides for the adoption of Federal Standards as State Standards by:

1. Advisory Committee recommendation.

2. Publication in newspapers of general/major circulation with a 30-day waiting period for public comment and hearings.

3. Commission order adopting and designating an effective date.

4. Provision of certified copies of Rules and Regulations or Standards to the Office of the State Archivist.

OSHA regulations (29 CFR 1953.22 and .23) require that States respond to the adoption of new or revised permanent Federal standards by State promulgation of comparable standards within six months of OSHA publication in the **Federal Register**, and within 30 days for emergency temporary standards. Although adopted State standards or revisions to standards must be submitted for OSHA review and approval under procedures set forth in Part 1953, they are enforceable by the State prior to Federal review and approval. By letter dated March 3, 1987, from Douglas J. McVey, Administrator, Utah Occupational Safety and Health Division, to Byron R. Chadwick, OSHA Regional Administrator, the State submitted rules and regulations in response to Federal OSHA's General Industry Standards (29 CFR 1910.430: Commercial Diving Standard, 51 FR 33033, September 18, 1986).

The above adoptions of Federal standards have been incorporated in the State Plan, and are contained in the Utah Occupational Safety and Health Rules and Regulations for General Industry, as required by Utah Code, annotated 1943, Title 63–46–1. In addition, the standards were published in newspapers of general/major circulation throughout the State. No public comments were received and no hearings were held.

State Standards for 29 CFR 1910.430: Commercial Diving Standards were adopted by the Industrial Commission of Utah, on December 2, 1986 (effective January 15, 1987), pursuant to Title 35–9–6, Utah Code, annotated 1953. The State Standards on Commercial Diving are identical to Federal 29 CFR 1910.430.

2. *Decision.* Having reviewed the State submission in comparison with the Federal standard, it has been determined that the State standard is identical to the Federal standard, and is accordingly approved.

3. *Location of Supplement for Inspection and Copying.* A copy of the standard supplement, along with the approved plan, may be inspected and copied during normal business hours at the following locations: Office of the Regional Administrator, Room 1554, Federal Office Building, 1961 Stout Street, Denver, Colorado 80294; Utah State Industrial Commission, UOSH Offices at 160 East 300 South, Salt Lake City, Utah 84111; and the Office of State Programs, Room N–3700, 200 Constitution Avenue, NW., Washington, D.C. 20210.

4. *Public Participation.* Under 29 CFR 1953.2(c), the Assistant Secretary may prescribe alternative procedures to expedite the review process or for any other good cause which may be consistent with applicable laws. The Assistant Secretary finds that good cause exists for not publishing the supplements to the Utah State Plan as a proposed change and making the Regional Administrator's approval effective upon publication for the following reason(s):

The standards were adopted in accordance with the procedural requirements of State law which included public comment and further public participation would be repetitious. This decision is effective July 17, 1987.

(Sec. 18, Pub. L. 91–596, 84 Stat. 1608 (29 U.S.C. 667))

Signed at Denver, Colorado this 31st day of March 1987.

Harry C. Borchelt,

Acting Regional Administrator.

[FR Doc. 87–16211 Filed 7–16–87; 8:45 am]

BILLING CODE 4510–26–M

Utah State Standards; Notice of Approval

1. *Background.* Part 1953 of Title 29, Code of Federal Regulations, prescribes procedures under Section 18 of the Occupational Safety and Health Act of 1970 (hereinafter called the Act) by which the Regional Administrator for Occupational Safety and Health (herinafter called the Regional Administrator) under delegation of authority from the Assistant Secretary of Labor for Occupational Safety and Health (hereinafter called the Assistant Secretary), (20 CFR 1953.4) will review and approve standards promulgated pursuant to a State Plan which has been approved in accordance with section 18(c) of the Act and 29 CFR Part 1902. On January 10, 1973, notice was published in the **Federal Register** (38 FR 1178) of the approval of the Utah Plan and adoption of Subpart E to Part 1952 containing the decision.

The Plan provides for the adoption of Federal Standards as State Standards by:

1. Advisory Committee recommendation.

2. Publication in newspapers of general/major circulation with a 30-day waiting period for public comment and hearings.

3. Commission order adopting and designating an effective date.

4. Provision of certified copies of Rules and Regulations or Standards to the Office of the State Archivist.

OSHA regulations (29 CFR 1953.22 and .23) require that States respond to the adoption of new or revised permanent Federal standards by State promulgation of comparable standards within six months of OSHA publication in the **Federal Register**, and within 30 days for emergency temporary standards. Although adopted State standards or revisions to standards must be submitted for OSHA review and approval under procedures set forth in Part 1953, they are enforceable by the state prior to federal review and approval. By letter dated February 2, 1987, from Douglas J. McVey, Administrator, Utah Occupational Safety and Health Division, to Byron R. Chadwick, OSHA Regional Administrator, the State submitted rules and regulations in response to Federal OSHA's General Industry Standards (29 CFR 1910.1200: Hazard Communications (Interim Final Rule, and corrections), 50 FR 48750, November 27, 1985, and (Definitions of Trade Secrets and Disclosure of Trade Secrets to Employers, Designated Representatives and Nurses) 51 FR 34590, September 30, 1986.

The above adoptions of Federal standards have been incorporated in the State Plan, and are contained in the Utah Occupational Safety and Health Rules and Regulations for General Industry, as required by Utah Code annotated 1943, Title 63–46–1. In addition, the standards were published in newspapers of general/major circulation throughout the State. No public comments were received and no hearings were held.

State Standards for 29 CFR 1910.1200: Hazard Communications, were adopted by the Industrial Commission of Utah, on December 5, 1986 (effective January 15, 1987) pursuant to Title 35–9–6, Utah Code, annotated 1953. The State Standards on Hazard Communications, are identical to Federal 29 CFR 1910.1200.

2. *Decision.* Having reviewed the State submission in comparison with the Federal standards, it has been determined that the State standards are identical to the Federal standards, and are accordingly approved.

3. *Location of Supplement for Inspection and Copying.*

A copy of the standard supplement, along with the approved plan, may be

inspected and copied during normal business hours at the following locations: Office of the Regional Administrator, Room 1554, Federal Office Building, 1961 Stout Street, Denver, Colorado 80294; Utah State Industrial Commission, UOSH Offices at 160 East 300 South, Salt Lake City, Utah 84111; and the Office of State Programs, Room N-3700, 200 Constitution Avenue, NW., Washington, D.C. 20210.

4. *Public Participation.* Under 29 CFR 1953.2(c), the Assistant Secretary may prescribe alternative procedures to expedite the review process or for any other good cause which may be consistent with applicable laws. The Assistant Secretary finds that good cause exists for not publishing the supplements to the Utah State Plan as a proposed change and making the Regional Administrator's approval effective upon publication for the following reason(s):

The standards were adopted in accordance with the procedural requirements of State law which included public comment and further public participation would be repetitious. This decision is effective July 17, 1987.

(Sec. 18, Pub. L. 91-596, 84 Stat. 1608 (29 U.S.C. 667)).

Signed at Denver, Colorado, this 31st Day of March, 1987.

Harry C. Borchelt,

Acting Regional Administrator.

[FR Doc. 87-16212 Filed 7-16-87; 8:45 am]

BILLING CODE 4510-26-M

Utah State Standards; Notice of Approval

1. *Background.* Part 1953 of Title 29, Code of Federal Regulations, prescribes procedures under Section 18 of the Occupational Safety and Health Act of 1970 (hereinafter called the Act) by which the Regional Administrator for Occupational Safety and Health (hereinafter called the Regional Administrator) under delegation of authority from the Assistant Secretary of Labor for Occupational Safety and Health (hereinafter called the Assistant Secretary), (29 CFR 1953.4) will review and approve standards promulgated pursuant to a State Plan which has been approved in accordance with section 18(c) of the Act and 29 CFR Part 1902. On January 10, 1973, notice was published in the **Federal Register** (38 FR 1178) of the approval of the Utah Plan and adoption of Subpart E to Part 1952 containing the decision.

The Plan provides for the adoption of Federal Standards as State Standards by:

1. Advisory Committee recommendation.

2. Publication in newspapers of general/major circulation with a 30-day waiting period for public comment and hearings.

3. Commission order adopting and designating an effective date.

4. Provision of certified copies of Rules and Regulations or Standards to the Office of the State Archivist.

OSHA regulations (29 CFR 1953.22 and 23) require that States respond to the adoption of new or revised permanent Federal standards by State promulgation of comparable standards within six months of OHSA publication in the **Federal Register**, and within 30 days for emergency temporary standards. Although adopted State standards or revisions to standards must be submitted for OSHA review and approval under procedures set forth in Part 1953, they are enforceable by the state prior to federal review and approval. By letter dated February 25, 1987, from Douglas J. McVey, Administrator, Utah Occupational Safety and Health Division, to Byron R. Chadwick, OSHA Regional Administrator, the State submitted rules and regulations in response to Federal OSHA's General Industry Standards (29 CFR 1910.145(f): Health and Safety Standards; Accident Prevention Tags, 51 FR 33251, September 19, 1986.)

The above adoptions of Federal standards have been incorporated in the State Plan, and are contained in the Utah Occupational Safety and Health Rules and Regulations for General Industry, as required by Utah Code annotated 1943, title 63-46-1. In addition, the standards were published in newspapers of general/major circulation throughout the State. No public comments were received and no hearings were held.

State Standards for 29 CFR 1910.145(f): Health and Safety Standards; Accident Prevention Tags, were adopted by the Industrial Commission of Utah, on December 2, 1986, (effective January 15, 1987) pursuant to Title 35-9-6, Utah Code, annotated 1953. The State Standards on Health and Safety Standards; Accident Prevention Tags, are substantially identical to Federal 29 CFR 1910.145(p) except for the following minor differences: (a) paragraph numbering; (b) biological hazard symbol not included in text per Utah rulemaking restrictions; (c) Federal Appendix A is Utah rule paragraph 145.6.10 because Utah rulemaking does not allow appendices; and, (d) Federal Appendix B is included only for information purposes and therefore is not included in the Utah standard.

2. *Decision.* Having reviewed the State submission in comparison with the Federal standard, it has been determined that the State standard is substantially identical to the Federal standard, and is accordingly approved.

3. *Location of Supplement for Inspection and Copying.* A copy of the standard supplement, along with the approved plan, may be inspected and copied during normal business hours at the following locations: Office of the Regional Administrator, Room 1554, Federal Office Building, 1961 Stout Street, Denver, Colorado 80294; Utah State Industrial Commission, UOSH Offices at 160 East 300 South, Salt Lake City, Utah 84111; and the Office of State Programs, Room N-3476, 200 Constitution Avenue, NW., Washington, D.C. 20210.

4. *Public Participation.* Under 29 CFR 1953.2(c), the Assistant Secretary may prescribe alternative procedures to expedite the review process or for any other good cause which may be consistent with applicable laws. The Assistant Secretary finds that good cause exists for not publishing the supplements to the Utah State Plan as a proposed change and making the Regional Administator's approval effective upon publication for the following reason(s):

The standards were adopted in accordance with the procedural requirements of State law which included public comment and further public participation would be repetitiuous. This decision is effective July 17, 1987.

(Sec. 18 Pub. L. 91-596, 84 Stat. 1608 (29 U.S.C. 667)).

Signed at Denver, Colorado, this 31st Day of March, 1987.

Harry C. Borchelt,

Acting Regional Administrator.

[FR Doc. 87-16213 Filed 7-16-87; 8:45 am]

BILLING CODE 4510-26-M

Utah State Standards; Notice of Approval

1. *Background.* Part 1953 of Title 29, Code of Federal Regulations, prescribes procedures under section 18 of the Occupational Safety and Health Act of 1970 (hereinafter called the Act) by which the regional Administrator for Occupational Safety and Health (hereinafter called the Regional Administrator) under delegation of authority from the Assistant Secretary of labor for Occupational Safety and Health (hereinafter called the Assistant

Secretary), (29 CFR 1953.4) will review and approve standards promulgated pursuant to a State Plan which has been approved in accordance with section 18(c) of the Act and 29 CFR Part 1902. On January 10, 1973, notice was published in the **Federal Register** (38 FR 1178) of the approval of the Utah Plan and adoption of Subpart E to Part 1952 containing the decision.

The Plan provides for the adoption of Federal Standards as State Standards by:

1. Advisory Committee recommendation.
2. Publication in newspapers of general/major circulation with a 30-day waiting period for public comment and hearings.
3. Commission order adopting and designating an effective date.
4. Provision of certified copies of Rules and Regulations or Standards to the Office of the State Archivist.

OSHA regulations (29 CFR 1953.22 and 23) require that States respond to the adoption of new or revised permanent Federal standards by State promulgation of comparable standards within six months of OSHA publication in the **Federal Register**, and within 30 days for emergency temporary standards. Although adopted State standards or revisions to standards must be submitted for OSHA review and approval under procedures set forth in Part 1953, they are enforceable by the state prior to federal review and approval. By letter dated February 25, 1987, from Douglas J. McVey, Administrator, Utah Occupational Safety and Health Division, to Byron R. Chadwick, OSHA Regional Administrator, the State submitted rules and regulations in response to Federal OSHA's General Industry Standards (29 CFR 1910.145(f): Health and Safety Standards; Accident Prevention Tags, 51 FR 33251, September 19, 1986.)

The above adoptions of Federal standards have been incorporated in the State Plan, and are contained in the Utah Occupational Safety and Health Rules and Regulations for General Industry, as required by Utah Code annotated 1943, Title 63–46–1. In addition, the standards were published in newspapers of general/major circulation throughout the State. No public comments were received and no hearings were held.

State Standards for 29 CFR 1910.145(f): Health and Safety Standards; Accident Prevention Tags, were adopted by the Industrial Commission of Utah, on December 2, 1986, (effective January 15, 1987) pursuant to Title 35–9–6, Utah Code, annotated 1953. The State Standards on Health and Safety Standards; Accident Prevention Tags, are substantially identical to Federal 29 CFR 1910.145(p) except for the following minor differences: (a) paragraph numbering; (b) biological hazard symbol not included in text per Utah rulemaking restrictions; (c) Federal Appenix A is Utah rule paragraph 145.6.10 because Utah rulemaking does not allow appendices; (d) Federal Appendix B is not included.

2. *Decision.* The above State Standard has been reviewed and compared with the relevant Federal Standards and OSHA has determined that the State Standard is at least as effective as the comparable Federal Standards, as required by Section 18(c)(2) of the Act. OSHA has also determined that the differences between the State and Federal Standards are minimal and that the Standards are thus identical. OSHA therefore approves this standard; however, the right to reconsider this approval is reserved should substantial objections be submitted to the Assistant Secretary.

3. *Location of Supplement for Inspection and Copying.* A copy of the standard supplement, along with the approved plan, may be inspected and copied during normal business hours at the following locations: Office of the Regional Administrator, Room 1554, Federal Office Building, 1961 Stout Street, Denver, Colorado 80294; Utah State Industrial Commission, UOSH Offices at 160 east 300 South, Salt Lake City, Utah 84111; and the Office of State Programs, Room N-3476, 200 Constitution avenue, NW., Washington, D.C. 20210

4. *Public Participation.* Under 29 CFR 1953.2(c), the Assistant Secretary may prescribe alternative procedures to expedite the review process of for any other good cause which may be consistent with applicable laws. The Assistant Secretary finds that good cause exists for not publishing the supplements to the Utah State Plan as a proposed change and making the Regional Administrator's approval effective upon publication for the following reason(s):

The standards were adopted in accordance with the procedural requirements of State law which included public comment and further public participation would be repetitious. This decision is effective July 17, 1987.

(Sec. 18, Pub. L. 91–596. 84 Stat. 1608 (29 U.S.C. 667).

Signed at Denver, Colorado, this 31st Day of March, 1987.

Harry C. Borchelt,

Acting Regional Administrator.

[FR Doc. 87–16214 Filed 7–16–87; 8:45 am]

BILLING CODE 4510–26–M

Utah State Standards; Notice of Approval

1. *Background.* Part 1953 of Title 29, Code of Federal Regulations, prescribes procedures under Section 18 of the Occupational Safety and Health Act of 1970 (hereinafter called the Act) by which the Regional Administrator for Occupational Safety and Health (hereinafter called the Regional Administrator) under delegation of authority from the Assistant Secretary of Labor for Occupational Safety and Health (hereinafter called the Assistant Secretary), (29 CFR 1953.4) will review and approve standards promulgated pursuant to a State Plan which has been approved in accordance with section 18(c) of the Act and 29 CFR Part 1902. On January 10, 1973, notice was published in the **Federal Register** (38 FR 1178) of the approval of the Utah Plan and adoption of Subpart E to Part 1952 containing the decision.

The Plan provides for the adoption of Federal Standards as State Standards by:

1. Advisory Committee recommendation.
2. Publication in newspapers of general/major circulation with a 30-day waiting period for public comment and hearings.
3. Commission order adopting and designating an effective date.
4. Provision of certified copies of Rules and Regulations or Standards to the Office of the State Archivist.

OSHA regulations (29 CFR 1953.22 and .23) require that States respond to the adoption of new or revised permanent Federal standards by State promulgation of comparable standards within six months of OSHA publication in the **Federal Register**, and within 30 days for emergency temporary standards. Although adopted State standards or revisions to standards must be submitted for OSHA review and approval under procedures set forth in Part 1953, they are enforceable by the state prior to federal review and approval. By letter dated February 2, 1987, from Douglas J. McVey, Administrator, Utah Occupational Safety and Health Division, to Byron R. Chadwick, OSHA Regional Administrator, the State submitted rules and regulations in response to Federal

OSHA's Construction Standards (29 CFR 1926.400: Electrical Standards for Construction, 51 FR 25294, July 11, 1986).

The above adoptions of Federal standards have been incorporated in the State Plan, and are contained in the Utah Occupational Safety and Health Rules and Regulations for General Industry, as required by Utah Code annotated 1943, Title 63–46–1. In addition, the standards were published in newspapers of general/major circulation throughout the State. No public comments were received and no hearings were held.

State Standards for 29 CFR 1926.400: Electrical Standards for Construction, were adopted by the Industrial Commission of Utah, on November 15, 1986 (effective December 15, 1986) pursuant to Title 35–9–6, Utah Code, annotated 1953. The State Standards on Electrical Standards for Construction are identical to Federal 29 CFR 1926.400, except that the coverage applies to existing installations if they effect the worksite.

2. *Decision.* Having reviewed the State submission in comparison with the Federal standards, it has been determined that the State standards are substantially identical to the Federal standards, and are accordingly approved.

3. *Location of Supplement for Inspection and Copying.* A copy of the standard supplement, along with the approved plan, may be inspected and copied during normal business hours at the following locations: Office of the Regional Administrator, Room 1554, Federal Office Building, 1961 Stout Street, Denver, Colorado 80294; Utah State Industrial Commission, UOSH Offices at 160 East 300 South, Salt Lake City, Utah 84111; and the Office of State Programs, Room N–3700, 200 Constitution Avenue, NW., Washington, D.C. 20210.

4. *Public Participation.* Under 29 CFR 1953.2(c), the Assistant Secretary may prescribe alternative procedures to expedite the review process or for any other good cause which may be consistent with applicable laws. The Assistant Secretary finds that good cause exists for not publishing the supplements to the Utah State Plan as a proposed change and making the Regional Administrator's approval effective upon publication for the following reason(s):

The standards were adopted in accordance with the procedural requirements of State law which included public comment and further public participation would be repetitious. This decision is effective July 17, 1987.

(Sec. 18, Pub. L. 91–596, 84 Stat. 1608 (29 U.S.C. 667)).

Signed at Denver, Colorado, this 31st Day of March, 1987.

Harry C. Borchelt,

Acting Regional Administrator.

[FR Doc. 87–16215 Filed 7–16–87; 8:45 am]

BILLING CODE 4510–26–M

Pension and Welfare Benefits Administration

Advisory Council on Employee Welfare and Pension Benefits Plans; Work Group Meeting

Pursuant to the authority contained in section 512 of the Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. 1142, a public meeting of the Work Group on Employee Stock Ownership Plans (ESOP) of the Advisory Council on Employee Welfare and Pension Benefit Plans will be held at 9:30 a.m., Thursday, August 6, 1987, in Room S–4215C, U.S. Department of Labor Building, Third and Constitution Avenue, NW., Washington, DC 20210.

This nine-member work group was formed by the Advisory Council to study various ERISA issues relating to employee stock ownership plans (ESOP'S).

The purpose of the August 6 meeting is to review and discuss public comments made, and statements received on the issue.

Individuals, or representatives of organizations, wishing to address the work group should submit written requests on or before July 31, 1987 to Charles W. Lee, Jr., Executive Secretary, ERISA Advisory Council, U.S. Department of Labor, Room N–5677, 200 Constitution Avenue, NW., Washington, DC 20210. Oral presentations will be limited to ten minutes, but witnesses may submit an extended statement for the record.

Organizations or individuals may also submit statements for the record without testifying. Twenty (20) copies of such statements should be sent to the Executive Secretary of the Advisory Council at the above address. Papers will be accepted and included in the record of the meeting if received on or before July 31, 1987.

Signed at Washington, DC, this 13th day of July, 1987.

David M. Walker,

Deputy Assistant Secretary for Pension and Welfare Benefits.

[FR Doc. 87–16247 Filed 7–16–87; 8:45 am]

BILLING CODE 4510–29–M

[Application No. D–6692 et al.]

Proposed Exemptions; Jim N. Miller Construction Co., Inc., et al.

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Notice of proposed exemptions.

SUMMARY: This Document contains notices of pendency before the Department of Labor (the Department) of proposed exemptions from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1954 (the Code).

Written Comments and Hearing Requests

All interested persons are invited to submit written comments or requests for a hearing on the pending exemptions, unless othewise stated in the Notice of Pendency, within 45 days from the date of publication of this **Federal Register** Notice. Comments and requests for a hearing should state the reasons for the writer's interest in the pending exemption.

ADDRESS: All written comments and reqeusts for a hearing (at least three copies) should be sent to the Pension and Welfare Benefits Administration, Office of Regulations and Interpretations, Room N–5669, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210. Attention: Application No. stated in each Notice of Pendency. The applications for exemption and the comments received will be available for public inspection in the Public Documents Room of Pension and Welfare Benefit Programs, U.S. Department of Labor, Room N–4677, 200 Constitution Avenue, NW., Washington, DC 20210

Notice to Interested Persons

Notice of the proposed exemptions will be provided to all interested persons in the manner agreed upon by the applicant and the Department within 15 days of the date of publication in the **Federal Register.** Such notice shall include a copy of the notice of pendency of the exemption as published in the **Federal Register** and shall inform interested persons of their right to comment and to request a hearing (where appropriate).

SUPPLEMENTARY INFORMATION: The proposed exemptions were requested in applications filed pursuant to section 408(a) of the Act and/or section 4975(c)(2) of the Code, and in

accordance with procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, these notices of pendency are issued solely by the Department.

The applications contain representations with regard to the proposed exemptions which are summarized below. Interested persons are referred to the applications on file with the Department for a complete statement of the facts and representations.

Jim W. Miller Construction Company, Incorporated Profit Sharing Trust (the Plan) Located in St. Cloud, Minnesota

[Application No. D–6692]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975). If the exemption is granted the restrictions of section 406(a) and 406(b) (1) and (2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code shall not apply to the sales of certain parcels of real property located in St. Cloud, Minnesota, by the Plan to Jim W. Miller Incorporated (the Employer) and Miller Companies, Inc. (Miller), parties in interest with respect to the Plan, provided that all the terms of the proposed transactions are as favorable to the Plan as those obtainable in an arm's-length transaction with an unrelated party on the date the transactions are consummated.

Summary of Facts and Representations

1. On April 24, 1981 (46 FR 23343), the Department granted a temporary exemption (PTE 81–25) which permitted, for a period of five years, beginning April 1981, the sale of certain parcels of real property (the Property) by the Plan to the Employer. An exemption is now requested to permit the continuation of the sales of the Property by the Plan to the Employer and to Miller, a related company which is a participating employer to the Plan, for an indefinite period.

2. The Employer is a Minnesota corporation and a member of a related group of corporations that are the participating employers under provision of the Plan. The related group of corporations includes the Employer, Miller, and Prime Rate, Inc. The Employer is located in St. Cloud, Minnesota, and specializes in real estate development, residential and commercial/industrial construction, and various kinds of specialized construction.

3. The Plan is profit sharing plan with 51 participants and total assets of $3,051,368 as of July 31, 1986. The trustees of the Plan are Messrs. Jim W. Miller, Galen Kabe and Thomas Hartmann, (the Trustees). The Plan was established on August 21, 1963, effective as of November 1, 1962, and received a favorable determination letter from the Internal Revenue Service on August 4, 1978. Due to the nature of the Employer and the area of expertise of personnel, the Trustees initially deemed it advisable to invest Plan assets in real property located in St. Cloud and the surrounding area. The Trustees discontinued further purchases of such real property subsequent to the enactment of the Act.

4. The applicant represents that since April 24, 1981, the Employer and the Plan have complied in all material respects with the express condition of the exemption granted by the Department. The Property consists of 523 acres. Three hundred and twenty (320) of these acres, having an approximate value of $100,000, have been held for long-term appreciation, and are not actively marketed at this time. In the last five years, only two sales of the Property have been made to the Employer, while sales equal in value to nearly 10 times the amount of those two sales have been made to unrelated third parties. These two sales involved a total of 44 acres, resulting in a reduction of acreage actively marketed from 203 acres to 159 acres.

5. The Trustees are now requesting an exemption from all further sales of the Property to the Employer and to Miller. The sales to the Employer have proved to be limited in volume, as compared to sales to outside parties, and have stimulated other sales of the Property to unrelated parties. They have produced a good historic return on the Plan's investment in real property and have enhanced the Plan's ability to reduce its investment in the Property and thereby further diversify its total investments. All sales to the Employer and Miller will be limited to the Property already held by the Plan. The Employer has paid, and the Employer and MIller will continue to pay, at least the full fair market value of the Property, as determined by an independent appraisal. All sales will be for cash only, and the Plan will not pay real restate commissions on any sales to the Employer or to Miller.

6. The First American Bank of St. Cloud (the Bank) will continue to act as an independent fiduciary, with the authority to approve or disapprove all sales of the Property by the Plan to the Employer and Miller. The Bank is independent of both the Employer and Miller. The Bank has the authority to review all transactions between the Plan and the Employer and Miller, and to determine that such transactions are in the best interests of the Plan and its participants and beneficiaries. The Employer and all related corporations represent less than .25 percent of the total deposits and less than 1 percent of the total loans at the Bank.

7. In summary, the applicant represents that the proposed transactions meet the statutory criteria of section 408(a) of the Act because:

a. the Bank has determined that the proposed transactions are in the interests of and protective of the Plan;

b. the Plan will receive fair market value for the Property as determined by an independent appraisal;

c. the Plan will be able to reduce its real estate holdings, thus increasing its liquidity; and

d. the Plan will pay no real estate commissions with respect to the proposed sales.

For Further Information Contact: Ms. Linda M. Hamilton of the Department, telephone (202) 523–8194. (This is not a toll-free number.)

John W. Truban, P.C. Pension Plan; John W. Truban, P.C. Profit Sharing Plan (the Plans) Located in Winchester, Virginia

[Application Nos. D–6842 and D–6843]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975). If the exemption is granted the restrictions of section 406(a) and 406(b) (1) and (2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code shall not apply to the sale of certain real property by the Plans to John W. Truban (Mr. Truban), a party in interest with respect to the Plans for a sales price of $35,000, provided all of the terms of the proposed sale are as favorable to the Plans as those obtainable by the Plans in an arm's-length transaction with an unrelated

party on the date the sale is consummated.

Summary of Facts and Representations

1. The Plans are a defined contribution pension plan and a profit sharing plan with 3 participants. The Plans had total net assets of $120,810 as of June 30, 1985. The trustees of the Plan are Ms. Carolyn B. Ash and Mr. Truban (the Trustees). The Trustees are both related to John W. Truban, P.C. (the Employer).

2. On April 3, 1984, Mr. Truban purchased, as a directed investment, a parcel of real estate known as Lot C, Selma Drive, Winchester, Virginia (the Property) for a purchase price of $35,000. The purchase was 40 percent by Mr. Truban's account in the pension plan ($14,000) and 60 percent by Mr. Truban's account in the profit sharing plan ($21,000). The Property was purchased from Gary W. and Dianne Wake, unrelated parties. The applicant represents that the purchase of the Property was for investment purposes with a hope that the Property would rapidly appreciate and could be resold at a profit. Mr. Truban states that the acquisition of the Property was a wise investment for the Plans and the Property has not appreciated in value. Also, after the purchase of the Property, Mr. Truban discovered some problems with the potential sale of the Property which affect its value significantly. First, the Property is located on a street which has not been approved by Virginia State standards. Thus, in order to obtain a building permit, a property owner must agree to assume the expenses of sewer and water hook-ups. Further, a property owner must agree to waive fire protection, police protection, trash removal and street cleaning services provided by the State of Virginia. Also, a property owner must agree to pay a pro rata share (approximately one-seventh) of the total cost for the completion of a city street once all the lots have been developed. (To date, only one of seven lots has been developed.) There have been no holding costs associated with the Property.

3. Mr. Truban wishes to purchase the Property from the Plans for a purchase price of $35,000 to be paid in cash. This amount represents the Plan's total expeditures for the purchase of the Property. The applicant represents that the purchase price of $35,000 ($5,000 above the fair market value of the property) will not cause the Plan to be disqualified under section 415 of the Internal Revenue Code.

4. An independent appraisal of the Property was performed by George W. Glaize, Jr., a certified appraiser, located in Winchester, Virginia (the Appraisal). The Appraisal established the fair market value of the Property at $30,000 as of September 30, 1986.

5. In summary, the applicant represents that the proposed transaction meets the statutory criteria of section 408(a) of the Act because:

(1) the sale will be a one-time cash transaction;

(2) the Plan will be able to dispose of a non-income producing asset which would be difficult to sell to an unrelated party; and

(3) the Trustees have determined that the proposed sale of the Property is in the interests of the Plan and its participants and beneficiaries.

Tax Consequences of Transaction

The Department of the Treasury has determined that if a transaction between a qualified employee benefit plan and its sponsoring employer (or affiliate thereof) results in the plan either paying less than or receiving more than fair market value such excess may be considered to be a contribution by the sponsoring employer to the plan and therefore must be examined under applicable provisions of the Internal Revenue Code, including sections 401(a)(4), 404 and 415.

For Further Information Contact: Ms. Linda M. Hamilton of the Department, telephone (202) 523–8194. (This is not a toll-free number.)

Steve Sohmer, Inc. Defined Benefit Pension Plan (the Plan) Located in Los Angeles, CA

[Application No. D–7027]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 4975(c)(2) of the Code and in accordance with the procedures set forth in Rev. Proc. 75–26 (1975 C.B. 772). If the exemption is granted the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code shall not apply to the proposed contribution of a copyright interest (the Interest) by Steve Sohmer to the Plan [1]

Summary of Facts and Representations

1. The Plan is a defined benefit pension plan with one participant and assets of $329,000 as of February 28, 1987. Mr. Sohmer is the Plan's sole participant and its trustee, and the sole employee of the Employer.

2. Mr. Sohmer is currently writing a book and is the holder of the Interest. He desires to make a voluntary participant contribution of the Interest to the Plan. The applicant represents that the Interest has no current ascertainable value, but that it may, in the future, become a source of income to the Plan in the form of royalty payments. The applicant also represents that the Plan does permit voluntary participant contributions subject to the limitations of section 415 of the Code.

3. The applicant represents that neither Mr. Sohmer nor the Employer will take any tax deduction with respect to the Interest. Furthermore, the voluntary contribution of the Interest by Mr. Sohmer is independent of, and will in no way affect, the Employer's obligation to continue to fund the Plan in accordance with the relevant provisions of the Plan and the Code. Any income derived from the Interest will increase the amount of funds available for Mr. Sohmer's retirement benefit.

4. The applicant represents that in the event that any additional employees are hired and become participants in the Plan, an independent corporate trustee will be appointed to administer the Plan.

5. In summary, the applicant represents that the proposed transaction satisfies the criteria of section 408(a) of the Act because: (a) The contribution of the Interest is a voluntary participant contribution; (b) the Plan is giving up nothing of value for the Interest; (c) the Interest may produce income which will increase the amount of funds available for retirement benefits; and (d) Mr. Sohmer is the sole Plan participant and desires that the transaction be consummated.

Notice To Interested Persons: Because Mr. Sohmer is the sole shareholder of the Employer and the only participant in the Plan, it has been determined that there is no need to distribute the notice of pendency to interested persons. Comments and requests for a hearing must be received by the Department within 30 days of publication of this notice of proposed exemption.

For Further Information Contact: David Lurie of the Department, telephone (202) 523–8194. (This is not a toll-free number.)

Mortgage & Real Estate Class of John Hancock Separate Account No. 1 (the Fund) Located in Boston, Massachusetts

[Application No. D–7053]

[1] Since Mr. Sohmer is the sole shareholder of Steve Sohmer, Inc. (the Employer) and is the sole participant in the Plan, there is no jurisdiction under Title I of the Act pursuant to 29 CFR 2510.3–3(b). However, there is jurisdiction under Title II of the Act pursuant to section 4975 of the Code.

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975). If the exemption is granted the restrictions of section 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code shall not apply, effective March 31, 1987, to the sale of certain mortgage and real estate investments by the Fund to the General Account of John Hancock Mutual Life Insurance Company, a party in interest with respect to the plans participating in the Fund, provided that the terms of the sale were not less favorable to the Fund that those terms obtainable in an arm's-length transaction with an unrealated party at the time of execution of the transaction.

Effective Date: If granted, this exemption will be effective March 31, 1987.

Summary of Facts and Representations

1. The Fund was established on June 13, 1966 by a vote of the Committee of Finance of John Hancock Mutual Life Insurance Company (the Company). The Fund is a pooled separate account maintained in accordance with the insurance laws of the State of Massachusetts. There are four defined benefit pension plans participating in the Fund at this time. As of March 31, 1987, the assets of the Fund were valued at approximately $47,070,767. The bulk of the Fund's assets are composed of mortgage investments, both commercial and residential. Some of the commercial loans relate to properties which have been foreclosed upon or are seriously delinquent.[2]

2. The group annuity contracts issued with respect to the Fund prior to the passage of the Act provided the contract holder with the right to request the withdrawal of part or all of its interest in the Fund upon 90 days written notice to the Company. At the time there contracts were issued, the Company planned to provide any needed liquidity by transferring a sufficient number of mortgage interests or other investments from the Fund to the Company's General Account, in exchange for cash. The passage of the Act, however, rendered the procedure originally contemplated for guaranteeing Fund liquidity illegal absent administrative relief.

3. One of the plans participating in the Fund, the Massachusetts State Carpenters Pension Plan (the Plan), whose interest in the Fund represented approximately 89% of the total assets in the Fund, requested the withdrawal of its assets. Under the group annuity contract issued to the trustees of the Plan, the distribution of its interest in the Fund was due by February 28, 1987. The Fund did not have sufficient liquidity to meet its obligations under the group annuity contract to the Plan. The trustees understood that a delay beyond the February 28th date was unavoidable, but they indicated a strong desire to receive a final distribution no later than March 31, 1987.

4. It was the Company's understanding and belief that none of the other plan participating in the Fund would have any desire to purchase the interest of the Plan. In addition, the secondary market for seasoned commercial mortgage is not well-established; the transaction cost to the Fund to find another purchaser would be high, involving such items as updated title coverage, underwriting, physical inspections and possible guarantees from the Fund or the Company. Even if another buyer could have been found for the Investments, it was unlikely that the sale could have been completed within a reasonable period of time, in order to allow the Fund to satisfy its contractual obligations.

5. In order to honor its obligations, the Fund, on March 31, 1987, sold the Investments to the Company's General Account for a total cash price of $35,067,678. The Fund did not pay any sales commissions or other related costs with respect to the sale.

6. The Company retained the services of Leggat McCall Advisors, Inc. (Leggat) to act as the Independent Fiduciary for the Fund with respect to the sale of the Investments. Leggat specializes in providing real estate appraisal, sales and property management advice to major corporations, financial institutions, and has regularly assumed major responsibilities with respect to the management and investment of real estate assets. Leggat is not affiliated with the Company, and at no time has more than 1% of its annual billings been received from the Company. Each plan participating in the Fund was informed in writing of the appointment of Leggat and of its role in the transaction.

7. Leggat reviewed the sale transaction prior to its consummation and submitted a written report summarizing its investigation, both with respect to the specific investments to be sold by the Fund and to the price to be paid by the Company's General Account. After a thorough analysis of the valuation procedures and the findings of independent appraisers, Leggat concluded that the valuations were consistent with the current market and that the proposed sale was equitable to all plans participating in the Fund.

The valuation process used for the commercial residential and agricultural loans involved an analysis by Leggat of each asset, taking into account loan amount, remaining loan term, likely holding period, property type, and the interest rate. Due to the differences in the interest rates of the various assets and current market rates, the pricing analysis compared loan yields with the recent average yield of Federal Home Loan Mortgage Corporation securities or Federal Farm Credit Systems bonds, priced with comparable holding periods.

Independent real estate appraisers were engaged to value the foreclosed or seriously delinquent loan investments. Each appraiser was an independent, qualified appraiser knowledgeable in the region where the property was located. A written appraisal report was submitted for each property and supplemental appraisal data was provided to Leggat by the appraisers where requested. The appraisals primarily relied upon recent sales of comparable properties in estimating the market value of the properties being appraised. The appraisal methodology, comparable analysis, and supplemental data was reviewed by Leggat and Leggat believed that the appraised values reasonably reflected market values for each of the properties.

8. In summary, the applicant represents that the transaction satisfied the statutory criteria of section 408(a) of the Act because:

a. The sale of the Investments from the Fund, including the consideration paid, has been reviewed and approved by Leggat acting on behalf of the plans participating in the Fund;

b. The sale provided the Fund with the necessary liquidity to satisfy its contractual obligations to the Plan; and

c. There were no sales commission or similar consideration paid by the Fund.

For Further Information Contact: Alan H. Levitas of the Department, telephone (202) 523–8194. (This is not a toll-free number.)

[2] The Fund's mortgage investments consist of a mix of assets acquired between 1966 and 1985 including 35 commercial mortgage loans, 43 residential mortgage loans, 12 agricultural mortgage loans and 2 foreclosed upon commercial properties (the Investments).

Plumbers, Pipe Fitters and Apprentices Local No. 112 Educational and Apprenticeship Fund (the Plan) Located in Binghamton, New York

[Application No. D-7071]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and in accordance with the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). If the exemption is granted the restrictions of section 406(a) of the Act shall not apply to the proposed sales by the Plan to J & K Plumbing and Heating Co., Inc. (the Corporation), a party in interest with respect to the Plan, of (1) an option to purchase certain real estate (the Land) owned by the Plan and (2) the Land itself, provided the sales prices are not less than the fair market values of the option and the Land on the dates of the sales of each and provided further that the other terms of the transactions are at least as favorable to the Plan as those the Plan could obtain in similar transactions with an unrelated party.

Summary of Facts and Representations

1. The Plan is a multiemployer training trust fund established by Plumbers, Pipe Fitters and Apprentices Local No. 112, AFL-CIO (the Union) and various employers through collective bargaining. The Plan provides apprenticeship and journeyman training benefits to eligible candidates and bargaining unit employees and is operated by a joint labor-management board of trustees (the Trustees). As of February 4, 1987, Plan participants included approximately 430 Union members indirectly benefiting from the Plan's activities and approximately 40 apprentices directly benefiting from same. As of December 31, 1985, the Plan's assets totalled $848,281. The Corporation employs Plan participants and contributes to the Plan pursuant to a collective bargaining agreement with the Union. None of the Corporation's officers or shareholders are Trustees of the Plan.

2. Mr. Frank Morano, a real-estate appraiser, has been appointed independent fiduciary for the Plan with respect to the proposed sales. Mr. Morano has over 15 years experience as an appraiser of both commercial and residential property and is a member of the Appraisal Institute of America. He states that he has no other connection or business relationship with the Union, the Plan, or the Corporation. Mr. Morano also states that he is fully familiar with the duties and responsibilities of a fiduciary under the Act and that he accepts such duties and responsibilities in recognizing his status as an independent fiduciary with respect to the proposed sales.

3. The Land consists of an undeveloped lot of approximately 3.3 acres located at 910 Front Street, Dickinson Township, City of Binghamton, New York and is not presently used by the Plan. In his report dated November 1, 1986, Mr. Jonathan R. Crossley, M.A.I., of the American Realty Appraisal Co., of Binghamton, New York, values the Land at $235,000.00. Mr. Crossley states that he has appraised vacant tracts on Front Street extensively for the last quarter century and certifies that he has no personal interest or bias with respect to the Land or the parties involved.

4. The Plan acquired the Land for a purchase price of $62,565.00 on October 15, 1969 through the 112 Plumbers and Steamfitters Building Corporation, a title-holding corporation owned wholly by the Plan, for the purpose of constructing a new building for an apprentice training school. Engineering costs in the amount of $19,776.00 were incurred prior to the decision to abandon the site. In 1977, when the Land was valued by an independent appraiser at $110,000.00, the Trustees offered the Land for sale but have been unable to sell it since then. The Plan has no use and forsees no future need for the Land as the Plan currently has offices and classrooms available at its headquarters at 11 Griswold Street, Binghamton, New York, and has no plans to expand its facilities. The Plan has actively explored various means of developing the Land but, according to the applicant, has not found any of those options to be economically feasible. Thus, although the Land continues to generate expenses to the Plan, the Plan has been unable to convert the Land to productive use.

5. The Plan proposes to grant the Corporation an option to purchase the Land at a purchase price of $250,000.00 cash. The Corporation proposes to pay $1,000.00 for this option on its commencement date. If the proposed exemption is granted, the option will commence on the date the Plan receives the exemption and will expire 90 days after such commencement date unless before such expiration date the Corporation extends the term of the option for an additional 90 days by paying an additional $2,000.00 and notifying the Plan. If the Corporation exercises the option, the amount it paid to acquire (and to extend, if applicable) the option will be credited toward the purchase price of the Land at closing. If the Corporation does not exercise the option, the Plan will retain the amount(s) paid by the Corporation to acquire (and to extend) the option.

6. The applicant and Mr. Morano (see 2, above) represent that the option contract is necessary to retain the Corporation's interest while it arranges for local government approval for zoning, signs and sewer connections and while it tests the soil on the Land and prepares the site for building. They assert that were it not for the option contract, the Corporation might be reluctant to invest the funds necessary to determine whether the Land is suitable for its intended use. They believe the option contract will encourage the Corporation to purchase the Land and thus realize a benefit on the amount it paid to acquire (and, if extended, to extend) the option. They state that the option contract is in the Plan's best interest because it will allow the Plan to receive $1,000 or $3,000 for continuing to hold the Land, even if it is not sold, and also allows the Plan the possibility of receiving a total of $250,000 if the Corporation exercises the option to purchase the Land. The applicant represents that the consideration the Plan will receive for the option contract will more than compensate the Plan for the additional cost incurred in holding the Land during the term of the option contract and will provide additional cash to further the Plan's objective of providing apprenticeship and training programs.

7. If the Corporation exercises the option, the remainder of the proposed sale price (i.e., $250,000 less the consideration paid by the Corporation for the option contract, including any extension thereof) will be paid in cash in a single payment on the date of the sale. No commission or other selling expense will be charged to the Plan.

8. Mr. Morano represents that he has reviewed the application for exemption, Mr. Crossley's appraisal (see 3, above), the most recent report of the Plan's auditor, and the Plan's income and expense statement. He states that he has visited and examined the Land and has analyzed its value using the market value approach, which he has determined is appropriate because the Land is undeveloped, because of its location, and because of the sale of comparable property nearby. Based upon the information described above and upon his survey, he has concluded that: (a) The highest and best use of the Land is for commercial uses; (b) the proposed option contract is in the best interests of the Plan and its participants for the reasons summarized in 6, above; (c) the terms of the proposed option

contract are as favorable to the Plan as a similar option contract between unrelated parties; (d) the fair market value of the Land is not likely to increase during the option period so that it is likely to remain below the proposed sale price at least until the date of the sale if the option is exercised (the Land's fair market value as appraised by Mr. Crossley is $15,000 less than the proposed sale price); (e) the terms of the proposed sale of the Land are as favorable to the Plan as those of an arm's-length transaction; and (f) the proposed sale of the Land is in the best interests of the Plan and its participants.

9. In summary, the applicant represents that the proposed transactions satisfy the exemption criteria set forth in section 408(a) of the Act because: (a) The sales will be one-time transactions for cash; (b) a qualified independent appraiser has determined that the Land's fair market value is less than the proposed sale price; (c) Mr. Morano, an independent fiduciary of the Plan and an experienced real-estate appraiser, has determined that the proposed sales of the Land and the option contract will be at arm's-length terms and in the best interests of the Plan and its participants; and (d) the sales will permit the Plan to convert a non-income producing asset, for which the Plan currently incurs expenses, into cash, thereby greatly improving the Plan's ability to provide the apprenticeship and training programs for which the Plan was established.

For Further Information Contact: Mrs. Miriam Freund of the Department, telephone (202) 523-8194. (This is not a toll-free number.)

Simkins Industries, Inc. Master Trust (the Trust) Located in New Haven, Connecticut

[Application No. D-7072]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). If the exemption is granted, the restrictions of section 406(a), 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code shall not apply to (1) the proposed loans (the Loans) by the Trust, for a period of five years, to Simkins Industries, Inc. (the Employer); and (2) the proposed guarantee of the Loans by the Employer, provided the terms of the transaction are at least as favorable to the Trust as those obtainable in arm's length transactions with an unrelated party.

Preamble

On May 8, 1981, the Department granted Prohibited Transaction Exemption (PTE) 81-36 (41 FR 25732), which permitted a series of loans (the Old Loans) by the Trust to the Employer. As of October 30, 1986 the outstanding principal balance of the Old Loans was $1,520,000. Since the time of their making, there have been no defaults or delinquencies with respect to the Old Loans. Because PTE 81-36 expired on May 8, 1986 with respect to the making of the Old Loans and will expire on May 8, 1990 with respect to the holding by the Trust of the Old Loans obligations, the applicant requests a continuation of the prior exemption.

Temporary Nature of Exemption

This proposed exemption is temporary in nature. If granted, the proposed exemption will expire five years after the date of the grant with respect to the making of any Loan, and will expire ten years after the date of the grant with respect to the Trust's continued holding of any Loan obligations.

Summary of Facts and Representations

1. The Trust constitutes a master trust comprised of nine defined benefit plans (the Plans), each of which cover different employees of the Employer. As of September 30, 1985, the Trust had assets having a fair market value of approximately $12,636,655 and an estimated 1,689 participants. The allocation of the assets among the Plans as well as the distribution of the Plans' participants were as follows as of September 30, 1985:

Name of plan	Asset allocation percentage	Dollar amount	Number of participants
Employees' Retirement Plan of Simkins Industries, Inc.	58.75	$7,424,035	662
United Paper Workers Union, Local 457 Simkins Industries, Inc. Pension Plan	19.44	2,456,566	245
New Haven Specialties and Paper Products Union Local 533 A.F.L.-C.I.O. Simkins Industries, Inc. Pension Plan	3.55	448,601	161
United Steel Workers of America Local 12993 Simkins Industries, Inc. Baltimore Division Pension Plan	2.93	370,254	134
Simkins Industries, Inc. Retirement Plan for Hourly Employees of the Cicero, Illinois Folding Carton Division	2.01	253,997	186
Simkins Industries, Inc. Retirement Plan for Hourly Employees of the Cleveland, Ohio Folding Carton Division	2.31	291,907	76
Simkins Industries, Inc. Retirement Plan for Hourly Employees of the Marietta, Georgia Folding Carton Division	1.10	139,003	89
Simkins Industries, Inc. Retirement Plan for Hourly Employees of the Landrum, South Carolina Divison	.22	27,801	47
Westfield River Paper Company Hourly Pension Plan	9.69	1,224,491	189
Total	100.00	12,636,655	1,689

The trustees of the Trust are Ms. Barbara Camera and Messrs. Leon J. Simkins and Milton Anderson. First Manhattan Company of New York, New York makes investment decisions for the Trust with respect to equity securities.

2. The Employer, by itself and through certain subsidiaries located in the Eastern and Midwestern United States, is engaged in the manufacture and sale of various paper products that include combination boxboard, converted boxboard products, corrugated containers and glassine and grease-proof papers. The Employer maintains its corporate headquarters at 259 East Street, New Haven, Connecticut.

3. An administrative exemption is requested to allow the Trust to establish a line of credit whereby it can make recurring loans to the Employer. The Loan proceeds will provide the Employer with a source of additional working capital. As presently contemplated, the Employer will be permitted to borrow amounts from the Trust, on a periodic basis, over a five year period that will commence on the date the proposed exemption is granted. However, no Loan will be made if the amount of the Loan, when aggregated with the outstanding principal balance of all prior Loans (including the outstanding balance of the Old Loans made pursuant to PTE 81-36) exceeds 25 percent of the assets of the Trust.[3] In

[3] The applicant represents that the $1,520,000 amount reflecting the outstanding principal balance of Old Loans as of October 30, 1986 is allocated amount the Plans in the percentages indentified in the table set forth above.

addition, no Loan will be made if the amount of the Loan allocable to any Plan, when aggregated with the outstanding principal balance of all prior Loans allocated to the Plan, exceeds 25 percent of the Trust assets that are allocated to the Plan.

4. To evidence its indebtedness to the Trust, the Employer will sign promissory notes (the Notes). The Notes will state that interest will accrue on the outstanding principal balance at one percent above the prime rate of interest charged by Chase Manhattan Bank, N.A. to its most creditworthy commercial borrowers. The Notes will provide for montly adjustments in the interest rate to reflect any changes in the prime rate but in no event will the interest rate be reduced below six percent per annum.

The adjustments to the interest rate will be made by Jefferson Bank (the Bank), a Pennsylvania state banking association with its principal office located at Downing Center, Downingtown, Pennsylvania. The Bank will serve as the independent fiduciary for the proposed Loans. In addition, each Note will provide for the repayment of the Loan in not more than twenty, approximately equal quarterly installments of principal and interest beginning on the first day of the second calendar quarter after the date of disbursement. Finally, the Employer will pay all costs for legal fees and any other expenses incurred by the Trust in connection with the Loans, including the independent fiduciary fees of the Bank.

5. The Loans made during the five year period will be secured by marketable, publicly-traded securities that are owned by the Employer but are not issued by the Employer. At all times, the securities will have a fair market value of at least 200 percent of the outstanding balance of the Loans. The collateral will be placed in escrow and held by the Bank. All non-bearer securities will be accompanied by stock transfer papers signed in blank (when necessary) by the Employer. No funds will be disbursed by the Bank under any Loan unless the value of the securities held in escrow at the time of the disbursement equals 200 percent of the amount of the Loan and the outstanding balance of any other outstanding loans, including the Old Loans. To establish that the value of the securities being placed in escrow meets the 200 percent requirement, the Bank may require that the Employer obtain an appraisal from an independent appraiser or other documentation. If, as of the first day of any calendar quarter, or during the term of any Loan made hereunder, the Bank determines that the value of securities held in escrow is inadequate, the Employer will be required to place promptly into escrow such additional securities as are necessary to satisfy the deficiency. Failure by the Employer to comply with this requirement will result in the Bank declaring a default on a Loan.

6. As additional security for the Loans, the Employer will issue its corporate guarantee for the full amount of any principal, interest and other expenses of the Loans which remains unpaid pursuant to any default by the Employer to the extent that the stock placed in the escrow account is insufficient to pay the unpaid amounts and expenses. The total assets of the Employer and its subsidiaries as of September 30, 1986 were $72,836,650.

7. As stated above, the Bank has been designated as the independent fiduciary for the proposed Loans and as such, it will approve and monitor these transactions. The Bank states that it has served as an escrow agent in a wide variety of transactions that include investor partnerships, sales of businesses and real estate and investing and accounting for the proceeds of several class action lawsuits. The Bank represents that it has extensive experience under the Act as a fiduciary. In addition, the Bank states that it has consulted with legal counsel regarding the duties, responsibilities and liabilities imposed on plan fiduciaries under the Act and it represents that it understands and acknowledges these duties, responsibilities and liabilities in acting as a fiduciary with respect to the Trust and the participating Plans. Further, the Bank states that none of its officers or directors serves on the board of directors of either the Employer or its subsidiaries nor is any officer or director of the Bank related in any way to the Employer or its shareholders. As for pre-existing commercial relationships, the Bank states that neither the Employer, the Trust or the Plan have outstanding loans or maintain credit arrangements with it. The Bank explains that the only commercial relationship it has with the Employer is as a depository for an escrow account held by the Employer. The Bank states that the average balance of this account is less than .01 percent of the Bank's total deposits.

8. The Bank represents that it believes the proposed Loans are appropriate for the Trust and are in the best interests of the participants and beneficiaries of the Plans participating thereunder. The Bank states that it would be willing to lend money to the Employer under substantially the same terms and conditions as those mentioned above. In consideration of the Employer's financial stability, the Bank submits that it would be willing to make similar loans to the Employer at the prime rate of interest (as opposed to one percent above prime), without collateral and on more favorable repayment terms. Specifically, instead of requiring repayment over five years, the Bank explains that it would consider a term of seven or eight years, or possibly even longer. According to the Bank, the Loan terms are commercially reasonable and compare favorably with the terms of similar transactions between unrelated parties.

The Bank represents that it has examined the Trust's portfolio and obtained information regarding the Trust's investment objectives and policies as well as the liquidity requirements of the Plans. Considering the foregoing, the Bank believes the Loans are in the best interests of the Plans and their participants and beneficiaries because the Loans will be secured by readily marketable collateral whose value will be at least 200 percent of the outstanding Loan balance as well as the Employer's guarantee. Indeed, the Bank states that because the collateral will substantially exceed the outstanding Loan balance at any time it considers the investment to be as safe as, if not safer than, a certificate of deposit it might issue. In addition, the Bank explains that the rate of return to the Trust, which is currently 8.75 percent, is higher than can be obtained by the Trust through other investments providing similar security. The Bank explains further that because principal and interest payments are required quarterly and the Loans will not exceed 25 percent of the Trust's assets (allocable to each Plan), the Loans will enable the Plans to meet their liquidity and diversification requirements.

The Bank agrees to monitor the Loans throughout their duration. The Bank notes that the proposed Loan commitment between it and the Employer gives it complete and final authority to disapprove a disbursement of funds unless the collateral held in escrow exceeds the required limit in effect at the time. Moreover, the Bank asserts that it has authority to require the Employer to provide additional collateral should the value of the securities held in escrow fall below the required minimum. Finally, the Bank states that it will take all actions that are necessary and proper to protect the rights of the Plans as well as their participants and beneficiaries, with respect to the proposed Loans. Such actions may include insuring that the

correct amount of interest on the Loans is paid or pursuing appropriate remedies in the event of a default on a Loan by the Employer.

9. In summary, it is represented that the proposed Loans will satisfy the statutory criteria for an exemption under section 408(a) of the Act because: (a) The Bank, which will approve and monitor the Loans as the independent fiduciary, believes such Loans are appropriate investments for the Trust and are in the best interest of the participants and beneficiaries of the Plans participating thereunder; (b) no Loan will be made if the amount of the Loan, when aggregated with the outstanding principal balance of all prior Loans (including the outstanding balance of the Old Loans made pursuant to PTE 81–36) exceeds 25 percent of the assets of the Trust; (c) no Loan will be made if the amount of the Loan allocable to any Plan, when aggregated with the outstanding principal balance of all prior Loans allocated to the Plan, exceeds 25 percent of the Trust assets that are allocated; (d) each Loan will be secured by marketable securities of the Employer which will, at all times have fair market value of at least 200 percent of the outstanding balance of the Loan; (e) the Loans will be further secured by the corporate guarantee of the Employer; (f) the duration of each Loan will be limited to a five year period; and (g) the Trust will receive a higher rate of return on the Loans that it can obtain by placing Trust assets in other investment vehicles.

Notice to Interested Persons

Notice of the proposed exemption will be provided to all interested persons by first class mail within 60 days of the publication of the notice of pendency in the **Federal Register**. Such notice shall include a copy of the notice of pendency of the exemption as published in the **Federal Register** and shall inform interested persons of their right to comment and/or to request a hearing with respect to the proposed exemption. Comments are due within 90 days of the date of publication of the proposed exemption in the **Federal Register**.

For Further Information Contact: Ms. Jan D. Broady of the Department, telephone (202) 523–8196. (This is not a toll-free number.)

Naegele Outdoor Advertising Company of Louisville, Inc. Employee's Group Pension Plan (The Plan) Located in Louisville, Kentucky

[Application No. D–7104]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975). If the exemption is granted the restrictions of section 406(a), 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code shall not apply to the sale by the Plan to Naegele Company, Inc. (Naegele), and/or to Naegele's parent corporations, of the right to receive future payments under a group annuity contract (the Group Annuity Contract) for cash, provided the amount received by the Plan is not less than the fair market value of such payments on the date of the sale.

Summary of Facts and Representations

1. The Plan, a defined benefit plan with 65 participants, was originally sponsored by Naegele Outdoor Advertising Company of Louisville, Inc. In 1980, that company was merged into Naegele, which became the Plan sponsor.

2. The Plan was terminated effective December 31, 1983, and replaced with a 401(k) plan through Massachusetts Mutual Insurance Company. A determination letter was received from the Internal Revenue Service approving the termination.

3. The Plan was funded through the Group Annuity Contract, which is contract number EV–2616ZA with Mutual Insurance Company of New York. Pursuant to the terms of the Group Annuity Contract, payment of the value of the Group Annuity Contract would be made in five equal payments. After the termination of the Plan, Naegele sold substantially all of its assets to another company. The payments received under the Group Annuity Contract were being held under the terms of the 401(k) plan for distribution to the eligible participants once the final payment had been received under the Group Annuity Contract.

4. Naegele has now terminated the 401(k) plan and desires to distribute all of the assets of the Plan to the Plan participants, including the monies from the Group Annuity Contract. In order to accomplish this, the Plan's sponsor and/or its parent corporations propose to purchase from the Plan the right to receive the future payments under the Group Annuity Contract in exchange for a lump sum cash payment to the Plan. The Group Annuity Contract specifically bars any payments under the terms of the contract other than over a five year period without the express written consent of the insurance company. The insurance company has stated that it refuses to make any payment other than pursuant to the five year payout provision specified in the insurance contract.

5. Naegele proposes to purchase the Group Annuity Contract for the present value of the future payments under the Group Annuity Contract as determined by an independent actuary. Mr. Richard C. Krahulec of Retirement Data Services, Inc., an independent actuary in Eden Prairie, Minnesota, has determined that as of July 1, 1987 the value of the Group Annuity Contract is $168,030.96. Two annual payments are due as of that date. Mr. Krahulec, who does not do any business for Naegele or its affiliates, represents that he has ten years of experience with the design, pricing and utilization of deposit administration group annuity contracts. Naegele will acquire the Group Annuity Contract for the present value of the contract on the date of sale as determined by Mr. Krahulec using the same factors as he used in making the July 1, 1987 valuation. The sale will take place at the earliest possible date following the granting of the exemption proposed herein.

6. The applicant represents that the proposed transaction would permit the Plan sponsor and/or its affiliates to wind up the affairs of Naegele and the Plan, which could not otherwise be accomplished until all of the payments from the Group Annuity Contract have been received by the Plan. In the absence of the requested exemption, the Plan would incur the expenses of maintaining a trust until all the payments from the Contract have been received.

7. In summary, the applicant represents that the proposed transaction meets the criteria of section 408(a) of the Act because: (1) The sale is a one-time transaction for cash; (2) the sales price will be the fair market value of all future payments under the Group Annuity Contract as determined by a qualified, independent actuary; and (3) the sale would permit the Plan participants to receive their distributions immediately rather than waiting until all of the payments under the Group Annuity Contract have been received by the Plan.

For Further Information Contact: Gary H. Lefkowitz of the Department, telephone (202) 523–8881. (This is not a toll-free number.)

Marcia Freed, M.D., Keogh Plan and Trust (the Keogh Plan) Located in Portland, OR

[Application No. D–7117]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 4975(c)(2) of the Code and in accordance with the procedures set forth in Rev. Proc. 75–26 (1975–1 C.B. 722). If the exemption is granted the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code shall not apply to the proposed cash sale of twenty (20) Canadian Maple Leaf gold coins (the Coins) and five (5) silver bars (the Bars) by the Keogh Plan to Marcia Freed, M.D. (Dr. Freed), a disqualified person with respect to the Keogh Plan; provided that the purchase price of the Coins and the Bars is the fair market retail value on the date of the sale.[4]

Summary of Facts and Representations

1. The Keogh Plan is a defined contribution keogh plan whose only participant is Dr. Freed. The total market value of the Keogh Plan's assets as of December 31, 1986, was approximately $44,171. The trustee for the Keogh Plan is the Key Bank of Oregon (the Bank).

2. It is represented that the Keogh Plan acquired from Merrill Lynch Pierce Fenner and Smith, Inc., an unrelated party with respect to the Keogh Plan, a total of twenty (20) Coins in two lots of ten (10) Coins each on September 27, 1979, and on January 27, 1981, at a price of $4,311.45 and $5,399.35, respectively, for each of the lots. In addition, the Keogh Plan purchased from T.E. Slanker Metals Company, Inc., an unrelated party with reference to the Keogh Plan, a total of approximately 500 ounces of silver in the form of five (5) Bars in two lots of 200 ounces and 300 ounces, respectively, on September 26, 1979, and March 31, 1980. The cost for the first lot of Bars was $3,750 and for the second lot of Bars was $4,830. As of December 12, 1986, the Coins and the Bars constituted approximately 18% and 6%, respectively, of the assets of the Keogh Plan.[5]

3. Dr. Freed proposes to purchase the Coins and the Bars for cash at the retail price as determined by the fair market appraisal of the Coins and the Bars on the date of the sale. It is represented that the proceeds from the sale of the Coins and the Bars will facilitate the diversification of the assets of the Keogh Plan.

4. Mr. Norman Locke (Mr. Locke) of Columbia Coin Company, Inc., located at 514 S.W. Sixth Avenue, Portland, Oregon, has appraised the retail market value of the Coins and the Bars as of March 27, 1987, at $8,877 for the Coins and at $3,101.92 for the Bars. The wholesale value of the Coins and the Bars as of March 27, 1987, was $8,654 and $2,851.77, respectively. The Coins are described as twenty (20) one ounce Maple Leaf gold coins. Mr. Locke has described the five (5) Bars as weighing 500.31 troy ounces. Mr. Locke's qualifications include thirty (30) years of experience in Portland, Oregon operating a coin and precious metal business. Mr. Locke is a life member of the Retail Coin Dealers Association and a member in the American Numismatic Society. Mr. Locke is also currently the legislative spokesman for the Oregon Dealers Association. It is represented that the Columbia Coin Company and Mr. Locke have no relationship with Dr. Freed, nor do they have any interest in purchasing the Coins or the Bars. Dr. Freed represents that she, rather than the Bank or the Plan, will bear the cost of obtaining appraisals of the retail fair market value of the Coins and Bars.

5. In summary, the applicant represents tha the proposed transaction will satisfy the statutory criteria of section 4975(c)(2) of the Code because:

(1) the one-time sale of the Coins and Bars will be entirely for cash;

(2) Dr. Freed will pay the retail fair market value of the Coins and Bars on the date of sale, as determined by an independent qualified appraiser;

(3) Dr. Freed is the only participant in the Keogh Plan, such that the transaction will affect only Dr. Freed;

(4) the cash proceeds from the sale of the Coins and Bars will further the liquidty and diversification of the Keogh Plan portfolio; and

(5) any appraisal fees associated with the sale of the Coins and Bars will be paid by Dr. Freed.

Notice to Interested Persons: Because Dr. Freed is the only participant in the Keogh Plan, it has been determined by the Department that there is no need to distribute the notice of pendency to interested persons. Comments and requests for a hearing must be received by the Department within 30 days of the date of publication of this notice of proposed exemption.

For Further Information Contact: Angelena C. Le Blanc of the Department, telephone (202) 523–8196. (This is not a toll-free number.)

Emanuel Klimpl Pension Plan (the Plan) Located in New York, New York

[Application No. D–7162]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975). If the exemption is granted the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code shall not apply to the contribution to the Plan of certain stock warrants (the Warrants) of Arlen Corporation (Arlen) by Emanuel Klimpl (Mr. Klimpl), a disqualified person with respect to the Plan, provided that: (1) The Warrants are valued at their fair market value at the time contributed, and (2) the Warrants, together with certain promissory notes of Arlen (the Arlen Notes), represent in the aggregate no more than 10% of the total assets of the Plan at the time of contribution of either the Warrants or the Arlen Notes.

Summary of Facts and Representations

1. The Plan is a defined benefit plan with total assets of appoximately $130,000. Mr. Klimpl is the administrator, trustee and sole participant of the Plan. Mr. Klimpl is a sole proprietor engaged in the business of being a corporate director and consultant.[6]

2. Mr. Klimpl is a director of Arlen. Mr. Klimpl received the Arlen Notes and the Warrants as compensation for services rendered to Arlen as a director and consultant. Mr. Klimpl was previously granted an exemption by the Department for the periodic contribution to the Plan of the Arlen Notes.[7]

Mr. Klimpl is also the holder of the Warrants, which entitle Mr. Klimpl to purchase 250,000 shares of the common stock of Arlen (the Arlen Stock) for $1.00

[4] Because Dr. Freed is the only participant in the Keogh Plan there is no jurisidiction under Title I of the Act pursuant to 29 CFR 2510.3–3(b). However, there is jurisdiction under Title II of the Act pursuant to section 4975 of the Code.

[5] The applicants represent that the Coins and Bars were not acquired after December 31, 1981. The Deparmtent notes that section 408(m) of the Code provides that the acquisition after December 31, 1981, of any "collectible," such as any metal or coin by an individually directed account shall be treated as a distribution from such account in an amount equal to the cost of such collectible. The Department herein is not offering any exemptive relief to the extent section 408(m) is applicable to the facts in this case.

[6] Since Mr. Klimpl is a sole proprietor and the only participant in the Plan, there is no jurisdiction under Title I of the Act pursuant to 29 CFR 2510.3–3(b). However, there is jurisdiction under Title II of the Act pursuant to section 4975 of the Code.

[7] Prohibited Transaction Exemption 86–104, 51 FR 32147, September 9, 1986.

per share. The Warrants are exercisable on or after July 2, 1987 through June 30, 1992. The Arlen Stock is publicly held and is traded on the Philadelphia Exchange. However, the Arlen Stock available for purchase under the Warrants is unregistered and subject to a two year holding period. The applicant states that the registered Arlen Stock had bid and ask prices of $0.25 and $0.31 per share, respectively, as of April 9, 1987.

3. Mr. Klimpl has obtained an independent appraisal (the Appraisal) of the fair market value of the Warrants from Ms. Marjorie E. Nesbitt, Vice President, Private Business Valuation Unit, Citibank, N.A. (Citibank). Citibank has no affiliation with and is independent of the Plan. Mr. Klimpl individually maintains commercial accounts with Citibank which represent a de minimus percentage of the total commercial accounts of Citibank.

The Appraisal states that the fair market value of the 250,000 Warrants is approximately $7,500. The Appraisal is based on an offer of $0.03 per Warrant rendered by Donaldson, Lufkin & Jenrette, a brokerage firm familiar with the underlying fundamentals of Arlen. The Appraisal takes into consideration the current price of freely traded Arlen Stock, the cost of the Arlen Stock under the Warrants, and the restrictions on the holding of the unregistered Arlen Stock.

4. Mr. Klimpl proposes to eventually contribute his entire interest in the Warrants to the Plan. Mr. Klimpl represents that the aggregate fair market value of the Warrants and the Arlen Notes contributed to the Plan will not exceed 10% of the value of the Plan's total assets at the time of contribution of either the Warrants or the Arlen Notes. Thus, Mr. Klimpl states that both the Arlen Notes and the Warrants will be contributed to the Plan in steps to assure that the aggregate value of these securities does not exceed the 10% limit when the contribution is made.

5. The applicant states that his Federal Income tax deduction for the contribution of the Warrants to the Plan will not exceed the fair market value of the Warrants at the time of contribution. In addition, in no event will Mr. Klimpl take a Federal income tax deduction in excess of that permitted under the Code.

The applicant states further that the Plan will not incur any sales commission or other expenses in connection with the contribution of the Warrants.

6. Mr. Klimpl believes that the transaction is in the best interest of the Plan. Mr. Klimpl states that the contribution will provide the Plan with an asset that has an excellent potential for appreciation.

7. Mr. Klimpl represents that there is little chance of there being a Plan participant other than himself. However, if there is ever another participant, Mr. Klimpl will establish a separate defined benefit plan for such employee containing provisions comparable to those contained in the Plan.

8. In summary, the applicant represents that the proposed transactions will satisfy the statutory criteria of section 4975(c)(2) of the Code because: (a) The Warrants will be valued at their fair market value on the date contributed by Mr. Klimpl; (b) no sales commissions or other expenses will be incurred by the Plan with respect to the contributions; (c) the aggregate fair market value of the Warrants and the Arlen Notes will not exceed 10% of the Plan's assets at the time of the contribution of any such Warrant or Note; and (d) Mr. Klimpl, who is the only person affected by the transactions, believes that the transactions are appropriate for the Plan and desires that the transactions be consummated.

Notice to Interested Persons: Because Mr. Klimpl is the only participant in the Plan, it has been determined that there is no need to distribute the notice of pendency to other persons. Comments and requests for a hearing must be received by the Department within 30 days of the date of publication of this notice of proposed exemption.

For Further Information Contact: Mr. E. F. Williams of the Department, telephone (202) 523-8881. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certin other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) Before an exemption may be granted under section 408(a) of the Act and/or section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries and protective of the rights of participants and beneficiaries of the plan; and

(3) The proposed exemptions, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction.

(4) The proposed exemptions, if granted, will be subject to the express condition that the material facts and representations contained in each application are true and complete, and that each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 14th day of July, 1987.

Elliot I. Daniel,

Associate Director for Regulations and Interpretations, Pension and Welfare Benefits Administration, U.S. Department of Labor.

[FR Doc. 87-16286 Filed 7-16-87; 8:45 am]

BILLING CODE 4510-29-M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50-320]

General Public Utilities; Availability of Final Supplement 2 to the Programmatic Environmental Impact Statement Related to Decontamination and Disposal of Wastes From March 28, 1979 Accident, Three Mile Island Nuclear Station Unit 2

July 13, 1987.

The Nuclear Regulatory Commission has published its final report, Supplement 2, to the Programmatic Environmental Impact Statement (PEIS) related to decontamination and disposal of radioactive wastes resulting from the March 28, 1979 accident, Three Mile Island Nuclear Station, Unit 2 (NUREG 0683). Supplement 2 to the PEIS addresses environmental impacts associated with the licensee's proposal and various alternatives for the disposal of slightly contaminated water presently stored on the Three Mile Island site.

Copies of the supplement have been placed in NRC's Public Document Room, 1717 H Street NW, Washington, DC, and

in the Local Public Docket Room, State Library, Commonwealth and Walnut Streets, Harrisburg, PA, for review by interested persons. Copies of the report may be purchased from Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20013–7982. GPO deposit account holders may charge orders by calling 202–275–2060. Copies are also available from the National Technical Information Service, Springfield, Virginia 22161.

Dated at Bethesda, Maryland, this 13th day of July 1987.

For the Nuclear Regulatory Commission.

Dennis M. Crutchfield,

Director, Division of Reactor Projects III, IV, V and Special Projects.

[FR Doc. 87–16279 Filed 7–16–87; 8:45 am]

BILLING CODE 7590–01–M

OFFICE OF PERSONNEL MANAGEMENT

Federal Prevailing Rate Advisory Committee; Open Meeting

According to the provisions of section 10 of the Federal Advisory Committee Act (Pub. L. 92–463), notice is hereby given that meetings of the Federal Prevailing Rate Advisory Comnmittee will be held on—

Wednesday, August 12, 1987
Wednesday, August 19, 1987
Wednesday, August 26, 1987

These meetings will start at 10 a.m. and will be held in Room 5A06A, Office of Personnel Management Building, 1900 E Street, NW., Washington, DC.

The Federal Prevailing Rate Advisory Committee is composed of a Chairman, representatives from five labor unions holding exclusive bargaining rights for Federal blue-collar employees, and representatives from five Federal agencies. Entitlement to membership of the Committee is provided for in 5 U.S.C. 5347.

The Committee's primary responsibility is to review the Prevailing Rate System and other matters pertinent to establishing prevailing rates under subchapter IV, chapter 53, 5 U.S.C., as amended, and from time to time advise the Office of Personnel Management.

These scheduled meetings will start in open session with both labor and management representatives attending. During the meeting either the labor members or the management members may caucus separately with the Chairman to devise strategy and formulate positions. Premature disclosure of the matters discussed in these caucuses would unacceptably impair the ability of the Committee to reach a consensus of the matters being considered and would disrupt substantially the disposition of its business. Therefore, these caucuses will be closed to the public because of a determination made by the Director of the Office of Personnel Management under the provisions of section 10(d) of the Federal Advisory Committee Act (Pub. L. 92–463) and 5 U.S.C. 552b(c)(9)(B). These caucuses may, depending on the issues involved, constitute a substantial portion of the meeting.

Annually, the Committee publishes for the Office of Personnel Management, the President, and Congress a comprehensive report of pay issues discussed, concluded recommendations, and related activities. These reports are available to the public, upon written request to the Committee's Secretary.

The public is invited to submit material in writing to the Chairman on Federal Wage System pay matters felt to be deserving of the Committee's attention. Additional information on these meetings may be obtained by contacting the Committee's Secretary, Office of Personnel Management, Federal Prevailing Rate Advisory Committee, Room 1340, 1900 E Street, NW., Washington, DC 20415 (202) 632–9710.

Thomas E. Anfinson,

Chairman, Federal Prevailing Rate Advisory Committee.

July 10, 1987.

[FR Doc. 87–16271 Filed 7–16–87; 8:45 am]

BILLING CODE 6325–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–24698; File No. SR–PSE–87–18]

Self-Regulatory Organizations; Proposed Rule Change by Pacific Stock Exchange Incorporated Relating to Deletion of Sections 12(b)(2) and 12(b)(3) of PSE Rule X

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on May 15, 1987, the Pacific Stock Exchange Incorporated filed with the Securities and Exchange Commission a proposed rule change as described in Items I, II, and III below, which items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The purpose of this proposed rule change is to eliminate the exemptions relating to COD transactions which are set forth in Rule X sections 12(b)(2) and 12(b)(3).

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change.

On March 2, 1987, the New York Stock Exchange, Inc. ("NYSE"), submitted to the Commission a proposed rule filing (SR–NYSE–87–04) which concerned the elimination of certain provisions of the NYSE rules relating to COD transactions.

The purpose and intent of the NYSE filing was to eliminate two subsections providing exemptions to the general requirement that a securities depository would be used for the confirmation, acknowledgement and book entry of all depository eligible transactions. As was stated in the NYSE filing "(T)he elimination of these exemptions would require member organizations and their customers to have a participating agent or be a direct participant in a depository to settle their COD transactions in eligible securities."

The NYSE initiated their proposal after the Depository Trust Co. ("DTC") and the DTC ID ("Institutional Delivery") Implementation Committee petitioned the NYSE and the National Association of Securities Dealers ("NASD") to remove these exemptions from their respective rules. The DTC and DTC ID also indicated that the other exchanges would be urged to adopt similar revisions to their COD regulations. The effect, should the NASD and other exchanges follow suit, "would be to require virtually all COD transactions in eligible securities to be confirmed, affirmed and book entry settled through a registered securities depository." (NYSE filing).

The NYSE brought this proposal to the attention of the PSE because PSE Rule X, Section 12 is virtually identical to NYSE Rule 387.10. After considering the NYSE proposal and the arguments behind it, the PSE Board of Governors has determined that it would be proper for the PSE to adopt similar revisions in its rules. Thus, this rule filing proposes to eliminate sections 12(b)(2) and 12(b)(3) of PSE Rule X.

These proposed amendments to PSE Rule X, Section 12 are consistent with the provisions of sections 6(b)(5) and 17(A)(1) of the Securities Exchange Act of 1934 (the "Act").

The proposal is consistent with section 6(b)(5) in that it is designed to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities. This is so because the procedures inherent in the electronic confirmation, acknowledgement and book entry settlement are made applicable by the proposal to an increased number of COD customers, and are more efficient and expeditious than current systems that do not utilize procedures for the electronic transfer of information.

This proposal is consistent with the requirements of section 17(A)(a)(1) of the Act in that it will foster prompt and accurate clearance and settlement of securities transactions and thereby reduce or eliminate unnecessary costs to investors brought by inefficient procedures for clearance and settlement.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The proposal does not impose any burden on competition that is not necessary or appropriate in the furtherance of the purposes of the Act. It should be noted that there are many bank and broker-dealer clearing agents that are able to provide a full range of clearing and record keeping services for those who do not wish or are unable to develop systems necessary to interface with a depository.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such data if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying in the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by August 7, 1987.

For the Commission by the Commission Division of Market Regulation, pursuant to delegated authority.

Dated: July 10, 1987.

Jonathan G. Katz,

Secretary.

[FR Doc. 87-16259 Filed 7-16-87; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-24697; File No. PSDTC-77-01]

Self-Regulatory Organizations; Pacific Securities Depository Trust Company; Order Withdrawing a Proposed Rule Change

On March 15, 1977, the Pacific Securities Depository Trust Company ("PSDTC") filed with the Commission, pursuant to Section 19(b) of the Securities Exchange Act of 1934 ("Act"), a proposed rule change that would establish agreements among depositories not to charge other depositories for certain linked and interfaced services. Notice of the proposal was published in the **Federal Register** on March 29, 1977.[1] On March 31, 1986, the Commission decided to withhold approval of this proposal, pending a decision on whether participation-identified surcharges for use of interfaced services are consistent with the Act.[2] By a letter dated June 19, 1987, PSDTC requested that this proposed rule change be withdrawan. This withdrawal request is pursuant to the Pacific Stock Exchange's decision to close operations of PSDTC.

It is therefore ordered, pursuant to section 19(b) of the Act, that the proposed rule change be, and hereby is, withdrawn.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: July 10, 1987

Jonathan G. Katz,

Secretary.

[FR Doc. 87-16260 Filed 7-16-87; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-24696; File No. SR-SCCP 87-02]

Self-Regulatory Organizations; Proposed Rule Change By the Stock Clearing Corporation of Philadelphia Relating to Implementation of its Automated Customer Account Transfer System

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on July 6, 1987, the Stock Clearing Corporation of Philadelphia filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Stock Clearing Corporation of Philadelphia (SCCP) submits as a proposed rule change a description and statement of interest to implement SCCP's Automated Customer Account Transfer System (ACATS).

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[1] *See* Securities Exchange Act Release No. 13392 (March 18, 1977), 42 FR 16690.

[2] *See* Securities Exchange Act Release No. 23083 (March 31, 1986), 51 FR 12421.

II. Self-Regulatory Organization's Statement Regarding the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and statutory basis for the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspect of such statements:

(A) Self-Regulatory Organization's Statement of Purpose of, and Statutory Basis for, the Proposed Rule Change

SCCP's ACATS extends the efficiencies of automation, centralization and control inherent in a registered clearing agency to the process whereby brokerage firm customers move accounts from one firm to another. Specifically, ACATS will provide participants of SCCP an automated system to facilitate the transfer of customer accounts between brokerage firms nationwide. The service also permits brokerage firms to comply with various regulations governing the timely transfer of customer accounts, see *e.g.*, recent revisions to New York Stock Exchange Rule 412.

SCCP's ACATS will be implemented in conjunction with similar programs established by the National Securities Clearing Corporation (NSCC) and the Midwest Clearing Corporation (MCC) to form a uniform, linkage-connected system for the transfer of customer accounts. SCCP has authorized NSCC to be its facilities manager for SCCP's ACATS.

SCCP will not be liable for the completeness or accuracy of the information contained in a participant's documentation or in its request to transfer a customer's securities account through the facilities of SCCP or otherwise, or for the completeness or accuracy of any documentation necessary for a participant to transfer a customer securities account or for the validity of information regarding any particular asset contained in a customer securities account. SCCP's sole responsibility would be to make any transfer initiation documentation or information forms available to the delivering account or to return such forms to the receiving participant to whom the account is to be transferred.

The proposed rule change is consistent with section 17A of the Securities Exchange Act of 1934 (Act) in that it is consistent with the prompt and accurate clearance and settlement of securities transactions and fostering cooperation and coordination with persons engaged in the clearance and settlement of securities transactions by providing an efficient mechanism for the transfer of customer securities accounts with participants of registered clearing agencies.

(B) Self-Regulatory Organization's Statement on Burden on Competition

SCCP does not believe that the rule change will impose any burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

Comments on the proposed rule change have not been solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC Copies of such filing will also be available for inspection and copying at SCCP. All submissions should refer to the file number in the caption above and should be submitted by August 7, 1987.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Dated: July 10, 1987.

Jonathan G. Katz,

Secretary.

[FR Doc. 87-16261 Filed 7-16-87; 8:45 am]

BILLING CODE 8010-01-M

[File No. 1-5599]

Issuer Delisting; Application To Withdraw From Listing and Registration; International Controls Corp.

July 10, 1987.

International Controls Corp. ("Company") (Common stock, per value $.10), has filed an application with the Securities and Exchange Commission pursuant to section 12(d) of the Securities Exchange Act of 1934 ("Act") and Rule 12d2-2(d) promulgated thereunder, to withdraw the above specified security from listing and registration on the Pacific Stock Exchange, Inc. ("PSE.").

The reasons alleged in the application for withdrawing this security from listing and registration on the PSE include the following:

In making the decision to withdraw such security from listing on the PSE, the Company cites the terms and provisions of an agreement and Plan of Merger dated as of May 21, 1987, between the Company and ICC Acquisition Corp., pursuant to which all shares of Common Stock of the Company not then beneficially owned by ICC Acquisition Corp. will be converted into the right to receive $44 per share in cash effective upon the filing of a Certificate of Merger on July 31, 1987, the Merger as defined in such Agreement and Plan of Merger.

Any interested person may, on or before July 29, 1987 submit by letter to the Secretary of the Securities and Exchange Commission, Washington, DC. 20549, facts bearing upon whether the application has been made in accordance with the rules of the Exchange and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz

Secretary.

[FR Doc. 87-16262 Filed 7-16-87; 8:45 am]

BILLING CODE 8010-01-M

[Release No. IC-15866; 812-6208]

College Retirement Equities Fund and Teachers Insurance and Annuity Association of America

July 10, 1987.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 ("1940").

Applicants: College Retirement Equities Fund ("CREF") and Teachers Insurance and Annuity Association of America ("TIAA") (collectively "Applicants").

Revelant 1940 Act sections: Exemption requested *under* section 6(c) of the 1940 Act *from* Sections 2(a)(32), 2(a)(37), 2(a)(42), 12(b), 12(d), 13(a), 15(a), 15(b), 16(a), 17(f), 18(f), 18(i), 22(c), 22(e), 26(a), 27(c)(1), 27(c)(1), 27(c)(2), 27(d) and 32(a) of the Act and Rules 0-1(e), 2a-4, 12b-1, 17f-2, 18f-2, 22c-1 and 27e-1 thereunder, and permission to engage in certain transactions requested under Section 17(d) of the Act and Rule 17(d)-1 thereunder.

Summary of application: Applicants seek an order in connection with the registration of certain variable annuity certificates to permit CREF to, among other things, restrict redemptions and limit the voting rights of its participants. CREF is a nonprofit membership corporation established in 1952 for the purpose of providing retirement benefits to teachers and other employees of nonproprietary and nonprofit-making colleges, universities, and other institutions engaged primarily in education or research.

Filing date: The application was filed on September 26, 1985 and amended on August 18, 1986, March 6, 1987, and April 17, 1987.

Hearing or notification of hearing: If no hearing is ordered, the application will be granted. Any interested person may request a hearng on the 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 August 4, 1987. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve the Applicants with the request, either personally or by mail, and also send a copy to the Secretary of the SEC, along with proof of service by affidavit or, in the case of an attorney-at-law, by certificate. Request notification of the date of hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 5th Street, NW. Washington, DC 20549. CREF and TIAA, 730 Third Avenue, New York, New York 10017.

FOR FURTHER INFORMATION CONTACT: Staff Attorney, Clifford E. Kirsch (202) 272-3032 or Special Counsel, Lewis B. Reich (202) 272-2061.

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 is person or the SEC's commercial copier (800) 231-3282 (in Maryland (301) 253-4300).

Applicant's Representations

1. CREF was established by a special act of the New York State Legislature on March 18, 1952, for the purpose of providing retirements benefits to teachers and other employees of nonproprietary and nonprofit-making colleges, universities, and other institutions engaged primarily in education or research. For this purpose, CREF issues individual variable annuity certificates ("Certificates"). CREF has operated as a diversified pool of equity securities, principally common stock, since July, 1952. CREF has decided to add a money market portfolio as a companion investment vehicle to CREF's existing equity portfolio and to restructure itself into two accounts: a Stock Account and a Money Market Account. The "Participants" is the owner (either an individual or, under certain arrangements, an eligible institution) of the Certificate.

2. TIAA. the companion organization of CREF, is a nonprofit insurance company organized in 1918 under the insurance law of New York State for the purpose of providing retirement and insurance benefits suited to the needs of the types of institutions and employees that CREF began serving in 1952.

3. The application states that neither CREF nor the variable annuities it issues have been registered under the federal securities laws, in reliance on the exemptions provided in section 3(c)(10) of the 1940 Act and section 3(a)(4) of the Securities Act of 1933 ("1933 Act"). The application states that to avoid any doubt regarding the potential applicability of the requirements of the federal securities laws to CREF once it is restructured, CREF will register as an investment company under the 1940 Act, and will register its variable annuity certificates under the 1933 Act.

4. CREF offers two types of Certificates: (1) Retirement Unit-Annuity Certificates ("Retirement Certificates"), which are designed to be used primarily in connection with retirement plans adopted pursuant to sections 403(a) or 403(b) of the Internal Revenue Code (the "Code") or tax-deferred annuity plans adopted pursuant to Section 403(b) of the Code; (2) Supplemental Retirement Unit—Annuity Certificates ("Supplemental Certificates"), which are designed to be used primarily in connection with tax-deferred annuity plans adopted pursuant to section 403(b) of the Code.

5. As a membership corporation, CREF has no shareholders. It is controlled by its "members," a group of seven individuals. The original members were designated in CREF's Charter; currently, new members are elected by existing members. The members elect CREF's board of trustees.

6. CREF will provide all services necessary for its operation, including investment advice, administration of CREF and the Certificates, and distribution of the Certificates. In accordance with an expense reimbursement agreement with TIAA ("Agreement"), TIAA will make all disbursements in connection with the operation of CREF. Deductions from CREF assets for expenses will be paid to TIAA daily while TIAA will pay expenses for CREF as they are actually incurred during a quarter.

7. As soon as practicable after the end of each quarter, an adjusting charge or credit will be made to correct any differences between the deduction and the expenses incurred. The rates of the deductions from CREF assets will be revised from time to time, based solely on estimates of anticipated expenses, with the objective of keeping the deductions as close as possible to actual expenses.

Definition of Separate Account

8. CREF requests an exemption from section 2(a)(37) and Rule 0(1)(e) to the extent necessary to allow CREF to be treated as a separate account of an insurance company for purposes of Rules 6c-7, 6c-8, 11a-2, 22e-1, 26a-1, 26a-2, 27a-3, and 27c-1.

9. CREF asserts that it should be viewed as the functional equivalent of a separate account. CREF was established as the companion organization to TIAA, an insurance company under New York State law. At the time CREF was formed, the creation of separate accounts for the purpose of funding

variable annuities had not been authorized by the legislature. Since CREF is a distinct legal entity, its income, gains, and losses are credited to CREF without regard to the income, gains, or losses of TIAA.

10. CREF represents that, in substance, it satisfies the conditions set forth in paragraph (2) of Rule 0–1(e). CREF states that its assets will, at all times, have a value equal to or in excess of all liabilities under the Certificates. These liabilities include the value of Participants' accumulations and the present value of all annuity payments owed. In addition, CREF does not intend to conduct any business other than its variable annuity business, and will not be chargeable with liabilities arising out of any business conducted by TIAA.

Restrictions on Redeemability

(a) The Retirement Certificates

11. CREF has restricted withdrawals under its Retirement Certificates since its formation in 1952, continuing the practice followed by TIAA with respect to its retirement annuity certificates since its inception in 1918. Withdrawals of all or part of the amount credited to a Participant in the accumulation or annuity funds of the accounts are not permitted under CREF's Retirement Certificates, except (1) pursuant to CREF's repurchase procedures, (2) to the extent a Participant's accumulation may be paid as a death benefit if the Participant dies prior to the end of the accumulation period, or (3) a portion at the time of annuitization.

12. CREF states that elimination of the restrictions on withdrawals under Retirement Certificates would never have been considered at the time of CREF's inception, as CREF was intended, like TIAA, to be a pension vehicle. The restriction on withdrawals was not questioned at the time of TIAA's formation in 1918 since TIAA's founders assumed that the vested retirement benefits to be provided could not be redeemable.

13. CREF asserts that the restrictions on redeemability of the Retirement Certificates are consistent with the special needs of the nonprofit educational and research institutions served by CREF. These institutions make substantial contributions to retirement plans (which vest immediately) because they are assured through the nonredeemable nature of the Retirement Certificates that their contributions, as well as those of Participants, will be used for their intended purpose of providing retirement income. CREF argues that the utility of the Retirement Certificates and, more generally, the primary obligation of CREF, to provide retirement income, would be frustrated if Participants could have access to their accumulations prior to the time amounts were applied under an income option.

14. CREF represents that the restrictions on redemptions will continue to be described in all CREF sales literature and will be highlighted in CREF's prospectus for the Certificates. In addition, the application for a Retirement Certificate will continue to require a Participant to sign an acknowledgment of the restrictions, and CREF represents that it will instruct its sales personnel (all of whom are CREF employees) to continue to bring this restriction to the attention of on-campus plan administrators and potential Participants.

15. CREF represents that it provides, and will continue to provide, Participants with the right to cancel a Certificate (other than one providing annuity payments immediately) at any time within 30 days of receipt.

16. CREF requests exemptions from sections 2(a)(32), 22(e), 27(c)(1), and 27(d) of the Act to the extent necessary to permit CREF to restrict redemptions under its Retirement Certificates. CREF represents that it will rely on that relief only to the extent its fundamental purpose as set forth in its Charter, providing retirement benefits to the academic community, remains unchanged.

(b) The Supplemental Certificates

17. Withdrawals currently are permitted under Supplemental Certificates. However, pursuant to recent Federal tax legislation, effective for tax years beginning after December 31, 1988, withdrawals prior to age 59–1/2 of amounts attributable to salary reduction contributions will not be permitted under taxdeferred annuity contracts such as the Supplemental Certificates. The restrictions on withdrawals imposed by this recent tax law change are inconsistent with the redeemability requirements of the 1940 Act.

18. CREF represents that, without the requested relief, it would be faced with a choice of (1) complying with Federal tax law requirements limiting withdrawals and violating the requirements of the 1940 Act, or (2) permitting withdrawals in violation of tax law requirements.

19. CREF requests relief to begin, effective for tax years after December 31, 1988, restricting redemptions under its Supplemental Certificates to the extent necessary to comply with applicable Federal tax law requirements. CREF claims that the restrictions on redemptions reflect a Congressional determination that such restrictions are appropriate.

Multiple Annuity Starting Dates

20. Under the Certificates, a Participant may apply all or a minimum specified portion of his accumulation to provide annuity payments. If a Participant applies only a portion of his accumulation to provide annuity payments, the Certificate, in effect, would be in both an accumulation period and an annuity payment period.

21. CREF states that although under a CREF Certificate, a Participant may receive annuity payments at the same time that premiums are being paid on his or her behalf, the two procedures operate independently.

22. CREF asserts that, as a technical matter, it qualifies for the exemptions provided in Rules 22e–1 and 27c–1. However, to resolve possible questions about the applicability of sections 22(e), 27(c), and 27(d), CREF requests an exemption from those sections, and Rules 22e–1 and 27c–1, to the extent necessary for it to suspend the right to withdraw or otherwise redeem any portion of the amounts set aside to provide annuity payments based on life contingencies when a CREF Certificate is in both an accumulation period and an annuity period.

Election of Trustees

23. CREF states that its procedures do not allow Participants to vote directly for the election of trustees since in a membership corporation the members elect the directors or trustees. CREF states that its management selection procedures are patterned on TIAA's, which originated in 1921.

24. CREF asserts that under its current procedures, Participants play a significant role in the trustee electoral process in that the Participants vote annually to select a nominee to the board pursuant to a Participant balloting procedure authorized by CREF's Constitution. The nominee is voted upon by the members each year together with the other nominees to the board, who are nominated by the existing trustees. For purposes of voting for a nominee to the board, each Participant has one vote.

25. Pursuant to CREF's Constitution, not more than four officers and salaried employees of CREF (and thus TIAA, since officers and employees of CREF are also officers and employees of TIAA) may serve on the board at any one time. Moreover, CREF represents that no more than four of its twenty

trustees will be officers or employees of CREF or TIAA or any affiliate or subsidiary of CREF.

26. CREF states that its current procedure for electing trustees does not comply with the requirements of sections 16(a), 2(a)(42) and 18(i). CREF asserts, however, that the current procedure is consistent with the spirit and policies of those provisions and, in practice, provides more meaningful participation than is typically provided under electoral processes that comply with those provisions of the Act. Therefore, CREF requests an exemption from the foregoing provisions to the extent necessary to permit it to continue to employ its long-standing current procedure.

Voting Procedures

27. The application states that CREF will seek the approval of Participants on matters other than the election of trustees under section 16(a) and the selection of CREF's public accountant under section 32(a)(2) (both of which are the subject of requests for exemptions in its application) for which shareholder approval is required under the Act. CREF represents that the laws of New York State under which it operates do not require it to conduct Participant voting. Accordingly, Participant balloting is only conducted under CREF's procedures described above for nominating Participants' candidates for election to the board.

28. Under this procedure, which has been employed by CREF since its inception, each Participant has one vote, regardless of the number of CREF accumulation or annuity units credited to a Participant's Certificate. This procedure conflicts with section 18(i), which requires that each share of the stock issued by a management company be voting stock. CREF states that its voting procedure, like virtually all other aspects of its noninvestment operations, is derived from TIAA.

29. The application states that the Commission has, on prior occasions, granted exemptive relief in connection with per capita voting procedures.

30. CREF represents that to the extent approval by a majority of the outstanding voting securities of CREF or an account is required under the Act, CREF will obtain the approval of (1) at least 67% of the Participants voting (either at a meeting or by proxy), if more than 50% of the Participants vote on the matter, or (2) more than 50% of the Participants, whichever is less. Any such voting will comply with the requirements of Rule 18f–2, concerning approval by individual series of an investment company.

31. CREF requests an exemption from the provisions of sections 2(a)(42), 13(a), 18(f), 18(i), 32(a), and to the extent necessary to obtain shareholder approval for the matters covered by those provisions, in the manner set forth herein.

Ratification of Independent Public Accountant

32. CREF requests an exemption to permit it to retain independent public accountants, the selection of which will not be submitted annually for ratification or rejection by its Participants.

33. CREF is not required by the laws of New York under which it operates to hold an annual meeting, or any other meeting, of Participants and, in fact, no such meetings have ever been held. CREF believes that, other than with respect to the ratification of its public accountant and the election of trustees, it will not in the ordinary course be required to hold an annual or other meeting of Participants by virtue of any of the requirements of the 1940 Act or any other provisions of the federal securities laws.

34. To the extent it does not hold annual shareholder meetings, CREF believes it is not required to have Participants ratify its public accountants. However, in order to resolve any uncertainty about the applicability of the ratification requirements to CREF, CREF requests an exemption from section 32(a)(2).

Custody of Assets

35. CREF anticipates that its securities and similar investments will be deposited with Chase Manhattan Bank, N.A., Bankers Trust Company, or another qualified bank ("Bank") pursuant to a custodial or safekeeping agreement. CREF requests an order of exemption from section 17(f) and Rule 17f–2 to permit access to the securities and similar investments of the accounts to (1) authorized representatives of the Superintendent of Insurance and other regulatory agencies; (2) officers or responsible employees of CREF and TIAA authorized by resolutions of their respective boards of trustees; and (3) independent public accountants retained by TIAA.

36. The application states that Rule 17f–2 requires, among other things, that no person other than bank officers, independent public accountants retained by the investment company, and agents of the Commission shall be authorized or permitted to have access to the securities and similar investments deposited, except pursuant to a resolution of the board of directors of the registered investment company which designates no more than five persons who must be either officers or responsible employees of such company.

37. The application states that access by authorized representatives of the Superintendent of Insurance, which is outside the parameters of Rule 17f–2, will facilitate the regulatory functions of the Superintendent and will provide additional protection for Participants. Access by authorized TIAA personnel may be deemed to occur since all employees of CREF are, technically, also employees of TIAA. CREF personnel will be authorized pursuant to a resolution of CREF's board of trustees and the total number of TIAA–CREF personnel authorized to have access to the assets of the accounts will not exceed five at any one time. Access shall be had by two or more authorized persons, at least one of whom shall be an officer of CREF or TIAA. An independent accountant may be retained by both CREF and TIAA in order to avoid administrative and procedural difficulties that could be encountered if CREF and TIAA were to retain different independent public accountants.

Transactions Involving CREF and TIAA

38. Applicants acknowledge that TIAA might be deemed to be an affiliated person of CREF by virtue of the common identity of the members of CREF and the members of "Trustees of T.I.A.A. Stock" (who hold the nonprofit stock of TIAA and elect TIAA's trustees).

39. Applicants state that CREF will provide all services necessary for its operation, including investment advice, administration of CREF and the Certificates, and distribution of the Certificates. However, in accordance with the Agreement, TIAA will make all disbursements in connection with CREF's operation. Thus, all expenses incurred in CREF's day-to-day operation initially will be borne by TIAA, which will then be reimbursed by CREF.

40. Applicants state that even if such transactions are deemed to be of the type prohibited by Rule 17d–1, they are structured to assure that the participation of CREF therein is consistent with the provisions, policies and purposes of the Act and is not less advantageous to CREF than to TIAA.

41. The rates of the deductions from CREF's assets are based solely on estimates of expenses anticipated to be incurred, and adjusting charges or credits are made on a quarterly basis to correct any difference between the deductions and the expenses actually

incurred. Thus, all goods and services obtained by CREF pursuant to its arrangement with TIAA are obtained at cost.

42. Applicants represent that the Agreement will be reviewed and ratified on an annual basis by trustees of CREF who are not employees of CREF or of TIAA or any affiliate or subsidiary of CREF.

43. In view of the foregoing, Applicants request on order under section 17 (d) and Rule 17d–1 to permit CREF to enter into joint arrangements with TIAA in connection with the provisions of goods and services for its day-to-day operations.

Financing of Distribution

(a) Sections 12(b), 26(a)(2) and 27(c)(2) and Rule 12b–1

44. A deduction will be made each day from CREF's assets for expenses incurred in connection with the distribution of CREF Certificates. Consequently, CREF may be deemed to be acting as a distributor of its own securities within the meaning of Rule 12b–1, and the distribution expense deduction may be deemed to involve a payment proscribed by sections 26(a)(2)(C) and 27(c)(2).

45. Applicants assert that the potential abuses that Rule 12b–1 is designed to address do not arise under its distribution arrangement. First, CREF states that both its investment advisory and distribution services are provided by its own employees on an at-cost basis. Second, CREF contends that the distribution expense deduction is a de minimis amount. Currently, the distribution expense deduction is at an annual rate of 0.015% of the average daily net assets. CREF represents that this deduction will not exceed 0.25% of the average daily net assets of an account.

46. CREF contends that the foregoing reasoning also supports its request for an exemption from the provisions of sections 12(b), 26(a)(2) and 27(c)(2) of the Act to the extent necessary to permit the deduction for distribution expenses from the assets of CREF's accounts.

(b) Section 17(d) and Rule 17d–1

47. CREF's distribution expense arrangement involves both the Stock Account and the Money Market Account (and could involve other accounts if CREF determines to add them in the future). The accounts are assessed distribution expenses based on their relative net assets. Accordingly, the distribution arrangement could be viewed as a joint transaction involving a registered investment company and an affiliate.

48. CREF represents that it will monitor all sales material and marketing efforts to ensure that one account will not, for marketing purposes, be preferred over the other.

49. CREF requests an order under section 17(d) and Rule 17d–1 to the extent necessary to permit the distribution expense arrangement between the accounts.

CREF's Investment in CREF B.V.

50. The application states that CREF B.V. is a private Netherlands corporation that holds a portion of the Stock Account's investment in equity securities of certain Netherlands corporations. All of the outstanding stock of CREF B.V. is owned by CREF and held in the Stock Account.

51. The application states that CREF B.V. was formed in 1982, upon the advice of CREF's Dutch tax adviser, for the purpose of obtaining certain favorable tax treatment under Dutch law. CREF B.V. has no salaried officers, employees or directors, and no CREF employees perform work solely for CREF B.V. In addition, no deductions are made from its assets for distribution or investment advisory services. Any advisory expense attributable to CREF B.V. are borne by the Stock Account through its advisory expense deduction. The only expenses borne directly by CREF B.V. relate to general corporate services (provided by a large Dutch bank) and Dutch legal fees. The amount of these expenses (which would otherwise be chargeable to CREF itself if CREF held the stock of those Netherlands companies directly) is, in any event, *de mimimis* when compared with the tax advantages gained by CREF and, more generally, with the size of CREF B.V.'s assets.

52. CREF represents that it intends to comply with the requirements of sections 12(d) (1) (A) (ii) and (iii). In view of all of the foregoing, CREF requests an exemption from section 12(d)(1) of the Act to the extent necessary to permit it to own all of the outstanding stock of CREF B.V.

Pricing of Annuity Units

(a) Yearly Pricing of Annuity Unit Value

53. The value of an annuity unit in each CREF Account is determined once each year. Changes in value of a unit from year to year reflect the investment and expense experience of the account(s) as well as the mortality experience of the annuitants receiving payments from the annuity fund(s) of the account(s).

54. For the purpose of determining the number of annuity units payable upon the conversion from accumulation units, the conversion formula CREF employs includes an adjustment factor that takes into consideration the investment experience of the account to the date of conversion. The impact of this adjustment is, in effect, to reflect current pricing of the annuity units for new entrants into the annuity fund. CREF states that by use of a similar formula which contains the adjustment factor, the pricing of annuity units for the purpose of redeeming annuity units (e.g., to receive commuted value in lieu of annuity payments where permitted) also takes into account investment experience since the last valuation.

55. CREF thus requests an exemption from section 22(c) and Rule 22c–1 to the extent necessary to continue its current method for pricing annuity units.

(b) Factoring in Past and Anticipated Mortality Experience in Determining Annual Annuity Unit Value—Rule 2a–4

56. The application states that past and anticipated mortality experience are factors used by CREF in determining annual annuity unit value. In effect, annuitants, as a group, assume the mortality risks under the Certificates; the assets of the annuity funds and, thus, annuity unit values, will reflect mortality experience in the amount actually available for distribution. CREF believes that its practice with respect to the group assumption of mortality risk by the annuitants involves an expense within the meaning of Rule 2a–4. However, in order to resolve any uncertainty about whether that practice is consistent with the rule, CREF requests an exemption to the extent necessary to permit CREF to continue its practice with respect to mortality risk assumption.

57. CREF asserts that that practice is necessitated by CREF's unique structure. Unlike an insurance company separate account, CFEF does not have a general account available to bear the risk that annuitants will live longer than anticipated or which can profit should annuitants die earlier than anticipated.

By the Commission.

Jonathan G. Katz,

Secretary.

[FR Doc. 87–16258 Filed 7–16–87; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC-15869; 812-6699]

Applications for Exemption; Nuveen Tax-Free Bond Fund, Inc., et al.

Date: July 13, 1987.

Agency: Securities and Exchange Commission ("SEC").

Action: Notice of application for exemption under the Investment Company Act of 1940 ("1940 Act").

Applicants: Nuveen Tax-Free Bond Fund, Inc.; Nuveen Insured Tax-Free Bond Fund, Inc.; Nuveen Tax-Free Money Market Fund, Inc.; Nuveen Municipal Bond Fund, Inc.; Nuveen Tax-Exempt Money Market Fund, Inc.; Nuveen Tax-Free Reserves, Inc.; Tax-Free Accounts, Inc.; Nuveen California Tax-Free Fund, Inc.

Relevant 1940 Act sections: Exemption requested under section 6(c) from section 32(a)(1) of the 1940 Act.

Summary of application: Applicants seek an order to permit them and any future funds advised by the same advisor to file with the SEC financial statements signed or certified by an independent accountant selected at a board of directors meeting held more than thirty but not more than ninety days before or after the beginning of their fiscal years.

Filing date: The application was filed on April 30, 1987 and amended on July 10, 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 August 6, 1987. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve the Applicant with the request either personally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit, or, for lawyers, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. Applicants: c/o John E. McTavish, Esq., John Nuveen & Co. Incorporated, 333 West Wacker Drive, Chicago, IL 60606.

FOR FURTHER INFORMATION CONTACT: Denis R. Molleur, Staff Attorney, (202) 272-2363 or Curtis R. Hilliard, Special Counsel, (202) 272-3026 (Division of Investment Management, 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 and Arguments

1. The Applicants are diversified, open-end management investment companies, incorporated under either the laws of Maryland or Minnesota, each having as one of its objectives the provision of tax-exempt income to its investors. Each Applicant is advised by Nuveen Advisory Corp. ("NAC"), a wholly-owned subsidiary of John Nuveen & Co. Incorporated ("Nuveen"), the principal underwriter of the Applicants.

2. Each of the Applicants' board of directors consists of eight persons, five of whom are not "interested persons" as defined in section 2(a)(19) of the 1940 Act. The membership of each Board of Directors is identical.

3. The Applicants are not required by state law to hold annual shareholders' meetings (except in certain circumstances), but may do so every two or three years. The regularly scheduled board of directors meetings for each Applicant are held on the same day of January, April, July and October of each year.

4. Nuveen Municipal Bond, Inc., Nuveen Tax-Exempt Money Market Fund, Inc. and Nuveen Tax-Free Reserves, Inc., each have a fiscal year-end of September 30. Tax-Free Accounts, Inc. and Nuveen California Tax-Free Fund, Inc. each have a fiscal year end of June 30. Nuveen Tax-Free Bond Fund, Inc., Nuveen Insured Tax-Free Bond, Inc. and Nuveen Tax-Free Money Market Fund, Inc. have fiscal year-ends of November 30, April 30 and February 28, respectively.

5. Each Applicant proposes to select an indepedent accountant at a regularly scheduled board of directors meeting, held within 90 days before or after the beginning of its fiscal year. Each Applicant currently has the same independent public accountant.

6. The application of section 32(a)(1) to the Applicants would require two additional meetings of the Board of Directors for the sole purpose of selecting the identical independent accountant, since two of the Funds' fiscal year ends do not fall within thirty days of a regularly scheduled board of directors meeting.

7. Each Applicant submits that it would be desirable for it to consider the selection of its independent accountant at a regularly scheduled board meeting during its fiscal year. Expanding the thirty-day window under section 32(a)(1) to ninety days will permit a regular and structural consideration of the independent accountant for complexes at a meaningful interval of time. This is preferable to incurring the expense of holding extra board meetings solely for the purpose of selecting an independent accountant, which would be the case if the thirty-day window is not expanded.

8. By permitting the scheduling of the selection of the independent accountant four times a year through expanding the window from thirty to ninety days, the Commission will allow a director review procedure to be put in place that will ensure that selection of the Applicants' independent accountant is considered on a systematic basis that will (1) provide detailed review by the Applicants' audit committee of the services furnished to the Funds by the independent accountant and (2) result in direct consideration of all information developed by the audit committee. Further, the process will more accurately reflect the reality of doing business in complexes having a substantial number of funds, which is different from the time the 1940 Act was passed when funds were operated on an individual basis or in small fund groups.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 87-16303 Filed 7-16-87; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

[Docket No. 43343; Notice 87-15]

Electronic Tariff System (ETS); Application Experiment

AGENCY: Office of the Secretary, DOT.

ACTION: Notice of electronic special tariff permission application experiment.

SUMMARY: DOT will consider receiving, on a trial basis, for a period not to exceed 12 months, electronic transmissions of Special Tariff Permission Applications (STPAs).

DATE: Closing date for responses is August 17, 1987.

ADDRESS: Comment should be sent to Docket Clerk, C-55, Docket 43343, Department of Transportation, Room 4107, 400 Seventh St., SW., Washington, DC 20590. Comments will be available

for review by the public at this address from 9:00 a.m. through 5:00 p.m., Monday through Friday. Persons wishing acknowledgment of their comments should include a stamped, self-addressed postcard with their comments. The docket clerk will time and date-stamp the card and return it to the commenter.

FOR FURTHER INFORMATION CONTACT: Mr. Thomas G. Moore or Ms. Desta McDowell, Tariffs Division, Office of International Aviation, P–44, Department of Transportation, 400 Seventh St., SW., Washington, DC 20590, (202) 366–2414.

SUPPLEMENTARY INFORMATION: The Department of Transportation (DOT) is defining its requirements and specifications for the development and implementation of an Electronic Tariff System (ETS). This experiment is in connection with that ongoing process. The experiment will aid in determining whether the methods of electronic transmission of STPAs to our Tariffs Division will expedite our processing of the STPAs and reduce the paperwork burden on the air carriers, foreign air carriers and their filing agents.

On June 30, 1987 (52 FR 22574, June 12, 1987), the ETS Advisory Committee recommended that DOT experiment with electronic STPA systems to determine if they might facilitate modification of the current paper filing system.

DOT has decided that the Advisory Committee's recommendation has merit and should be pursued. The electronic STPA transmissions must conform to the technical format specifications described in Part 221 of DOT's Economic Regulations (14 CFR Part 221) and the relevant notices to the industry. See the Advance Notice of Proposed Rulemaking, "Filing, Posting and Publishing of Tariffs by Air Carriers and Foreign Air Carriers," (50 FR 33452, August 19, 1985), Docket 43343, and the DOT Preliminary Electronic Tariff Automated Data Processing Requirements Study, for a description of STPA format, filing, and analysis. A copy of this Study is available for public inspection between the hours of 9:00 a.m. and 5:00 p.m. in the Docket Section, C–55, Docket 43343, Department of Transportation, Room 4107, 400 Seventh Street, SW., Washington, DC 20590.

Any carrier, tariff filing agent, or other firm currently maintaining electronic STPA transmission capability, and seeking to submit STPAs to the Department through this mode should submit an expression of interest. The expression should contain a description of the electronic mail system and a detailed description as to how it would satisfy the requirements outlined in Docket 43343. The expression may also contain any other information which the applicant believes would be useful to DOT in assessing the system's merits and feasibility. The information will be used to assist DOT in ascertaining whether the participant's system will facilitate the Department's ability to review and process STPAs in a more timely fashion.

As a condition of participation in this experiment, each carrier, tariff filing agent, or other party choosing to file electronically will be required to place in the Department's Public Reference Tariffs room a personal computer or other similar device to allow public access to its STPAs. Tariff filing agents and carriers may, by mutual agreement, place a single common community personal computer or other similar device in DOT's Public Reference Tariffs room in lieu of individual devices. Placement of such a device for public use will enable the Department to solicit and receive public input as to the benefits that might be obtained through use of electronic mail filings. Parties will be expected also to maintain this equipment, and to execute a hold harmless agreement relieving the Department from liability arising from public usage of the equipment. DOT also reserves the right, if circumstances warrant, to limit each participant in the number of overall electronic mail transmissions, *e.g.* involving only certain geographic points or markets, in order to facilitate our analysis and evaluation of the system. During this experimental period, additionally, any carrier or tariff agent submitting STPAs electronically to us will be required to file paper STPAs under established procedures.

This is not a solicitation for proposals. The Department will not provide compensation for information or equipment provided or for any services rendered, nor will DOT accept any confidential submissions.

Dated: July 13, 1987.

Matthew V. Scocozza,

Assistant Secretary for Policy and International Affairs.

[FR Doc. 87–16265 Filed 7–16–87; 8:45 am]

BILLING CODE 4910–62–M

[Docket No. 43343; Notice 87–14]

Electronic Tariff System (ETS); Data Base Experiment

AGENCY: Office of the Secretary, DOT.

ACTION: Notice of data base experiment.

SUMMARY: DOT is considering use of an existing data base or data bases, for a trial period, to assist it in evaluating its options and defining its requirements concerning use of the data base(s) for its proposed Electronic Tariff Filing System.

DATE: Closing date for responses is August 17, 1987.

ADDRESS: Comments should be sent to Docket Clerk, C–55, Docket 43343, Department of Transportation, Room 4107, 400 Seventh St., SW., Washington, DC 20590. Comments will be available for review by the public at this address from 9:00 a.m. through 5:00 p.m., Monday through Friday. Persons wishing acknowledgment of their comments should include a stamped, self-addressed postcard with their comments. The docket clerk will time and date-stamp the card and return it to the commenter.

FOR FURTHER INFORMATION CONTACT: Mr. Thomas G. Moore or Ms. Desta McDowell, Tariffs Division, Office of International Aviation, P–44, Department of Transportation, 400 Seventh St., SW., Washington, DC 20590, (202)366–2414.

SUPPLEMENTARY INFORMATION: The Department of Transportation (DOT) is defining its requirements and specifications for the development and implementation of an Electronic Tariff System (ETS).

On April 22 and 23, 1987 (52 FR 11151, April 7, 1987, the ETS Advisory Committee held its first Subcommittee meeting on Technical/Data Base Issues. At the close of these discussions the Subcommittee unanimously recommended that the DOT consider investigating and using, on a trial basis, for a period not to exceed 12 months, any existing data base(s) to determine if the data base(s) could be utilized as a basis for a DOT ETS.

On June 30, 1987 (52 FR 22574, June 12, 1987), the ETS Advisory Committee unanimously approved the Subcommittee's recommendation.

The DOT has decided that the Advisory Committe's proposal has merit and should be pursued. Our trial will focus on those existing data bases, and their supporting systems and programs, which most nearly reflect the system overview, requirements and operating environment described in the Advance Notice of Proposed Rulemaking, "Filing, Posting and Publishing of Tariffs by Air Carriers and Foreign Air Carriers," (50 FR 33452, August 19, 1985), Docket 43343, and in the DOT Preliminary Electronic Tariff Automated Data Processing Requirements Study. A copy of this Study is available for public

inspection between the hours of 9:00 a.m. and 5:00 p.m. in the Docket Section, D–55, Docket 43343, Department of Transportation, Room 4107, 400 Seventh St., NW., Washington, DC 20590.

Any firm currently maintaining a data base that could support the described DOT application systems and programs, and seeking to offer the data base for trial experimentation, should submit an expression of interest. The expression should contain a description of the data base and a detailed description as to how the data base and supporting systems/programs would satisfy the requirements outlined in Docket 43343. The expression may also contain any other information which the applicant believes would be useful to the DOT in assessing its merits and feasibility. The information will be used to assist DOT in evaluating its options and defining its requirements concerning utilization of any existing data base(s) for its ETS.

The selection of a data base(s) for the experiment will be based on (a) whether they have the capability and flexibility to handle various types of tariff filings; (b) whether they are substantially compatible with the industry's electronic tariff capabilities; and (c) whether they would be easily read and understood by DOT analysts and other system users.

This is not a solicitation for proposals. The Department will not provide compensation for information or equipment provided or for any services rendered, nor will DOT accept confidential submissions.

Dated: July 13, 1987.

Matthew V. Scocozza,

Assistant Secretary for Policy and International Affairs.

[FR Doc. 87–16264 Filed 7–16–87; 8:45 am]

BILLING CODE 4910–62–M

Federal Highway Administration

Environmental Impact Statement; Dade County, FL

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an Environmental Impact Statement will be prepared for a proposed highway project in Dade County, Florida.

FOR FURTHER INFORMATION CONTACT: R.V. Robertson, District Engineer, Federal Highway Administration, 227 N. Bronough Street, Room 2015, Tallahassee, Florida 32301, Telephone: (904) 681–7236.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Florida Department of Transportation, will prepare an environmental impact statement (EIS) for a proposal to improve SR 932 in Dade County, Florida. The proposed improvement would involve the reconstruction of SR 932 (NW 103rd Street, Miami/E. 49th Street, Hialeah) from NW 57th Avenue (SR 955) to NW 27th Avenue (SR 9), a distance of 2.1 miles. Improvements to the corridor are considered necessary to provide for the existing and projected traffic demand.

Alternatives under consideration include: (1) Taking no action; (2) widening the existing four-lane divided urban roadway portion to a six-lane divided urban roadway, with turn lanes and sidewalks as required, as well as bringing to standard the existing six-lane divided urban roadway portion; and (3) alternate corridors to the north and south of the existing corridor.

Federal, State, and local agencies have contributed early coordination comments through the State Advance Notification process. Public information meetings will be held in Hialeah and unincorporated Dade County in the middle to latter part of 1988, during the development of the EIS. In addition, a public hearing will be held. Public notice will be given of the time and place of the meetings and hearing. The draft EIS will be made available for public and agency review and comment prior to the public hearing. A formal scoping meeting is planned during the early to middle part of 1988.

To ensure that the full range of issues related to the proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments and questions concerning this proposed action and the EIS should be directed to the Federal Highway Administration at the address provided above. (Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research, Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Issued On: July 8, 1987.

Dennis B. Luhrs,

District Engineer, Tallahasee, Florida.

[FR Doc. 87–16233 Filed 7–16–87; 8:45 am]

BILLING CODE 4910–22–M

Environmental Impact Statement; Kenton County, KY and Hamilton County, OH

AGENCY: Federal Highway Administration.

ACTION: Notice of Intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an environmental impact statement will be prepared for a proposed bridge over the Ohio River between the City of Covington, Kenton County, Kentucky and the City of Cincinnati, Hamilton County, Ohio.

FOR FURTHER INFORMATION CONTACT: Robert E. Johnson, Division Administrator, FHWA, 330 W. Broadway, P.O. Box 536, Frankfort, Kentucky 40602, Phone (502) 227–7321; FTS 352–5468 or G.F. Hughes, Jr., Director, Division of Environmental Analysis, Kentucky Department of Highways, 419 Ann Street, Frankfort, Kentucky 40622, (502) 564–4890.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Kentucky Department of Highways (KDOH), will prepared an environmental impact statement (EIS) for a proposed bridge between Covington, Kentucky and Cincinnati, Ohio. The purpose of the proposed bridge is to alleviate heavy traffic from the existing John A. Roebling Suspension Bridge, a National Historic Landmark located between the two cities. The monies for this project were allocated by Congress on January 21, 1986, and authorized in Bill No. HR 3128–35. The boundaries for this project are: the Clay Wade Bailey Bridge to the west and the Roebling Suspension Bridge to the east. To date, seven alignments have been identified in addition to the "do nothing" alternative. Key areas of importance for this proposed project include: social, economic and environmental impacts, transportation impacts to the central business districts of both cities, large riverfront development projects on both sides of the river, aesthetic impacts to a national landmark and actual projected need for the project.

A Scoping Meeting was held on May 20, 1987, with representatives of both cities and states to solicit information in preparing the baseline studies and for environmental impact assessment. An Interdisciplinary Team (IDT) is being formulated and will be comprised of representatives from concerned state and federal regulatory agencies, key local officials and businesses and citizens affected by the proposed project. The IDT will be responsible for

the selection of the preferred and alternate alignments, input of baseline information, and impact evaluation. Additionally, the U.S. Coast Guard and the Advisory Council on Historic Preservation are being requested to be Cooperating Agencies in accordance with 23 CFR 771 and 40 CFR 1501.6. Public Hearings will be held to obtain formal public input to the project decision-making process.

To insure that the full range of issues related to the proposal action are addressed and that all significant issues are identified, comments or questions concerning this action and the environmental impact statement should be directed to the Federal Highway Administration or the Kentucky Department of Highways at the addresses listed on page 1.

(Catalog of Federal Domestic Assistance Program No. 20.205, (Highway Research, Planning and Construction). The provisions of OMB Circular A-95 regarding State and local clearinghouses review of Federal and Federally assisted programs and projects apply to this program.)

Issued On: July 8, 1987.

Robert E. Johnson,

Division Administrator, Frankfort, Kentucky.

[FR Doc. 87-16234 Filed 7-16-87; 8:45 am]

BILLING CODE 4910-22-M

National Highway Traffic Safety Administration

[Docket No. IP-87-08; Notice 1]

Receipt of Petition for Determination of Inconsequential Noncompliance; GTE Products Corp.

GTE Products Corporation of Danvers, MA has petitioned to be exempted from the notification and remedy requirements of the National Traffic and Motor Vehicle Safety Act (15 U.S.C. 1381 et seq.) for apparent noncompliance with 49 CFR 571.108, Federal Motor Vehicle Safety Standard No. 108, "Lamps, Reflective Devices and Associated Equipment," on the basis that it is inconsequential as it relates to motor vehicle safety.

This notice of receipt of a petition is published under section 157 of the National Traffic and Motor Vehicle Safety Act (15 U.S.C. 1417) and does not represent any agency decision or other exercise of judgment concerning the merits of the petition.

Paragraph S4.1.1.38 (b) of Standard No. 108, requires that the base of each type HB3 and HB4 standardized replaceable light source shall also be marked by its manufacturer with its HB type designation. GTE manufactured over 1 million replaceable bulbs from July 1986 until March 1987 for use in model year 1987 automobiles. These bulbs do not display the type designations HB3 and HB4, however, they do bear the American National Standards Institute (ANSI) designations 9005 and 9006.

GTE considers this noncompliance to be inconsequential as it relates to motor vehicle safety because:

1. All production was shipped to vehicle manufacturers or their dealerships, or to professional service organizations, where proper use as original equipment or as exchanges under warranty is well understood.
2. The bulbs are differentiated by ANSI designations in wide use. Differences in base design of the two types of bulbs make incorrect usage impossible.
3. When GTE aftermarket material is distributed, it will list both the ANSI and the NHTSA nomenclature. In fact, one customer's owner instruction manual advises that replacements for original bulbs are marked with the pertinent ANSI numbers.
4. NHTSA's own rationale in rejecting suggestions for sole use of industry terminology foresaw possible customer confusion from a proliferation of bulb types varying in features but not in basic safety performance, *e.g.*, using less power to achieve the same illumination performance. The agency, thus, insisted on the ability to group all performance-neutral variations under a common "HB" label, no matter what nomenclature industry assigned to the new products. 51 FR 16325, 16326, May 2, 1986. But no such proliferation has happened yet. We still are only dealing with the HB1/9004, HB3/9005 and HB4/9006. While GTE has no quarrel with the HB labeling requirement and intends to abide by it, GTE submits that there is no need for notice-and-remedy when the number of replaceable bulb types is small.
5. In fact, the experience thus far with the 9004, which is given an HB1 designation under the NHTSA rules but is not required to bear the dual marking, suggests that exemption here will not be of significant safety consequence.

Interested persons are invited to submit written data, views and arguments on the petition of GTE Products Corporation described above. Comments should refer to the docket number and be submitted to: Docket Section, National Highway Traffic Safety Administration, Room 5108, 400 Seventh Street, SW., Washington DC 20590. It is requested but not required that five copies be submitted.

All comments received before the close of business on the closing date indicated below will be considered. The application and supporting materials, and all comments received after the closing date will also be filed and will be considered to the extent possible. When the petition is granted or denied, the Notice will be published in the **Federal Register** pursuant to the authority indicated below.

Comment closing date: August 17, 1987.

(Sec. 102, Pub. L. 93-492, 88 Stat. 1470 (15 U.S.C. 1417); delegations of authority at 49 CFR 1.50 and 49 CFR 501.8)

Issued on July 14, 1987.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 87-16266 Filed 7-16-87; 8:45 am]

BILLING CODE 4910-59-M

DEPARTMENT OF THE TREASURY

Office of the Secretary

[Supplement to Department Circular—Public Debt Series—No. 17-87]

Treasury Notes, Series N-1991

Washington, June 25, 1987.

The Secretary announced on June 24, 1987, that the interest rate on the notes designated Series N-1991, described in Department Circular—Public Debt Series—No. 17-87 dated June 18, 1987, will be 7⅞ percent. Interest on the notes will be payable at the rate of 7⅞ percent per annum.

Gerald Murphy,

Fiscal Assistant Secretary.

[FR Doc. 87-16273 Filed 7-16-87; 8:45 am]

BILLING CODE 4810-40-M

[Supplement to Department Circular—Public Debt Series—No. 18-87]

Treasury Notes, Series F-1994

Washington, June 26, 1987.

The Secretary announced on June 25, 1987, that the interest rate on the notes designated Series F-1994, described in Department Circular—Public Debt Series—No. 18-87 dated June 18, 1987, will be 8 percent. Interest on the notes will be payable at the rate of 8 percent per annum.

Gerald Murphy,

Fiscal Assistant Secretary.

[FR Doc. 87-16274 Filed 7-16-87; 8:45 am]

BILLING CODE 4810-40-M

[Order Number 150-02]

Establishment of Certain Offices in the National Office of the Internal Revenue Service

July 2, 1987.

By the authority vested in me as Secretary of the Treasury by section

1002 of 31 U.S.C.; section 7801(a) and 7803 of the Internal Revenue Code of 1954 and 1986, as amended; section 321(b) of 31 U.S.C., and Reorganization Plan No. 1 of 1952 as made applicable to the Internal Revenue Code of 1954 by section 7804(a) of such Code and by Executive Order No. 10574, approved November 5, 1954; and as provided by section 7802(b) of the Internal Revenue Code of 1954, the following offices continue uninterrupted as they existed prior to this order, with the following changes;

The present position of Deputy Commissioner, in the office of the Commissioner, is abolished and a newly-defined position established, titled Senior Deputy Commissioner; and

The offices of Associate Commissioner (Policy and Management), (Operations), and (Data Processing) are abolished;

Two new positions in the office of the Commissioner are established—titled Deputy Commissioner (Operations) and Deputy Commissioner (Planning and Resources).

The offices of the Assistant Commissioner (Tax System Redesign) and the Assistant Commissioner (Returns and Information Processing) are retitled Assistant Commissioner (Information Systems Development) and Assistant Commissioner (Taxpayer Service and Returns Processing) respectively.

1. *Office of Commissioner of Internal Revenue.* The Office of the Commissioner shall consist of the Commissioner, Senior Deputy Commissioner, two Deputy Commissioners, the Assistant Commissioner (Inspection), and Assistants to the Commissioner and the Senior Deputy Commissioner.

a. Except for the specific positions and titles in sections 1 through 5 of this order, the Commissioner may create, abolish, or modify offices and positions within the Internal Revenue Service as may be necessary to effectively and efficiently provide for the administration of tax laws or other responsibilities assigned to the Internal Revenue Service. The authoirty of the Commissioner to create, abolish, or modify offices under this delegation is subject only to limitations that exist by law or Department of the Treasury rules and regulations.

2. *Senior Deputy Commissioner.* The Senior Deputy Commissioner serves as chief operating officer of the Service. The Senior Deputy Commissioner also assists and acts for the Commissioner in planning and in directing, coordinating and controlling the policies, programs and other activities of the Internal Revenue Service. He/she supervises the Deputy Commissioners and the Assistants to the Commissioner and the Senior Deputy Commissioner. The Senior Deputy Commissioner assists the Commissioner in establishing tax administration policy and developing strategic issues and objectives as a basis for strategic management of the Service.

3. *Office of the Deputy Commissioner (Operations).* The Deputy Commissioner (Operations) is the principal advisor to the Commissioner and Senior Deputy Commissioner on policy and execution matters affecting field functions. The Deputy Commissioner (Operations) is responsible for the following activities:

a. Serves as national spokesperson for the field operations functions which are; assisting taxpayers in complying with the tax laws; processing tax returns and information documents; accounting for revenue collected by the Service; collecting delinquent accounts; investigating deliquent taxpayers; investigating criminal tax fraud; examining tax returns; approving and examining employee plans and exempt organizations; tax treaty administraton; foreign tax administration assistance and disclosure.

b. Supervises the regional commissioners and the following assistant commissioners—Collection, Criminal Investigation, Employee Plans and Exempt Organizations, Examination, International, and Taxpayer Service and Returns Processing.

C. Represents the Service, as designated by the Commissioner, to other Executive Branch agencies, the Congress, Other Tax authorities and the public on field operations and major cross-functional issues.

4. *Office of Deputy Commissioner (Planning and Resources).* The Deputy Commissioner (Planning and Resources) is the principal advisor to the Commissioner and Senior Deputy Commissioner on Servicewide planning, and the management of human, financial and information resources. The Deputy Commissioner (Planning and Resources) is responsible for the following activities:

a. Serves as national spokesperson for the planning and management of resources functions which are: administering the Strategic Management System; conducting research; formulating budgets and controlling their execution; administering human resource policies, facilities and logistical support, contracting, and telecommunications; planning for and designing multi-functional information systems; coordinating and integrating functional systems into the overall systems architecture; acquiring, testing, developing and maintaing computer equipment and the Service's computer software.

b. Supervises the following assistant commissioners—Computer Services; Human Resources Management and Support; Information Systems Development; Planning, Finance, and Research.

c. Serves as the Service's Information Resources Manager—establishing practices, procedures and standards for development and coordination of information systems.

d. Represents the Service, as designated by the Commissioner, to other Executive Branch agencies, the Congress, other tax authorities, and the public on Servicewide planning, management of resources, and major cross-functional issues.

5. *The Assistant Commissioner (Inspection)* will, to ensure objectivity and integrity, report directly to the Commissioner.

6. The above changes shall be implemented at a date determined by the Commissioner of Internal Revenue. Effective immediately, the Commissioner of Internal Revenue is authorized to effect, at appropriate times and in an orderly manner, such transfers of functions, personnel, positions, equipment and funds as may be necessary to implement the provisions of this order.

7. *The Chief Counsel,* pursuant to delegated authority from the General Counsel, is authorized to take necessary action on all personnel and administrative matters pertaining to the Office of Chief Counsel, including but not limited to those for the appointment, classification, promotion, demotion, reassignment, transfer or separation of officers or employees; however, all personnel and administrative matters concerning Senior Executive Service or Performance Management Recognition System employees in the Office of Associate Chief Counsel (Technical and International), whose primary duties do not involve litigation, shall be approved by the Commissioner of Internal Revenue prior to implementation.

a. The Corporation Tax and Individual Tax Divisions are under the supervision of the Chief Counsel, with the authority to supervise and evaluate the work of all officers and employees of these functions.

b. The Appeals Division is under the supervision of the Chief Counsel, and the Commissioner of Internal Revenue will exercise line supervision over the Chief Counsel for this function.

c. The Commissioner of Internal Revenue will exercise the Service's final authority concerning substantive interpretation of the tax laws as reflected in legislative and regulatory proposals, revenue rulings, letter rulings, and technical advice memoranda.

8. All offices in existence within the Internal Revenue Service but not mentioned in this order are continued without interruption.

9. *Effect on Other Treasury Department Orders.* This order supersedes Treasury Department Order: 150–02, July 30, 1986.

James A. Baker III,

Secretary of the Treasury.

[FR Doc. 87–16288 Filed 7–16–87; 8:45 am]

BILLING CODE 4810–25–M

Sunshine Act Meetings

Federal Register
Vol. 52, No. 137
Friday, July 17, 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 CREDIT CORPORATION

TIME AND DATE: 9:00 a.m., July 24, 1987.

PLACE: Room 104A—Administration Building, U.S. Department of Agriculture, Washington, DC.

STATUS: Open.

MATTERS TO BE CONSIDERED: Agenda to be announced.

CONTACT PERSON FOR MORE INFORMATION: Jim V. Hansen, Secretary, Commodity Credit Corporation, Room 3603, South Building, U.S. Department of Agriculture, Post Office Box 2415, Washington, DC 20013; telephone (202) 447–4208.

Dated: July 15, 1987.

James V. Hansen,

Secretary, Commodity Credit Corporation.

[FR Doc. 87–16365 Filed 7–15–87; 11:51 am]

BILLING CODE 3410-05-M

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 3:01 p.m. on Monday, July 13, 1987, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session, by telephone conference call, to consider: (1) A memorandum regarding the Corporation's corporate activities, and (2) the application of Brentwood Bank, Los Angeles, California, an insured State nonmember bank, for consent to merge, under its charter and title, with Westlake Bancorp, Westlake Village, California, a noninsured institution, and for consent to establish de novo branches at the corner of Hampshire Road and Townsgate Road, Westlake Village, California, and at 575 Anton Boulevard, Costa Mesa, California.

At that same meeting, the Board also considered a recommendation regarding the initiation of an administrative enforcement proceeding against an insured bank.

In calling the meeting, the Board determined, on motion of Director C.C. Hope, Jr. (Appointive), seconded by Director Robert L. Clarke (Comptroller of the Currency), concurred in by Chairman L. William Seidman, that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting pursuant to subsections (c)(2), (c)(6), (c)(8), and (c)(9)(A)(ii) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(2), (c)(6), (c)(8), and (c)(9)(A)(ii)).

Dated: July 14, 1987.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 86–16373 Filed 7–15–87; 12:51 pm]

BILLING CODE 6714-01-M

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that the Federal Deposit Insurance Corporation's Board of Directors will meet in open session at 2:00 p.m. on Tuesday, July 21, 1987, to consider the following matters:

Summary Agenda: No substantive discussion of the following items is anticipated. These matters will be resolved with a single vote unless a member of the Board of Directors requests that an item be moved to the discussion agenda.

Disposition of minutes of previous meetings.

Applications for Federal deposit insurance:

OmniBank of Connecticut, Inc., an operating noninsured savings association located at 256 Samson Rock Drive, Madison, Connecticut.

Wainwright Bank & Trust Company, a proposed new bank to be located at 101 Summer Street, Boston, Massachusetts.

Application for consent to purchase assets and assume liabilities and to establish one branch:

United Savings Bank of Tecumseh, Tecumseh, Michigan, an insured State nonmember bank for consent to purchase certain assets of and assume the liability to pay deposits made in the Clinton Township, Michigan, branch of First America Bank-Ann Arbor, Ann Arbor, Michigan, and for consent to establish that office as a branch of United Savings Bank of Tecumseh.

Recommendation regarding the liquidation of a bank's assets acquired by the Corporation in its capacity as receiver, liquidator, or liquidating agent of those assets:

Case No. 47,059
The Bowery Savings Bank, (Amendment) New York City (Manhattan), New York

Reports of committees and officers:

Minutes of actions approved by the standing committees of the Corporation pursuant to authority delegated by the Board of Directors.

Reports of the Division of Bank Supervision with respect to applications, requests, or actions involving administrative enforcement proceedings approved by the Director or an Associate Director of the Division of Bank Supervision and the various Regional Directors pursuant to authority delegated by the Board of Directors.

Report of the Director, Division of Liquidation:

Memorandum re:
Quarterly Report of Actions Approved Under Delegated Authority as of December 31, 1986

Discussion Agenda:

No matters scheduled.

The meeting will be held in the Board Room on the sixth floor of the FDIC Building located at 550—17th Street, NW., Washington, DC.

Requests for further information concerning the meeting may be directed to Mr. Hoyle L. Robinson, Executive Secretary of the Corporation, at (202) 898–3813.

Dated: July 14, 1987.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 87–16374 Filed 7–15–87; 12:51 pm]

BILLING CODE 6714-01-M

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 2:30 p.m. on Tuesday, July 21, 1987, the Federal Deposit Insurance Corporation's Board of Directors will meet in closed session, by vote of the Board of Directors, pursuant to sections 552b(c)(2), (c)(4), (c)(6); (c)(8), (c)(9)(A)(ii), (c)(9)(B), and (c)(10) of Title

5, United States Code, to consider the following matters:

Summary Agenda: No substantive discussion of the following items is anticipated. These matters will be resolved with a single vote unless a member of the Board of Directors requests that an item be moved to the discussion agenda.

Recommendations with respect to the initiation, termination, or conduct of administrative enforcement proceedings (cease-and-desist proceedings, termination-of-insurance proceedings, suspension or removal proceedings, or assessment of civil money penalties) against certain insured banks or officers, directors, employees, agents or other persons participating in the conduct of the affairs thereof:

Names of persons and names and locations of banks authorized to be exempt from disclosures pursuant to the provisions of subsections (c)(6), (c)(8), and (c)(9)(A)(ii) of the "Government in the Sunshine Act" (5 U.S.C. 552(c)(6), (c)(8), and (c)(9)(A)(ii).

Note.—Some matters falling within this category may be placed on the discussion agenda without further public notice if it becomes likely that substantive discussion of those matters will occur at the meeting.

Discussion Agenda:

Application for Federal deposit insurance:

College Savings Bank, a proposed new bank to be located at 5 Vaughn Drive, West Windsor, New Jersey.

Application for Federal deposit insurance and for consent to merge:

State Savings Bank (In Organization), Southington, Connecticut, a State chartered savings bank in organization, for Federal deposit insurance and for consent to merge, under its charter and title, with Savings and Loan Association of Southington, Southington, Conneticut, a State chartered savings and loan association insured by the Federal Savings and Loan Insurance Corporation.

Recommendation regarding the liquidation of a bank's assets acquired by the Corporation in its capacity as receiver, liquidator, or liquidating agent of those assets:

Case No. 47,053–L
Knoxville Consolidated Office,
(Amendment) Knoxville, Tennessee

Request for relief from reimbursement under the Truth in Lending Simplification and Reform Act:

Name and location of bank authorized to be exempt from disclosure pursuant to the provisions of subsections (c)(8), and (c)(9)(A)(ii) of the "Government in the Sunshine Act" (5 U.S.C. 552(c)(6), (c)(8), and (c)(9)(A)(ii).

Personnel actions regarding appointments, promotions, administrative pay increases, reassignments, retirements, separations, removals, etc.:

Names of employees authorized to be exempt from disclosure pursuant to the provisions of subsections (c)(2), (c)(6), "Government in the Sunshine Act" (5 U.S.C. 552(c)(2), and (c)(6)).

The meeting will be held in the Board Room on the sixth floor of the FDIC Building located at 550—17th Street, NW., Washington, DC.

Requests for further information concerning the meeting may be directed to Mr. Hoyle L. Robinson, Executive Secretary of the Corporation, at (202) 898–3813.

Dated: July 14, 1987.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 87–16375 Filed 7–15–87; 12:51 am]

BILLING CODE 6714–01–M

MERIT SYSTEMS PROTECTION BOARD

TIME AND DATE: 10:00 a.m., Friday, July 24, 1987.

PLACE: Eighth Floor, 1120 Vermont Avenue, NW., Washington, DC.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Adjudication of cases dealing with issues related to wavier of annuity overpayments to retired federal employees, and cases of discipline for misconduct, as affected by programs mandating nondiscrimination and rehabilitative treatment for drug and alcohol abusers.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Robert E. Taylor, Clerk of the Board, (202) 653–7200.

Dated: July 14, 1987

Robert E. Taylor,

Clerk of the Board.

[FR Doc. 87–16307 Filed 7–14–87; 5:01 pm]

BILLING CODE 7400–01–M

SECURITIES AND EXCHANGE COMMISSION

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94–409, that the Securities and Exchange Commission will hold the following meetings during the week of July 20, 1987:

Closed meetings will be held on Tuesday, July 21, 1987, at 2:30 p.m. and on Thursday, July 23, 1987, following the 2:30 p.m. open meeting. Open meetings will be held on Tuesday, July 21, 1987, at 11:00 a.m., on Wednesday, July 22, 1987, at 10:00 a.m., and on Thursday, July 23, 1987, at 2:30 p.m., in Room 1C30.

The Commissioners, Counsel to the Commissioners, the Secretary of the Commission, and recording secretaries will attend the closed meeting. Certain staff members who are responsible for the calendared matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(4), (8), (9)(A) and (10) and 17 CFR 200.402(a)(4), (8), (9)(i) and (10), permit consideration of the scheduled matters at a closed meeting.

Commissioners Grundfest, as duty officer, voted to consider the items listed for the closed meeting in closed session.

The subject matter of the closed meeting scheduled for Tuesday, July 21, 1987, at 2:30 p.m., will be:

Settlement of administrative proceedings of an enforcement nature.

To amend institution of an administrative proceeding of an enforcement nature.

Institution of injunctive actions.

Settlement of injunctive action.

The subject matter of the open meeting scheduled for Tuesday, July 21, 1987, at 11:00 a.m., will be:

Consideration of whether to adopt previously proposed Securites Exchange Act Rules 3a43–1 and 3a44–1 to implement the provisions of the Government Securities Act of 1986, which authorizes the Commission, after consulation with the Commodity Futures Trading Commission (CFTC), to determine what government securities activities of certain persons regulated by the CFTC are incidental to their futures business for purposes of exceptions from the government securities broker and government securities dealer definitions under the government Securities Act of 1986. For further information, please contact Lynne G. Masters at (202) 272–2848.

The subject matter of the open meeting scheduled for Wednesday, July 22, 1987, at 10:00 a.m., will be:

The Commission will hold public hearing on proposed Rule 19c–4, voting rights requirements for companies whose securities are listed on a national securities exchange or quoted on the National Association of Securities Dealers Automated Quotation system. An agenda setting forth the schedule of appearances is available from the Office of Public Affairs, Room 1012, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC. For further information please contact Ellen K. Dry at (202) 272–2843.

The subject matter of the open meeting scheduled for Thursday, July 23, 1987, at 2:30 p.m., will be:

Oral argument on an appeal by Petrofab International, Inc. and Blinder, Robinson & Co., Inc. from an administrative law judge's initial decision. For further information, please contact Herbert V. Efron, at (202) 272–7400.

The subject matter of the closed meeting scheduled for Thursday, July 23,

1987, following the 2:30 p.m. open meeting, will be:

Post oral argument discussion.

At times changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: Nancy Morris at (202) 272–3085.

Jonathan G. Katz,

Secretary.

July 15, 1987.

[FR Doc. 87–16388 Filed 7–15–87; 2:45 pm]

BILLING CODE 6010–01–M

Corrections

Federal Register
Vol. 52, No. 137
Friday, July 17, 1987

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents and volumes of the Code of Federal Regulations. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 520

[Docket No. 86N-0438]

Animal Drugs, Feeds, and Related Products; Dimetridazole

Correction

In rule document 87-15201 beginning on page 25212 in the issue of Monday, July 6, 1987, make the following correction:

On page 25213, in the second column, in amendatory instruction 4, "520.580b" should read "520.680b".

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Eight in One Pet Products, Inc.; Withdrawal of Approval of NADA

Correction

In notice document 87-12438 appearing on page 20642 in the issue of Tuesday, June 2, 1987, make the following correction:

In the second column, in the first complete paragraph, in the third line, "21 U.S.C. 360(e)" should read "21 U.S.C. 360b(e)".

BILLING CODE 1505-01-D

Federal Register

Friday
July 17, 1987

Part II

Department of Housing and Urban Development

Office of the Secretary

24 CFR Part 0
Standards of Conduct; Final Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Secretary

24 CFR Part 0

[Docket No. R-87-1303; FR 2146]

Standards of Conduct

AGENCY: Office of the Secretary, HUD.

ACTION: Final rule.

SUMMARY: This rule comprehensively amends the Department's Standards of Conduct regulations. It clarifies certain provisions of the former regulations and eliminates redundant and outdated material. It also conforms the former regulations to subsequently enacted statutes.

The rule operates prospectively. Therefore, in the absence of an actual conflict of interest, any financial interest properly held or acquired under the prior regulation will not have to be divested even if its holding or acquisition is prohibited under this regulation.

On September 25, 1986 the President signed Executive Order 12565 (51 FR 34437) which amended Executive Order 11222 to establish a comprehensive system of financial reporting for federal employees. The Office of Government Ethics (OGE) has published a proposed rule (51 FR 43359) implementing Executive Order 12565. This rule would significantly revamp the confidential reporting system and would require every agency to issue regulations in accordance with OGE's rule. Therefore, once OGE publishes a final rule concerning the confidential financial disclosure system, the Department will amend Subpart C of these regulations to bring it into conformity with OGE regulations.

EFFECTIVE DATE: September 18, 1987.

FOR FURTHER INFORMATION CONTACT: Mr. David D. White, Assistant General Counsel for Administrative Law, Office of General Counsel, Room 10254, 451 7th Street, SW., Washington, DC 20410, (202) 755-7137 (This is not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

HUD published a proposed rule on August 22, 1986 (51 FR 30178) entitled "Standards of Conduct." The rule was intended to amend the Standards of Conduct regulations by specifically defining permissible financial interests and outside activities for Department employees, as well as interests which are prohibited by the Ethics in Government Act of 1978 and Office of Personnel Management regulations.

The Department received three comments in response to the proposed rule. Two of these comments were from HUD employees who suggested various technical amendments. One of these commenters also suggested that the Department retain the rule in the former regulation that permitted an employee to obtain FHA insurance on his immediate past residence, vacation or retirement home. The Department decided not to adopt this suggestion because the thrust of the new regulation is to restrict employee involvement in HUD-related real estate investments, and to relax restrictions on real estate investments unrelated to the programs of the Department. However, the rule was modified somewhat in this regard after negotiations with the American Federation of Government Employees (AFGE), as discussed below.

The third commenter was an official of the AFGE. He made a number of preliminary observations in anticipation of negotiations concerning the Standards of Conduct. Some of these comments were suggested technical changes. He also suggested eliminating rules based upon the Government-wide Standards of Conduct regulations promulgated by the Office of Personnel Management. The Department does not have the discretion to modify or eliminate those rules.

However, the rule was also submitted in a draft final version to the AFGE for review pursuant to Article 5 of the Department's Agreement with the AFGE. The AFGE requested negotiations concerning certain provisions of the rule. As a result of those negotiations this rule deletes the provision which required an employee to obtain the prior approval of a Deputy Counselor before maintaining a publicly listed place of business (§ 0.735-203(d)). That rule has been superceded by a new § 0.735-203(d)(1) which requires an employee to obtain prior approval before using his title or reference to Government experience in connection with a commercial enterprise.

After discussion with the AFGE we also added a new § 0.735-204(a)(3) which explicitly permits an employee to obtain FHA insurance on one single family dwelling in addition to the employee's current principal residence. This change pemits an employee for example, to retain FHA insured financing on any one past residence or other investment property. Under the prior regulation, an employee could properly obtain FHA insurance on his immediate past residence, vacation or retirement home. We agreed to reinstate a somewhat modified version of this rule because of concerns raised during the clearance process and the AFGE negotiations concerning the possible hardship on employees who may have to refinance in connection with a job relocation.

The rule was also submitted for review to the Office of Government Ethics (OGE) pursuant to 5 CFR 735-104. In accordance with OGE suggestions, we made a number of changes in § 0.735-202 of the rules concerning the acceptance of gifts. First, we reinstated at § 0.735-202(b)(2) the rule that an employee may accept food and refreshments of nominal value on infrequent occasions at a business meeting. We deleted proposed § 0.735-202(b)(2)(i) which would have permitted acceptance of food and refreshments at conferences and similar meetings where payment by the employee would not be practicable.

Second, as OGE suggested we deleted § 0.735-202(b)(2)(ii) which would have permitted acceptance of food and refreshments at "meetings which do not include the inspection, monitoring, or selection of grantees, contractors, or others who do business, or are seeking to do business, with the Department."

Third, we revised § 0.735-202(b)(5) which generally addressed the subject of attendance at conferences and social functions. As OGE recommended, we revised the regulation to provide for case-by-case handling of attendance at these functions. The rule now permits an employee to participate in a "widely attended luncheon, dinner, conference or similar gathering sponsored by a trade, technical, professional or other association or similar group for a discussion of matters related to the work of the Department." Participation must be in the Department's interest and approved in advance by the employee's supervisor. However, acceptance of food and refreshments from a private company in connection with an association's activities will be impermissible.

Fourth, we revised § 0.735-202(b)(6) to include a reference to HUD's gift acceptance authority at 42 U.S.C. 3535(k). We also added a new § 0.735-202(e) to state that employees may accept certain gifts of travel from charitable organizations defined in 26 U.S.C. 501(c)((3).

Finally, in § 0.735-202(c) we restored language which would permit an employee to accept gifts of only nominal value (not "modest" value) on special occasions from persons receiving less pay than himself.

OGE also suggested a number of changes to provisions concerning the misuse of Government position and official title. In response to these suggestions, we revised § 0.735–202(d)(2) to require an employee to obtain the prior approval of a Deputy Counselor before using his official title or reference to government employment "in connection with" a commercial enterprise, rather than to "promote" a commercial enterprise as the proposed rule stated. OGE objected to the implication that an employee's title or employment could ever be used to promote a commercial enterprise.

We declined to adopt OGE's recommendation that a Deputy Counselor approve every proposed use of an employee's title in connection with a writing. An employee's use of title in connection with a commercial writing must be approved by a Deputy Counselor under § 0.735–203(d)(2). For other writings, an employee must add a disclaimer or obtain the prior approval of the appropriate Assistant Secretary or equivalent, or his or her designee pursuant to § 0.735–203(e)(3).

OGE also recommended several other technical and editorial changes in the proposed rule to clarify meaning and correct errors. We have made those changes where appropriate.

In preparing this rule for publication in final form, the Department reconsidered all changes set forth in the proposed rule. One of the proposed revisions would have barred employees from acquiring notes or bonds issued by a State or local agency if the proceeds were to be used for HUD-related housing. After reevaluating the effects of this restriction, the Department decided the proposed revision was unnecessary to prevent a real or apparent conflict of interest in most cases, and this final rule eliminates the restriction. However, acquisition of such bonds or notes based upon any inside information acquired during the course of HUD employment would be prohibited by § 0.735–201(a) and § 0.735–206. Other than this change and those discussed above, the rule is essentially unchanged from that which was published in proposed form. Major changes from the former regulations are as follows:

Subpart A

1. The statement of purpose in § 0.735–101 has been shortened and simplified. In addition, a similar statement now set forth in § 0.735–201 has been deleted entirely.

2. The provisions of § 0.735–104 have been modified to clarify the role and responsibilities of the Department Counselor and to identify the Department's Deputy Counselors. In addition, the Inspector General has been designated a Deputy Standards of Conduct Counselor for employees in the Office of Inspector General.

3. A new provision has been added in § 0.735–106 authorizing waiver of one or more of the regulations' restrictions by the Department Counselor when their application is not necessary to prevent an actual or apparent conflict of interest in a particular case.

4. Section 0.735–201 of the former regulations has been eliminated because it was superfluous and unnecessary. Section 0.735–202 of the former regulations has been renumbered § 0.735–201 and all following sections are renumbered accordingly. (Unless otherwise indicated, all subsequent section references in Subpart B of this preamble are to the renumbered sections.)

5. The prohibition in § 0.735–202(a)(3) on accepting gifts from a person or organization whose interests may be substantially affected by the performance of an employee's official duties has been changed to prohibit acceptance when these interests may be substantially affected by "the actions of the Department."

6. A new subparagraph (b)(5) has been added to § 0.735–202 permitting participation by a Department employee at a widely-attended luncheon, dinner, seminar or other similar gathering sponsored by a trade, technical or other association. Participation must be approved in advance by the employee's supervisor as being in the Department's interest. The rule does not permit an employee to accept payment of food and refreshments from a private company in connection with this type of activity.

7. A new subparagraph (b)(6) has been added to § 0.735–202 permitting acceptance by Department employees of in-kind contributions toward official travel (for example, donated transportation tickets and meals) made by a non-Federal entity, if consistent with the Department's official travel policies. These policies are intended to permit such acceptance only in circumstances where no actual or apparent conflict of interest would result. The policies are available for public inspection.

8. A new paragraph (e) has been added to § 0.735–202 permitting acceptance of travel expenses from a charitable organization defined in 26 U.S.C. 501(c)(3).

9. In § 0.735–203(b)(4), the prohibition against engaging in outside employment or activities related to the substantive programs of the Department has been clarified so that the prohibition is against "active participation in, or conduct of, a business dealing with, or related to, real estate or manufactured housing including, but not limited to, real estate brokerage, management and sales, architecture, engineering, mortgage lending, property insurance, appraisal services, construction, construction financing, land planning and real estate development." The new standard permits employees to engage in isolated transactions in areas that are generally similar to programs of HUD when there is no actual conflict of interest, but it does not permit employees to engage in any outside employment involving a HUD program, such as the sale of real estate financed with FHA insurance.

10. In § 0.735–203(b)(5) a provision has been added prohibiting an employee from "serving as an officer or director of any organization which engages in lobbying activities concerning HUD's programs." This provision codifies existing Department policy on this issue.

11. A provision has been added at § 0.735–203(d)(1) requiring an employee to obtain the approval of a Deputy Counselor before using his or her title or government experience in connection with a commercial enterprise. The former provision requiring prior approval before maintaining a publicly listed place of business has been deleted.

12. Current provisions concerning honoraria in § 0.735–203(e)(4) have been revised to reflect the statutory limitation (2 U.S.C. 441i) on receipt of honoraria. The limit, with certain exceptions, is $2000 per appearance, speech or article.

13. A new provision has been added in § 0.735–203 (f) to reflect the statutory limitation on outside earned income that may be received by Presidential appointees at or above GS–16. That limitation is 15% of annual salary.

14. In § 0.735–203 (g) and (h), new provisions have been added incorporating the restrictions on outside activities set forth in 18 U.S.C. 203 and 205. In general, these restrictions pertain to off-duty employee involvement in outside claims, requests for rulings, contracts and applications or other similar particular matters in which the United States is a party or has a direct and substantial interest and which are pending before a Federal or District of Columbia department or agency or, in some instances, court.

15. A new § 0.735–203(k) has been added permitting an employee to serve as a member of the Board of a federal credit union or a cooperative or condominium association for a housing project which is not subject to

Department regulation or, if so regulated, in which the employee resides. This provision codifies existing Department policy.

16. Section 0.725–204, which deals with permissible holdings, has been revised substantially. Most restrictions on employee investment in non-HUD related properties have been eliminated, but restrictions against employee investment in HUD-related interests or properties have been expanded. Thus, the restriction on the number of permissible investment units (the so-called "six unit rule") has been eliminated, but restrictions on FHA-financing of properties other than the employee's principal residence and one other single family unit have been expanded. Most of the new or revised provisions in this section reflect this change in emphasis, and also codify existing Department policy concerning HUD-related financial interests.

17. The primary purpose of § 0.735–204(a) of the new regulation is to regulate certain financial interests acquired after beginning employment with the Department. Prohibited interests acquired prior to HUD employment are governed by § 0.735–204(c).

18. The prohibition against the acquisition of GNMA securities has been eliminated. Accordingly, employees may now purchase GNMA securities and funds comprised of GNMA securities. The holding of GNMA-guaranteed securities does not create a potential conflict-of-interest on the part of a HUD employee, because actions that may be taken by GNMA vis-a-vis the issuer after default will not affect the security holder. GNMA's guarantee of timely payment of principal and interest on mortgage-backed securities is backed by the full faith and credit of the United States. From the perspective of the investor, therefore, GNMAs are essentially similar to Treasury securities, which are not prohibited investments. However, an employee who has access to information unavailable to the general public relevant to GNMA securities (such as prepayment trends) is still prohibited from acquiring, selling, or otherwise dealing in GNMA securities on the basis of this "inside information." GNMA transactions based on inside information violate § 0.735–201(a) of this regulation which prohibits using public office for private gain and § 0.735–206 which prohibits the use of inside information.

19. This regulation continues to prohibit the holding and acquisition of FNMA securities and also bars the holding of securities collateralized by FNMA securities. See § 0.735–204(a)(1). The obligations of FNMA are not backed by the full faith and credit of the United States, and the interests of holders of FNMA debt obligations (including guaranteed passthrough securities) or equity securities can be affected by actions taken by HUD under its oversight and regulatory responsibility.

20. A new provision has been added at § 0.735–204(a)(3) barring an employee from having any interest in a Department-owned, insured, or subsidized project or unit other than an employee's principal residence, subject to certain exceptions set forth in § 0.735–204(b). This is a departure from the former rule at § 0.735–204(a)(6) which permitted an employee, for example, to obtain a HUD-insured loan for an immediate past residence, vacation or retirement home.

21. In § 0.735–204(a)(4), a new provision has been added barring the receipt of HUD subsidies under section 8 of the United States Housing Act of 1937, as amended, except in certain limited situations. The provision codifies existing Department policy.

22. The prohibition against "speculation" in real estate, in the former rule at § 0.735–205(a)(8), has been deleted since it was ambiguous and unenforceable.

23. A new § 0.735–204(a)(5) has been added barring acquisition of a direct creditor interest in mortgages insured by HUD. This restriction is in addition to that set forth in § 0.735–204(a)(4) which prohibits an employee from acquiring an interest in a HUD-insured investment property. This provision does not bar the acquisition of an indirect interest in HUD-insured mortgages, such as through GNMA securities.

24. A new provision has been added in § 0.735–204(b)(1) permitting employee investments in widely held mutual or money market funds which have broadly diversified portfolios although these funds may have HUD-related assets. The provision codifies existing Department policy.

25. A new § 0.735–204(b)(2) has been added permitting investment as a limited partner in a large public partnership if less than 25% of the partnership assets are involved in HUD-related housing. This also codifies existing Department policy.

26. A new provision has been added at § 0.735–204(b)(3) which permits an employee to obtain FHA insurance on one single family residential unit, other than the employee's principal residence. Under the provision, for example, an employee is not required to refinance a single family investment property formerly occupied as a principal residence.

27. Section 0.735–204(c) adds a new provision setting forth a procedure to resolve conflicts which may arise because of prohibited interests acquired involuntarily or acquired before employment with the Department. Prohibited interests acquired involuntarily or prior to HUD employment must be reported to, and considered by, a Deputy Counselor. Generally, an employee may retain such interests in the absence of an actual conflict of interest. For example, an employee who owned a property with section 8 voucher or certificate holder tenants in place prior to HUD employment may normally retain the property and the tenants after beginning employment with the Department. However, the employee may not take on new section 8 tenants during HUD employment.

28. A portion of the former regulations implementing 18 U.S.C. 208 has been deleted. Formerly, § 0.735–205(b)(2) permitted an employee to act in a matter involving a corporation if the employee owned stock in the corporation worth less than $7500 (and which was less than 1% of the total stock in that corporation), and if the employee, his or her spouse, or minor child was not involved in managing the corporation. This provision has been deleted because the $7500 ceiling is arbitrary and is not "inconsequential" within the meaning of 18 U.S.C. 208. Further, retaining this provision would have been inconsistent with other portions of the new rule which prohibit the mere acquisition of certain HUD-related interests.

29. The provision of the former regulations at § 0.735–205(c) which attributed the financial interests of an employee's spouse and minor child to the employee has been deleted. The Department has determined that provision was unfair and unenforceable, particularly when an employee's spouse had independent means and the employee had no actual control over the spouse's investments. Of course, sham transactions will still be barred by § 0.735–204. For example, the acquisition of a prohibited interest in the name of a minor child will be barred as a sham transaction if the employee's funds are used to purchase the interest or if the employee directs purchase of the interest with other funds.

30. Section 0.735–205 has been expanded to include a prohibition against the use of Government

personnel for other than official purposes. In addition, the prohibition against the misuse of Government property set forth in this section is intended to include intangible property such as the Government's rights in data, patents, and copyrights, as well as products and services it has under grants, loans, subsidies, and insurance.

31. A new § 0.735–207 has been added prohibiting an employee from misusing his or her supervisory relationship or management position to obtain favors from, encourage a contribution from, or sell to, another HUD employee or someone who has business with the Department.

32. A number of miscellaneous employee conduct provisions contained in §§ 0.735–207 through 0.735–212 of the former regulations have been revised and streamlined.

Subpart C

33. Section 0.735–301 adds a new provision describing the categories of employees required to submit public financial disclosure statements.

34. A new § 0.735–302(a)(4) has been added requiring employees at GS–13 or above who are involved in conducting Departmental investigations to file confidential financial disclosure statements.

35. A new provision has been added at § 0.735–302(d) requiring all employees who serve on Source Evaluation Boards and Technical Evaluation Panels to file confidential disclosure statements.

36. Much of the technical information in the former regulations concerning time and place of filing confidential statements has been deleted. This information will be set forth in a Handbook detailing filing procedures.

Subpart D

37. All provisions relating to special Government employees have been consolidated in Subpart D, §§ 0.735–401 through 405.

38. Section 0.735–402 adds a new provision prohibiting special Government employees from having financial interests or engaging in outside employment or activities that constitute an actual conflict of interest. This section codifies existing Department policy.

Subpart E

39. Subpart E is new and implements the post employment restrictions set forth in the Ethics in Government Act of 1978.

40. Section 0.735–213 of the former regulations has been transferred to Subpart E, § 0.735–501, to consolidate provisions dealing with conduct and responsibilities of former employees. Section 0.735–501(f) incorporates the provisions of 25 U.S.C. 450i(f), permitting representation before any Federal Department, agency, court or commission by a former federal employee employed by an Indian tribe.

41. Sections 0.735–502 through 509 set forth provisions concerning disciplinary actions that may be initiated against former employees who violate post employment restrictions.

Determinations

HUD regulations published at 24 CFR Part 50, implementing section 102(2)(C) of the National Environmental Policy Act of 1969, contain categorical exclusions for certain actions, activities and programs specified in § 50.20. Since the amendments made by this rule fall within the categorical exclusions for internal administrative procedures set forth in paragraph (k) of § 50.20, the preparation of an Environmental Impact Statement or a Finding of No Significant Impact is not required for this rule.

Pursuant to the provisions of 5 U.S.C. 605(b) (the Regulatory Flexibility Act), the Undersigned hereby certifies that this rule does not have a significant economic impact on a substantial number of small entities. The rule affects only present and former Government employees.

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

This rule was listed as item 885 in the Department's Semiannual Agenda of Regulations published on April 27, 1987 (52 FR 14362, 73) pursuant to Executive Order 12291 and the Regulatory Flexibility Act.

List of Subjects in 24 CFR Part 0

Conflict of interest.

Accordingly, 24 CFR Part 0 is revised to read as follows:

PART 0—STANDARDS OF CONDUCT

Subpart A—General Provisions

Sec.

Subpart B—Conduct and Responsibilities of Employees

Subpart C—Statements of Employment and Financial Interests

Subpart D—Conduct and Responsibilities of Special Government Employees

Subpart E—Conduct and Responsibilities of Former Employees

Authority: 5 U.S.C. 301; 18 U.S.C. 201–212; E.O. 11222, 3 CFR, 1964–1965 Comp., p. 306; 5 CFR 735.101–412.

Subpart A—General Provisions

§ 0.735–101 Purpose.

The maintenance of high standards of honesty, integrity and impartiality by Government employees is essential for the proper performance of the public business and the maintenance of confidence by citizens in their Government. To inform the public and Department staff as to the specific application of this general principle, this Part sets forth the Department's regulations prescribing standards of conduct for, and governing the submission of statements of employment and financial interests by its employees. All questions about, or requests for, interpretations should be directed to the Department Counselor or to a Deputy Counselor.

§ 0.735–102 Definitions.

(a) "Department" means the Department of Housing and Urban Development.

(b) "Employee" means an employee of the Department, other than a Special Government employee.

(c) "Special Government employee" means a person who is retained, designated, appointed or employed by the Department to perform temporary duties, with or without compensation, for not more than 130 days during any period of 365 consecutive days, either on a full-time or intermittent basis, as defined in 18 U.S.C. 202.

(d) "Person" means an individual human being.

(e) "Business entity" means a corporation, company, firm, partnership, society, joint stock company, or any other organization or institution having a business purpose including, but not limited to:

(1) Non-profit organizations or institutions which own or operate housing units, and

(2) Educational and other institutions doing research and development or related work involving grants or other types of financial assistance from, or contracts with, the Government.

§ 0.735–103 Notification to employees.

The provisions of this Part shall be brought to the attention of, and made available to, each employee and special Government employee at the time of entrance on duty and at least annually thereafter. Each revision of this Part shall be brought promptly to the attention of all employees and special Government employees.

§ 0.735–104 Interpretation and advisory service.

(a) *Department Counselor.* The General Counsel is the Standards of Conduct Counselor for the Department and shall serve as the Department's designee to the Office of Personnel Management on matters covered by this Part. The Department Counselor shall be responsible for directing and coordinating the Department's activities under this Part and assuring that adequate counseling is provided to prospective, present and former employees of the Department.

(b) *Deputy Counselors.* The Department's Deputy Standards of Conduct Counselors are the Associate General Counsel for Equal Opportunity and Administrative Law, the Assistant General Counsel for Administrative Law, all Regional Counsel, and any other employees designated by the Department Counselor. The Department Counselor and the Deputy Counselors shall provide authoritative advice to former, current and prospective Department employees who seek guidance on questions of conflicts of interest and on other matters covered by this Part. In addition, the Inspector General is the Deputy Counselor for employees of the Office of Inspector General and will provide advice to former, current and prospective employees of that office.

§ 0.735–105 Disciplinary and other remedial actions.

(a) When an actual or apparent conflict of interest or other violation of this Part is not resolved to the satisfaction of a Deputy Counselor, the matter shall be reported by the Deputy Counselor to the employee's supervisor; copies of the report shall also be provided to the Office of Personnel and Training and other concerned offices, such as the Office of the Inspector General, and the Office of the appropriate Assistant Secretary, Regional Administrator or other field office head.

(b) The employee's supervisor must consider the report of the Deputy Counselor, initiate appropriate remedial action, and inform the Deputy Counselor of the action taken. Remedial action may inlcude, but is not limited to:

(1) Changes in assigned duties;

(2) Divestment by the employee of the conflicting interest within a reasonable time, but normally not more than 60 days after notice that a conflict exists;

(3) Disciplinary action; or

(4) Disqualification for a particular assignment.

§ 0.735–106 Waivers.

(a) The Department Counselor, in an individual case, may waive any requirement of this Part not required by law if the Department Counselor finds that application of the requirement is not necessary to prevent an actual or apparent conflict of interest in a particular case.

(b) Each such waiver shall be in writing and supported by a statement of the facts and conclusions on which it is based.

(c) The Department Counselor's authority under this Section may not be delegated.

Subpart B—Conduct and Responsibilities of Employees

§ 0.735–201 Proscribed actions.

An employee shall avoid any action, whether or not specifically prohibited by this subpart, which might result in, or create the appearance of:

(a) Using public office or official title for private gain;

(b) Giving preferential treatment;

(c) Impeding Government efficiency or economy;

(d) Losing independence or impartiality;

(e) Making a Government decision outside official channels;

(f) Adversely affecting the confidence of the public in the integrity of the Government;

(g) Discriminating against any other employee, or applicant for employment, on the ground of race, color, religion, national origin, sex, age, or handicap;

(h) Excluding any person from participating in, or denying to any person the benefits of, any program or activity administered by the Department on the ground of race, color, religion, sex, national origin, age, or handicap; or

(i) Knowingly participating in, or attending while on official business, any segregated meetings, or meetings held in segregated facilities, from which persons are excluded because of race, color, religion, national origin, sex, age or handicap.

§ 0.735–202 Gifts, entertainment, and favors.

(a) Except as provided in paragraph (b) of this section, an employee shall not solicit or accept, directly or indirectly, any gift, gratuity, favor, entertainment, loan, or any other thing of value, from a person, State government, local government or business entity, or a group of persons, State governments, local governments or business entities, who or which:

(1) Has, or is seeking, and contractual or other business or financial relationship with the Department;

(2) Conducts operations or activities that are regulated by the Department; or

(3) Has interests, or whose members or clients have interests, that may be substantially affected by the actions of the Department.

(b) The prohibitions of paragraph (a) of this section do not apply:

(1) When the circumstances make it clear that family or personal relationships are the motivating factors for a gift, entertainment or favor;

(2) To acceptance of food and refreshments of nominal value on infrequent occasions in the course of a business meeting in which the employee is properly in attendance;

(3) To acceptance by an employee of loans from banks or other financial institutions on customary terms;

(4) To Acceptance by an employee of unsolicited advertising or promotional material, such as pens, pencils, plaques, note pads, calendars, and other items of nominal intrinsic value;

(5) To participation by an employee at a widely attended luncheon, dinner, conference, or similar gathering sponsored by a trade, technical, professional or other association or similar group for a discussion of matters related to the work of the Department. Participation must be approved in advance by the employee's supervisor as being in the interest of the Department. Acceptance of food and refreshments from a private company in connection with an association's activities is impermissible.

(6) To acceptance by the Department pursuant to 42 U.S.C. 3535(k) and under its policies governing official travel, of a donation of transportation, lodging or meals from a non-federal entity to permit an employee to attend a meeting or other event in an official duty status.

(c) An employee shall not solicit contributions for a gift to an official superior, make a donation as a gift to an official superior, or accept a gift from an employee receiving less pay than himself or herself (5 U.S.C. 7351). However, this paragraph does not prohibit voluntary gifts or donations of modest value made because of special circumstances such as marriage, illness or retirement.

(d) An employee shall not accept any gift, present, decoration or other item from a foreign government, except as authorized by the Foreign Gifts and Decorations Act (5 U.S.C. 7342).

(e) An employee may accept payment of travel, subsistence, and other expenses, incident to attendance at a meeting, from a charitable organization as defined in 26 U.S.C. 501(c)(3), if the donor is not a prohibited source described in subsection (1) of this section (5 U.S.C. 4111).

§ 0.735–203 Outside employment and other activities.

(a) Reference in this section to outside employment and outside activities is not intended to cover employee investments. That subject is covered in § 0.735–204.

(b) An employee shall not engage in outside employment or other outside activity not compatible with the full and proper discharge of the employee's official duties and responsibilities. Incompatible activities include, but are not limited to:

(1) Outside activities which tend to impair the employee's ability or capacity to perform official duties and responsibilities.

(2) Outside activities that may be construed by the public to be the official acts of the Department;

(3) Outside activities that establish relationships or property interests that may result in a conflict between private interests and official duties;

(4) Active participation in, or conduct of, a business dealing with, or related to, real estate or manufactured housing including, but not limited to, real estate brokerage, management and sales, architecture, engineering, mortgage lending, property insurance, appraisal services, construction, construction financing, land planning, and real estate development;

(5) Serving as an officer or director of any organization which engages in lobbying activities concerning Department programs;

(6) Serving as an officer or director of a Department-approved mortgagee, lending institution or organization which services mortgages or other securities for the Department;

(7) Accepting employment, with or without compensation, with any person or business entity doing business with the Department;

(c) An employee shall not receive any salary or any thing of monetary value from a private source as compensation for his or her services to the Government (18 U.S.C. 209).

(d) An employee must obtain the prior approval of the appropriate Deputy Counselor:

(1) Before using his or her title or reference to his or her government employment or experience in connection with a commercial enterprise, or

(2) Before accepting employment, with or without compensation

(i) With a State or local government, or

(ii) In the same professional field as that of the employee's official position.

(e) Employees are encouraged to engage in teaching, lecturing, and writing that is not prohibited by law, Executive order, Office of Personnel Management regulations, or this Part, except that

(1) An employee may not receive compensation for any lecture, writing, or consultation, the subject matter of which is substantially related to the responsibilities, programs, or operations of the Department;

(2) An employee may not, either with or without compensation, engage in teaching, lecturing or writing that is dependent on information obtained as a result of his or her Government employment, except when that information has been made available to the general public, or will be made available on request, or when the appropriate Assistant Secretary or his or her designee gives written authorization for the use of nonpublic information on the basis that the use is in the public interest.

(3) An employee may use his or her title in connection with writing for publication only if:

(i) The writing contains a statement indicating that the views contained therein are those of the employee as an individual and do not necessarily represent the views of the Department of Housing and Urban Development; or

(ii) Such use of the employee's title is approved in advance by the appropriate Assistant Secretary or equivalent, or his or her designee.

(4) An employee may not accept any honorarium of more than $2,000 for any appearance, speech or article (2 U.S.C. 441i), except if the honorarium is paid directly to a charitable organization at the request of the employee and selected by the payor from a list of 5 or more charitable organizations provided by the employee. In computing the $2,000 amount, the following may be excluded:

(i) Actual travel and subsistence expenses for the employee and the employee's spouse or aide; and

(iii) Amounts paid or incurred for any agent's fees or commissions.

(f) Any employee who is compensated at an amount equal to or above GS-16 in the General Schedule and who occupies a full-time position, appointment to which must be made by the President by and with the advice and consent of the Senate, may not have in any calendar year outside earned income attributable to such calendar year which is in excess of 15 per cent of the employee's salary (Pub. L. 95–521, section 210, 5 U.S.C. App.).

(g) An employee may not directly or indirectly seek or receive compensation for services, rendered by himself or others, in connection with any proceeding, application, request for ruling, contract, claim, or other particular matter in which the United States is a party or has a direct and substantial interest and which is before any Federal or District of Columbia department or agency (18 U.S.C. 203).

(h) An employee may not act, with or without compensation, as agent or attorney for another:

(1) In prosecuting a claim against the United States; or

(2) In connection with any proceeding, application, request for ruling, contract or other particular matter in which the United States is a party or has a direct and substantial interest and which is before any Federal or District of Columbia department, agency, or court (18 U.S.C. 205).

(i) Permissible exceptions to the prohibitions set forth in paragraphs (g) and (h) of this section include:

(1) Representation without compensation in connection with a disciplinary, loyalty, or personnel proceeding;

(2) Representation with or without compensation of parents, spouse, child, or those to whom the employee owes a fiduciary duty except in those matters in which the employee has participated personally and substantially as a Government employee or which are the subject of his official responsibility; and

(3) Statements required to be made under penalty for perjury or contempt.

An employee seeking to engage in one of these excepted activities is encouraged to consult in advance with a Deputy Counselor.

(j) The prohibitions set forth in paragraphs (g) and (h) of this section are in addition to, and not in lieu of, any other restrictions contained in this subpart.

(k) This section does not prohibit an employee from serving in an individual capacity as an officer or a member of the Board of Directors of:

(1) A Federal Credit Union, or

(2) A cooperative or condominium association for a housing project which is not subject to regulation by the Department or, if so regulated, in which the employee personally resides.

(l) When participating in any activity permitted by this section, an employee shall make certain that his or her official title or Department connection is not shown or used in a manner which implies that the employee is acting in an official capacity.

§ 0.735-204 Financial interests.

(a) An employee shall not have a direct or indirect financial interest that conflicts, or appears to conflict, with his or her official duties and responsibilities. Such interests include, but are not limited to, the voluntary acceptance, acquisition or holding of:

(1) Securities issued by the Federal National Mortgage Association and securities collateralized by FNMA securities.

(2) FHA debentures or certificates of claim.

(3) Stock or other interest in a Department-owned, insured or subsidized multifamily project or single family dwelling, cooperative unit, or condominium unit, except to the extent that the stock or other interest represents the employee's principal residence. Employees who wish to purchase a Department-held property as a principal residence must adhere to the procedures established by the Assistant Secretary for Housing for the administration of the property disposition program set forth in Handbook 4310.5.

(4) Any Department subsidy provided pursuant to Section 8 of the United States Housing Act of 1937, as amended, to or on behalf of a tenant of property owned by the employee. However, an employee may accept the benefit of such a subsidy when:

(i) The employee involuntarily acquires a property which at the time of acquisition has a tenant receiving such a subsidy but only as long as that tenant continues to reside in the property, or

(ii) An incumbent tenant who has not previously received such a subsidy becomes the beneficiary thereof but only if there is no increase in that tenant's rent upon the commencement of subsidy payments other than normal annual adjustments.

(5) Any direct creditor interest in a mortgage insured by the Department.

(b) Notwithstanding paragraph (a) of this section, an employee may accept, acquire or hold

(1) An interest in a mutual or money market fund which has holdings listed in paragraph (a) of this section, and which:

(i) Has a broadly diversified portfolio not specializing in any particular industry;

(ii) Is widely held; and

(iii) Is not under the employee's control.

(2) A limited partnership interest in a large public partnership (i.e. one which has at least 5,000 partnership interests) less than 25% of the assets of which are Department insured or subsidized projects;

(3) Mortgage insurance provided pursuant to section 203 of the National Housing Act on any one single family residence in addition to the employee's current principal residence.

(c) If an employee acquires an interest prior to the commencement of employment with the Department which is prohibited under paragraph (a) of this section, or involuntarily acquires such a prohibited interest after the commencement of employment with the Department, the matter must be reported promptly to a Deputy Counselor. The Deputy Counselor will then determine whether retention of the interest is permissible or whether divestment or other appropriate remedial action is required.

(d)(1) An employee must not participate in his or her capacity as a Government employee in any matter in which, to his or her knowledge, the employee, his or her spouse, minor child, any organization in which the employee is serving as an officer, director, trustee, partner, or staff member, or a partner of the employee has a financial interest. In addition, an employee must not participate in his or her capacity as a Government employee in any matter in which, to the employee's knowledge, a person, business, or nonprofit organization with whom the employee is negotiating, or has an arrangement for, employment has a financial interest. For purposes of this paragraph a "matter" includes an application, contract, claim, request for a ruling, controversy, charge, accusation, arrest, judicial or other proceeding, or other particular matter. (18 U.S.C. 208(a)).

(2) Paragraph (d)(1) of this section does not apply:

(i) If a Deputy Counselor first determines that the financial interest is not so substantial as to be deemed likely to affect the integrity of the services which the Government may expect from the employee; or

(ii) If the financial interest is within one of the following categories which are hereby exempted from the requirements of section 208(a) of Title 18, United States Code, as being too remote or too inconsequential to affect the integrity of an employee's service:

(A) Any holding in a widely held mutual or money market fund, or regulated investment company, which is not under the employee's control and which has a broadly diversified portfolio not specializing in any particular industry;

(B) Participation in a bona fide employee benefit plan, other than a profit-sharing or stock-bonus plan, that is maintained by a former employer to

the extent that the employee's rights in the plan are vested and require no additional services by him or her or further payment to the plan by the former employer with respect to the services of the employee.

§ 0.735–205 Misuse of Government personnel and property.

An employee shall not directly or indirectly use, or allow the use of, Government property of any kind, including property leased to the Government, or the services of any HUD employee, for other than officially approved activities. An employee has a positive duty to protect and conserve Government property, including equipment and supplies, entrusted to him or her.

§ 0.735–206 Misuse of official information.

For the purpose of furthering a private interest, an employee shall not, except as permitted by § 0.735–203(e)(2), directly or indirectly use, or allow the use of, official information which has not been made available to the general public.

§ 0.735–207 Misuse of official position.

Except as may be permitted in the course of official business, an employee shall not use his or her supervisory relationship or management position, directly or indirectly, to seek a favor from, encourage a contribution from, or attempt to sell to, another HUD employee or person who has business with HUD.

§ 0.735–208 General conduct and conduct prejudicial to the Government.

(a) Each employee shall be courteous, considerate, and prompt in dealing with the public and with persons or organizations having business with the Department;

(b) An employee shall not engage in criminal, infamous, dishonest, immoral, or notoriously disgraceful conduct, or other conduct predjudicial to the Government.

§ 0.735–209 Intermediaries and product recommendations.

In communicating with any person or organization doing, or seeking to do, business with the Department, an employee shall not recommend or suggest the use of any particular or identified nongovernmental intermediary to deal with the Department, except as required by the employee's official duties.

§ 0.735–210 Membership in organizations in an official capacity.

(a) An employee may not, in his or her official capacity, serve as a member of a non-Federal or private organization except where express statutory authority exists, or statutory language necessarily implies such authority, or where the Secretary has determined in writing that such service would be beneficial to the Department and consistent with the employee's service to the Department.

(b) An employee may be designated to serve as a liaison representative of the Department to a non-Federal or private organization when the Secretary, the Under Secretary, an Assistant Secretary, the General Counsel, or a Regional Administrator, as appropriate, has determined in writing that such service would be beneficial to the Department and provided that:

(1) The activity relates to the work of the Department.

(2) The employee does not participate by vote in the policy determinations of the organization.

(3) The Department is not bound by any vote or action taken by the organization.

§ 0.735–211 Political activities.

Employees are required to observe the prohibitions against partisan political activities in 5 U.S.C. 7321–7327 and 18 U.S.C. 602, 603 and 607. Regulations implementing these restrictions are set forth in 5 CFR Part 733.

§ 0.735–212 Miscellaneous statutory provisions.

The attention of each employee is directed to the following statutory provisions which relate to his or her conduct:

(a) Pub. L. 96–303, 5 U.S.C. 7301 note, the "Code of Ethics for Government Service."

(b) Chapter 11 of Title 18, United States Code, relating to bribery, graft, and conflicts of interest.

(c) The prohibition against lobbying with appropriated funds (18 U.S.C. 1913).

(d) The prohibitions against disloyalty and striking (5 U.S.C. 7311, 18 U.S.C. 1918).

(e) The prohibition against the employment of a member of a Communist organization (50 U.S.C. 784).

(f) The prohibitions against—

(1) The disclosure of classified information (18 U.S.C. 798, 50 U.S.C. 783(b)); and

(2) The disclosure of confidential information (18 U.S.C. 1905).

(g) The provision relating to the habitual use of intoxicants to excess (5 U.S.C. 7352).

(h) The prohibition against the misuse or unauthorized use of Government vehicle (31 U.S.C. 1344, 18 U.S.C. 641).

(i) The prohibition against the misuse of the franking privilege (18 U.S.C. 1719).

(j) The prohibition against the use of deceit in an examination or personnel action in connection with Government employment (18 U.S.C. 1917).

(k) The prohibition against fraud or false statements in a Government matter (18 U.S.C. 1001).

(l) The prohibition against concealing, removing, mutilating or destroying a public record (18 U.S.C. 2071).

(m) The prohibition against counterfeiting and forging transportation requests (18 U.S.C. 508).

(n) The prohibitions against—

(1) Embezzlement and theft of Government money, property, or records (18 U.S.C. 641);

(2) Failing to account for public money (18 U.S.C. 643); and

(3) Embezzlement or wrongful conversion of the money or property of another which comes under the control, or into the possession, of an employee by reason of his employment (18 U.S.C. 654).

(o) The prohibition against unauthorized taking or use of documents relating to claims from or by the Government (18 U.S.C. 285).

(p) The prohibitions against an employee acting as the agent of a foreign principal registered under the Foreign Agents Registration Act of 1938, as amended (18 U.S.C. 219).

(q) The prohibition against the employment of an individual convicted of felonious rioting or related offenses (5 U.S.C. 7313).

(r) The prohibition against a public official appointing or promoting a relative, or advocating such an appointment or promotion (5 U.S.C. 3110).

Subpart C—Statements of Employment and Financial Interests

§ 0.735–301 Employees required to file under the Ethics in Government Act of 1978.

(a) The following employees shall submit public financial disclosure reports in accordance with the provisions of Title II of the Ethics in Government Act of 1978, as amended:

(1) Officers and employees whose positions are classified at GS–16 or above of the General Schedule, or whose basic rate of pay (excluding "step" increases) under other pay schedules is equal to, or greater than, the rate for GS–16 (step 1);

(2) Officers and employees in any other positions determined by the Director of the Office of Government

Ethics to be of equal classification to GS–16;

(3) Administrative Law Judges;

(4) Employees in the excepted service in positions which are of a confidential or policy-making character, unless their positions have been excluded by the Director of the Office of Government Ethics;

(5) Designated agency ethics officials.

(b) Those employees required to file under paragraph (a) of this section are subject to the provisions of 5 CFR Part 734 regarding procedures for filing, contents of reports, and penalties for failure to file or for falsifying a report.

§ 0.735–302 Employees required to file confidential financial disclosure statements.

The following categories of employees, other than those required to file under § 0.735–301, shall submit confidential statements of employment and financial interests:

(a) Employees classified at GS–13 or above who are in positions which include responsibility for making a Government decision or taking a Government action in regard to:

(1) Contracting or procurement;

(2) Administering or monitoring grants or subsidies;

(3) Regulating or auditing private or other non-Federal enterprises;

(4) Conducting Departmental investigations; or

(5) Other activities where the decision or action has an economic impact on the interests of any non-Federal enterprise.

(b) Employees classified at GS–13 or above who are in positions which the Department has determined have duties and responsibilities which require the incumbent to report employees and financial interests in order to avoid involvement in possible conflicts of interest.

(c) Employees classified below GS–13 who are in positions which otherwise meet the criteria in paragraphs (a) or (b) of this Section. These positions have been justified in writing to OPM as exceptions that are essential to protect the integrity of the Government and to avoid employee involvement in possible conflicts of interest.

(d) Employees, regardless of grade level, who have been selected to serve on a Technical Evaluation Panel or Source Evaluation Board.

§ 0.735–303 Employee's grievance regarding filing requirements.

If an employee believes that his or her position has been improperly designated as one requiring its incumbent to submit a confidential statement of employment and financial interest, the employee may obtain review of the designation through the Department's grievance procedures.

§ 0.735–304 Reporting and review requirements.

(a) Confidential statements of employment and financial interest and supplementary statements:

(1) Shall be submitted on forms prescribed by the Department Counselor;

(2) Shall contain information required by the Department Counselor regarding the employment background and financial interests of the employee, the employee's spouse and family members, and

(3) Shall be submitted at the times and places designated by the Department Counselor.

(b) Notwithstanding paragraph (a) of this section, the Department Counselor shall not require reporting of information relating to the interests of an employee, or his or her spouse and family members, in professional associations or charitable, religious, social, fraternal, recreational, public service, civic, or political organizations or similar organizations not conducted as business enterprises.

(c) The appropriate Deputy Counselor shall review and retain employees' statements and shall advise employees as to corrective action if necessary.

§ 0.735–305 Confidentiality of employees' statements.

To insure the confidentiality of statements filed under § 0.735–302, the appropriate Deputy Counselors shall not allow access to, or allow information to be disclosed from, statements except as the Office of Personnel Management or the Department Counselor may determine for good cause shown.

SUBPART D—CONDUCT AND RESPONSIBILITIES OF SPECIAL GOVERNMENT EMPLOYEES

§ 0.735–401 Applicable provisions.

(a) Every special Government employee is subject to the provisions of §§ 0.735–101 through 0.735–106, 0.735–201, 0.735–202, 0.735–204(d), 0.735–205 through 0.735–210.

(b) Every special Government employee should become familiar with the statutes listed at § 0.735.212.

§ 0.735–402 Outside employment, activities and financial interests.

(a) Special Government employees may not engage in outside employment and activities or have financial interests that conflict with the responsibilities and duties of Federal employment. However, because special Government employees usually are employed outside the Department, they may engage in employment or activities prohibited other Federal employees under § 0.735–203 when there is no actual conflict of interest. Special Government employees may also have financial interests prohibited other Federal employees under § 0.735–204(a)(1) through (a)(5) when there is no actual conflict of interest.

(b) Notwithstanding the provisions of paragraph (a) of this section, a special Government employee may not directly or indirectly seek or receive compensation for services rendered by himself, herself or others in connection with any proceeding, application, request for ruling, contract, claim or other particular matter in which the United States is a party or has a direct and substantial interest and:

(1) Which is before any Federal or District of Columbia department or agency and in which he or she participated personally and substantially for the Government, or

(2) Which is pending before the Department, provided that a special Government employee who has served in the Department no more than 60 days in the previous 365 days shall be bound only as to a matter in which he or she participated personally and substantially. 18 U.S.C. 203.

(c) Notwithstanding the provisions of paragraph (a) of this section, a special Government employee may not act, with or without compensation, as an agent or attorney for another in prosecuting a claim against the United States, or in connection with any proceeding, application, request for ruling, contract or other particular matter in which the United States is a party or has a direct and substantial interest, and

(1) Which is before any Federal or District of Columbia department, agency or court and in which he or she participated personally and substantially for the Government, or

(2) Which is pending before the Department, provided that this clause shall not apply in the case of a special Government employee who has served in the Department no more than 60 days in the previous 365 days. 18 U.S.C. 205.

(d) Permissible exceptions to the prohibitions set forth in paragraphs (b) and (c) of this section include:

(1) Representation without compensation in connection with a disciplinary, loyalty, or personnel proceeding;

(2) Representation with or without compensation of parents, spouse, child, and those to whom the employee owes a fiduciary duty except in those matters in which the employee has participated

personally and substantially as a Government employee or which are the subject of his official responsibility; and

(3) Statements required to be made under penalty for perjury or contempt.

(e) A special Government employee seeking to engage in one of the excepted activities should consult in advance with a Deputy Counselor.

(f) The Secretary may allow a special Government employee to represent his or her regular employer or another person or organization before the Department in the performance of work under a grant or a contract. The Secretary must first certify in the Federal Register that such representation is in the national interest. (18 U.S.C. 205).

(g) The prohibitions set forth in paragraphs (b) and (c) of this section are in addition to any other restrictions contained in this subpart and do not permit any activities which are otherwise prohibited.

§ 0.735–403 Political activities.

Special Government employees are bound by the political activity restrictions cited in § 0.735–211. Such restrictions also apply to a special Government employee engaged on an irregular or occasional basis, but only on days in which service is rendered and then for the entire 24 hours of such service day.

§ 0.735–404 Financial reporting.

(a) Special Government employees who will work more than 60 days in a calendar year must submit public financial disclosure reports in accordance with the provisions of Title II of the Ethics in Government Act of 1978 when their rate of pay is equal to or greater than the basic rate for GS–16, Step 1. Such employees are covered by the reporting requirements at 5 CFR Part 734.

(b) All special Government employees not required to file under paragraph (a) of this section shall submit Confidential Statements of Employment and Financial Interests and supplementary statements to the appropriate Deputy Counselor for review and custody.

(c) The provisions of §§ 0.735–304 and 0.735–305 are applicable to a special Government employee who is required to file a statement under paragraph (b) of this section.

§ 735–405 Post employment restrictions.

All special Government employees are bound by the restrictions concerning post employment set forth in § 0.735–501 (a) and (b) and are subject to the provisions regarding disciplinary proceedings set forth in Subpart E. However, the restrictions set forth in § 0.735–501 (c) and (d) apply only to special Government employees who serve as Senior Employees, as defined in 5 CFR 737.3(a)(6), over sixty days in any calendar year. The exception to the post employment restrictions set forth in § 0.735–501(f) for former employees employed by an Indian tribe also apply to former special Government employees.

Subpart E—Conduct and Responsibilities of Former Employees

§ 0.735–501 Prohibited activities by former employees.

(a) No former employee, after terminating Government employment, shall knowingly act as agent or attorney for, or otherwise represent another in any formal or informal appearance before, or with the intent to influence, make any oral or written communication on behalf of another to, any agency, employee or court of the United States or the District of Columbia, in connection with any particular Government matter involving a specific party, in which matter such employee participated personally and substantially as a Department employee.

(b) No former employee, within two years after terminating employment by the United States, shall knowingly act as agent or attorney for, or otherwise represent another in any formal or informal appearance before, or with the intent to influence, make any oral or written communication on behalf of another to, any agency, employee or court of the United States or the District of Columbia, in connection with any particular Government matter involving a specific party, if such matter was actually pending under the employee's official responsibility as an officer or employee within a period of one year prior to the termination of such responsibility.

(c) No former Senior Employee, as defined in 5 CFR 737.3(a)(6), within two years after terminating employment by the United States, shall knowingly represent or aid, counsel, advise, consult, or assist in representing another by personal presence at any formal or informal appearance before any agency, employee or court of the United States or the District of Columbia, in connection with any particular Government matter involving a specific party, in which matter he or she participated personally and substantially.

(d) For a period of one year after terminating employment by the United States, no former Senior Employee shall knowingly act as an agent or attorney for, or otherwise represent, anyone in a formal or informal appearance before, or with the intent to influence, make any written or oral communication on behalf of anyone, to the Department or any of its officers or employees, in connection with any particular Government matter, whether or not involving a specific party, which is pending before the Department, or in which it has a direct and substantial interest.

(e) The prohibitions set forth in paragraphs (a) through (d) of this section will be applied in accordance with regulations of the Office of Government Ethics as set forth in 5 CFR Part 737.

(f) The prohibitions in paragraphs (a) through (d) of this section do not bar a former employee employed by an Indian tribe from representing the tribe in connection with any matter pending before any Federal department, agency, court or commission. However, a former employee who intends to engage in representational activities must advise the head of the department, agency, court, or commission, in writing, of any personal and substantial involvement he or she may have had as a federal employee in the matter. 25 U.S.C. 450i(f).

§ 0.735–502 Disciplinary action.

(a) Disciplinary action may be taken against any former Department employee or special Government employee (hereafter referred to as "former employee") found under this subpart to have violated the post employment restrictions set forth in §§ 0.735–405 and 0.735–501 of this Part.

(b) The Department Counselor or a Deputy Counselor may initiate disciplinary proceedings. For purposes of this subpart, such an official is referred to as an Initiating Official.

(c) Disciplinary action may consist of:

(1) Prohibiting the former employee from making, on behalf of another, except the United States, any informal or formal appearance before, or with the intent to influence, any oral or written communication to the Department, on any matter of business for a period not to exceed five years. This prohibition may be accomplished by directing Department personnel to refuse to participate in any such appearance or to accept any such communication; or

(2) Other appropriate disciplinary actions, including but not limited to:

(i) Prohibiting, for a definite period of not more than five years, the former employee from any representational activity in connection with a specific office in the Department, or with a specific matter, in which the employee had an interest;

(ii) Issuing a letter of warning to the former employee.

§ 0.735–503 Initiating disciplinary proceedings.

(a) The Initiating Official, upon receiving information indicating grounds for disciplinary action, shall request that the Office of the Inspector General conduct an investigation and report all relevant investigative findings back to the Initiating Official.

(b) The Inspector General shall coordinate all investigations under this subpart with the Department of Justice as appropriate.

(c) All investigations under this subpart shall be conducted in a manner which protects the privacy of former employees. To the extent possible, information received as a result of the Inspector General's investigation shall remain confidential except as necessary to carry out the purposes of this subpart.

(d) After the Inspector General reports the facts of the investigation to the Initiating Official, the Initiating Official shall determine either:

(1) That there is reasonable cause to believe that a violation has occurred, in which event the Initiating Official shall expeditiously provide all relevant information, along with any comments or agency regulations, to the Director of the Office of Government Ethics (OGE); in addition, the Initiating Official shall commence disciplinary action against the former employee by serving notice in accordance with § 0.735–504; or

(2) That there is no reasonable basis for believing that a violation has occurred, in which event the Initiating Official shall advise the former employee and the Inspector General's office of that determination.

(e) In the event disciplinary action is initiated, the Department Counselor shall promptly appoint an impartial hearing officer who shall be a member of the HUD Board of Contract Appeals or an Administrative Law Judge. The hearing officer shall not have participated in any manner in the decision to initiate disciplinary action.

§ 0.735–504 Notice.

(a) The Initiating Official shall notify the former employee of the proposed disciplinary action in writing, by registered or certified mail, return receipt requested, or by any other means which gives actual notice or is reasonably calculated to give actual notice.

(b) The Notice shall include:

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

(2) A statement that the former employee is entitled to a hearing with a right to counsel if he or she requests a hearing within 15 days after receiving the notice;

(3) A statement explaining the method by which a hearing may be requested including the name, business address, and telephone number of the person to be contacted if there are further questions;

(4) A statement explaining the right to submit documentary evidence and a report to the hearing officer if a hearing is not requested and the method by which evidence may be submitted; and

(5) The disciplinary action proposed.

§ 0.735–505 Hearings.

(a) Formal rules of evidence and procedure applicable to a proceeding in a court of law will not be applied. Parties may object to clearly irrelevant material, but technical objections to testimony as used in a court of law will not be sustained.

(b) A former employee, against whom disciplinary action is proposed, is entitled to a hearing upon a written request submitted to the hearing officer within 15 days after the former employee receives notice as set forth in § 0.735–504. If no timely request is made, the hearing officer may proceed under § 0.735–506 to make a decision without a hearing.

(c) An attorney from the Department's legal staff shall represent the Department in the matter.

(d) The hearing shall be conducted at a reasonable time, date, and place as set by the hearing officer.

(1) In setting a hearing date, the hearing officer shall give due regard to the former employee's need for adequate time to prepare a defense and to an expeditious resolution of allegations that may be damaging to the former employee's reputation.

(2) Notice of the time, date, and place of such hearing shall be transmitted in writing to all interested parties by the hearing officer and shall include a statement indicating the nature of the proceedings and their purpose.

(e) At a hearing, the former employee shall have the right to:

(1) Represent himself or herself or be represented by counsel;

(2) Introduce and examine witnesses and submit relevant evidence;

(3) Confront and cross-examine adverse witnesses;

(4) Present oral argument; and

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

(f) In a hearing, the Department has the burden of proof and must establish substantial evidence of a violation.

(g) The hearing officer shall make a determination based exclusively on matters of record in the proceeding and shall set forth in the decision all findings of fact and conclusions of law relevant to the matters at issue.

§ 0.735–506 Decision without a hearing.

(a) If no hearing is requested under § 0.735–505(b), the hearing officer shall make a decision on the basis of evidence submitted under paragraph (b) of this section. The proposed disciplinary action shall be sustained upon a showing, by substantial evidence, of cause as specified in § 0.735–502. Notice shall be provided to all interested parties stating the findings of fact and conclusions of law, the sanctions to be imposed if a violation has been found, and the procedure for filing an appeal to the Secretary.

(b) If no hearing is requested, the former employee and the Initiating Official may submit relevant information and reports on their behalf to the hearing officer. In making a decision the hearing officer shall consider all evidence and reports received prior to the decision.

§ 0.735–507 Appeals.

(a) The former employee may appeal the hearing officer's decision finding a violation of the post-employment restrictions, as set forth in §§ 0.735–405 and 0.735–501 of this Part, to the Secretary by making a written request within 20 days of the decision.

(b) Upon receiving an appeal, the Secretary or his or her designee shall review the decision of the hearing officer. The decision of the Secretary or designee shall be based solely on:

(1) The record of the proceedings if there has been a hearing;

(2) The record upon which the hearing officer made his or her decision if there has not been a hearing; or

(3) Those portions of the record cited by the parties to limit the issues.

(c) If the decision of the hearing officer is modified or reversed, the decision by the Secretary or designee shall state any findings of fact or conclusions of law which differ from the findings or conclusions of the hearing officer.

§ 0.735–508 Sanctions.

Disciplinary action may be imposed by the hearing officer if there was no appeal, or by the Secretary or his or her designee if there was an appeal, against a former government employee found to have violated the post-employment restrictions set forth in §§ 0.735–405 and 0.735–501 of this Part. The sanctions

shall not exceed those proposed by the Initiating Official in the notice which initiated the disciplinary action against the former employee.

§ 0.735–509 Judicial review.

Any person found to have violated the post-employment restrictions set forth in §§ 0.735–405 and 0.735–501 of this Part, may seek judicial review of the Department's final administrative determination.

Dated: July 7, 1987.

Samuel R. Pierce, Jr.,

Secretary, Department of Housing and Urban Development.

[FR Doc. 87–16248 Filed 7–16–87; 8:45 am]

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Part III

Department of Housing and Urban Development

Office of the Secretary

24 CFR Parts 14 and 20

Implementation of the Equal Access to Justice Act in Administrative Proceedings; Final Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Parts 14 and 20

[Docket No. R-87-1327, FR-2156]

Implementation of the Equal Access to Justice Act in Administrative Proceedings

AGENCY: Office of the Secretary, HUD.

ACTION: Final rule.

SUMMARY: HUD is issuing final regulations implementing the Equal Access to Justice Act (the Act), which was recently reauthorized and amended. The Act provides for the award of attorney fees and other expenses to parties who prevail over the Federal government in certain administrative adjudications. This rule establishes procedures for the submission and consideration of applications for awards of fees and expenses in connection with adversary adjudications within HUD.

EFFECTIVE DATE: September 18, 1987.

FOR FURTHER INFORMATION CONTACT: Grant E. Mitchell, Assistant General Counsel for Fiscal Management and Energy, Office of General Counsel, Department of Housing and Urban Development, Room 10248, Washington, DC 20410; telephone (202) 755-6550. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION:

I. Background

The Equal Access to Justice Act (the Act), Pub. L. 96-481, (Approved October 21, 1980) amended title 5 of the United States Code by adding a new section 504, which provides for the award of fees and other expenses to parties who prevail over the Federal government in certain administrative adjudications under 5 U.S.C. 554. The Act requires agencies to establish uniform procedures for the submission and consideration of applications for these awards. This rule follows the final revised model rule issued on May 6, 1986 (51 FR 16659) by the Administrative Conference of the United States pursuant to its consultative role under section 504. Certain modifications have been made to adapt the model rule to the responsibilities and organization of the Department.

The Act applies only to adjudications under 5 U.S.C. 554, and thus does not apply to those Departmental proceedings not required by statute. Section 14.115(a) identifies the adversary adjudications that the Department is required by statute to conduct under 5 U.S.C. 554: all adjudications under the Interstate Land Sales Full Disclosure Act, 15 U.S.C. 1715; adjudications of alleged discrimination under Title VI, section 602 of the Civil Rights Act of 1964 (42 U.S.C. 2000d-1), section 505(a) of the Rehabilitation Act of 1973 (29 U.S.C. 794a), section 305(a) of the Age Discrimination Act of 1975 (42 U.S.C. 6104(a)); section 3 of the HUD Act of 1968 (Employment Opportunities for Business and Lower Income Persons in Connection with Assisted Projects), 12 U.S.C. 1701u; the Debt Collection Act (Salary Offset), 5 U.S.C. 5514; the Manufactured Home Construction and Safety Standards Act of 1974, 42 U.S.C. 5401; section 111 of Title I of the Housing and Community Development Act of 1974, 42 U.S.C. 5311; and appeals of decisions made pursuant to section 6 of the Contract Disputes Act of 1978, 41 U.S.C. 605, before the HUD Board of Contract Appeals as provided in section 8 of that Act, 41 U.S.C. 607.

HUD published a proposed rule to implement the Equal Access to Justice Act in Administrative Proceedings (24 CFR Part 14) on January 26, 1984 (49 FR 3202). Only one comment (Administrative Conference of the United States, ACUS) was received on the proposed rule. ACUS generally suggested that HUD follow more closely the model rule issued on June 25, 1981 (46 FR 32900). ACUS also suggested adding governmental entities to the list of covered parties. HUD had precluded governmental units from receiving attorney fees awards based upon its statutory interpretation and court decisions. However, section 1(c) of Pub. L. 99-80 (Approved, August 5, 1985), which reauthorized and amended the Act, revised the definition of party to include units of local government, and HUD has accordingly revised its rule. ACUS also questioned HUD's requirement for documentation of attorney fees (24 CFR 14.210). HUD requires, in cases where no hourly rate is paid by the majority of clients, that the attorney provide information about two attorneys with similar experience, who perform similar work, stating their hourly rate. HUD believes this requirement is necessary to determine the reasonableness of the fee by showing the market comparables.

The Department has decided to issue a final rule implementing the EAJA and its amendments. The Department believes another proposed rule is unwarranted, because only minor changes have been made to the proposed rule and because the conforming amendment to Part 20 is a required statutory change which does not require comment. The Department has consulted ACUS, the only previous commenting entity, in the preparation of this final rule and has adopted its suggestions.

II. Section-by-Section Analysis

For each section of Part 14, this portion of the preamble will discuss the changes required by Pub. L. 99-80, and the principal difference between the Department's rule and the model rule issued by ACUS. References to regulation § 14.____ are to the HUD rule and those to § 315.____ are to the ACUS model rule. HUD has decided to include proceedings before the HUD Board of Contract Appeals and has added a cross-reference to Part 14 in Part 20 (Board of Contract Appeals).

The definition of adversary adjudication in § 14.50 has been revised to include appeals of decisions of contracting officers pursuant to section 6 of the Contract Disputes Act of 1978. Section 14.105 has been revised to refer to the agency's "position" rather than its "position in the proceeding". This change is based on statutory amendments intended to clarify that the position that must be substantially justified is not limited to the litigation position alone.

Section 14.110 has been revised in response to Pub. L. 99-80. The Act and Part 14 apply to cases pending on or commenced after August 5, 1985, cases commenced on or after October 1, 1984 and finally disposed of before August 5, 1985 (provided applications for fees were filed no later than 30 days after August 5, 1985), and cases pending on or commenced on or after October 1, 1981, in which fee applications were timely filed and dismissed for lack of jurisdiction.

Section 14.115 describes the HUD proceedings covered by the Act. In addition to the four proceedings listed in the proposed rule, HUD has added: (1) Section 3 of the HUD Act of 1968 (Employment Opportunities for Business and Lower Income Persons in Connection with Assisted Projects); (2) the Debt Collection Act of 1982 (Salary Offset); (3) the Manufactured Home Construction and Safety Standards Act of 1974; (4) Section 111 of Title I of the Housing and Community Development Act of 1974; and (5) Appeals of decisions made pursuant to section 6 of the Contract Disputes Act of 1978 before the HUD Board of Contract Appeals. Proceedings (1) through (4) above are added because these are adversary adjudications that the Department is required by statute or regulation to conduct under 5 U.S.C. 554. Contract appeals are added because of changes in the Act made by Pub. L. 99-80. A new § 14.115(b) is added which parallels the

ACUS model rule. This section provides that the Department's failure to identify a type of proceeding as an adversary adjudication will not preclude the filing of an application by a party who believes the proceeding is covered by the Act.

Section 14.120 is revised to reflect the increased eligibility ceilings in the Act ($2 million net worth for individuals and $7 million for businesses and organizations other than tax-exempt organizations and agricultural cooperatives, which are exempt from the net worth limitations). Units of local government that meet the limits on net worth and number of employees are also added because of Pub. L. 99–80. HUD believes certain units of local government are separable (*e.g.*, a public housing agency may be separable from a city), but prefers to resolve any controversies on a case-by-case basis.

Section 14.125 incorporates a provision of Pub. L. 99–80 that the "position of the agency" includes any action or failure to act on which the proceeding is based, in addition to the agency's litigation position. Section 14.125(b) is revised to reduce or deny an award if the applicant has falsified the application (see § 14.200), including documentation (see § 14.210) or the net worth exhibit (see § 14.205). If the applicant has falsified a material part of the application, the award will be denied under the Act. False statements of material fact in the application may also be actionable under 18 U.S.C. 1001, 18 U.S.C. 1012 or 31 U.S.C. 3729.

Sections 14.130–14.140 are basically unchanged from the proposed rule. The Department's final rule does not contain a counterpart to § 315.107(a) of the model rule, which states that the agency may adopt regulations providing that attorney fees may be awarded at a rate higher than $75 per hour. The Department prefers instead to use the approach contained in § 315.107(b) of the model rule, under which any person may file with the Department a petition for rulemaking to increase the maximum rate for attorney fees. This provision (in § 14.135) makes clear that in its rulemaking the Department will act on the basis of the statutory standard set forth at 5 U.S.C. 504(b)(1)(A)(ii). Section 14.135 of the Department's rule also simplifies paragraph (b) of § 315.107 of the model rule by cross-referencing the Department's general rulemaking procedures.

Section 315.109 of the model rule, delegating authority within an agency to take final action on matters pertaining to the Act, has been stricken from the Department's rule because it is HUD's policy to publish delegations of authority in the **Federal Register** as public notices rather than as provisions of codified rules. This policy avoids the need for amendments to rules whenever a Departmental reorganization or change in delegation of authority occurs.

Section 14.200 has been revised to parallel the model rule. The phrase "in the proceeding" is removed, and eligibility ceilings are adjusted because of Pub. L. 99–80.

Section 14.205 of the Department's rule includes a paragraph (b) not found in § 315.202 of the model rule. The addition requires the submission of data which will enable the adjudicative officer to determine whether an applicant for an award has manipulated its net worth or the size of its work force in order to establish eligibility for an award under the Act and the rule. Section 14.205(c) includes a sentence indicating that disclosure of information in the net worth exhibit shall be subject to the provisions of the Privacy Act of 1974 and the Department's regulations thereunder.

Section 14.210 elaborates upon § 315.203 of the model rule. The added provisions require that the attorney, agent, or expert witness submit an affidavit setting forth detailed information on the services performed, rates charged and expenses incurred in order to justify the rates claimed. This will help to assure responsible and accurate reporting in the application and the submission of information useful in determining an appropriate award under the Act and the rule.

Section 14.215(a) states that an application may be filed whenever the applicant has prevailed in the proceeding or in a significant and discrete substantive portion of the proceeding, but in no case later than 30 days after the Department's final disposition of the proceeding. Sections 14.215 (b) and (c) follow the model rule.

Sections 14.300–14.325 are essentially unchanged from the proposed rule. Section 14.300 does not appear in the model rule. This section states that any provision of the Department's rules and regulations limiting or terminating the jurisdiction of an adjudicative officer upon the effective date of his or her decision in the underlying proceeding shall not affect his or her jurisdiction to render a decision under the Act. This addition is needed to preserve the jurisdiction of the adjudicative officer to render a decision under this part after the decision in an adjudication under the Interstate Land Sale Full Disclosure Act (see 24 CFR 1720.535(b)).

Section 14.310(a) of the Department's rule modifies a provision of § 315.302 of the model rule. The model rule states that failure of agency counsel to file an answer or otherwise respond to the application within 30 days may be treated as a consent to the award requested. The Department's rule permits the adjudicative officer to make an award under the Act where agency counsel has failed to respond within the 30-day period only upon a satisfactory showing of entitlement by the applicant. The change is considered necessary in order to avoid any implication that a failure by agency counsel to answer or contest the application for an award precludes a determination by the adjudicative officer of the eligibility of the applicant for an award under the Act.

The Department's rule does not include a counterpart to § 315.303 of the model rule. That section of the model rule allows the applicant to file a reply to the agency answer within 15 days, and states that if the reply is based on any alleged facts not already in the record of the proceeding, the applicant must include either supporting affidavits or a request for further proceedings. The Department's intent by deviating from the model rule is to follow the applicable procedures in the underlying adversary adjudication as far as setting the time period within which the applicant must file a reply to the agency answer.

Section 315.305 of the model rule provides that the applicant's and the agency's counsel may agree on a proposed settlement of the award in accordance with the agency's standard settlement procedure. Section 14.320 of the Department's rule modifies this section to reflect that the Department has no single standard settlement procedure. Instead, the rule provides that any settlement would be arrived at in accordance with the settlement procedures applicable to the underlying proceeding.

Section 14.325(a) remains unchanged from the proposed rule. Section 14.325(b) has been amended to parallel § 315.306. This section describes further proceedings. The phrase "on the basis of the administrative record, as a whole, which is made in the adversary adjudications for which fees and other expenses are sought" is taken from Pub. L. 99–80. This statutory provision prohibits discovery or evidentiary proceedings to determine substantial justification; the legislative history indicates that the administrative record includes affidavits submitted with the fee application and the government's answer, as well as the underlying record. House Committee on the Judiciary, H.R. Rep. No. 120, 99th Cong.,

1st Sess. pp. 13–14 (1985). This section recognizes further submissions but does not allow discovery of new material.

Section 14.330 of the Department's rule provides that the adjudicative officer shall issue an initial decision on the application within 30 days after completion of the proceedings on the application, and states that the decision must contain written findings and conclusions on the matters specified. The rule modifies § 315.307 of the model rule to state more clearly the various issues on which the adjudicative officer is likely to be called upon to rule.

Section 14.335 of the Department's rule modifies § 315.308 of the model rule so that the procedure applicable to review of decisions of adjudicative officers under the Act parallel the Department's review or appeals procedures applicable to the underlying adversary adjudications. The only changes from the proposed rule are (1) the addition of a sentence to indicate that if review is taken, the Department will issue a final decision on the application or remand the application to the adjudicative officer for further proceedings; and (2) an additional section regarding reconsideration under Rule 29, 24 CFR 20.10, Rules of the HUD Board of Contract Appeals.

Section 14.345 of the Department's rule modifies § 315.310 of the model rule. The Department's rule has been revised by adding a 60-day payment requirement as required by Pub. L. 99–80. Also, in identifying the submissions that must accompany a request for payment, the section tracks more closely the language of the Act. If a court reviews a departmental decision on a fee application pursuant to 5 U.S.C. 504(c)(2), then the applicant, under § 14.345, must submit a copy of the court's decision. Otherwise the applicant submits a copy of the final decision of the Department.

III. Other Matters

Regulatory Impact Analysis

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

Semiannual Agenda of Regulations

This rule was listed as sequence number 889 in the Department's Semiannual Agenda of Regulations published on April 27, 1987 at 52 FR 14362, 14363.

Environmental Impact

A Finding of No Significant Impact with respect to the environment has been made in accordance with Part 50 of this title, which implements section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332). The Finding of No Significant Impact is available for inspection and copying during regular business hours at the Office of the Rules Docket Clerk, Room 10276, 451 Seventh Street SW., Washington, DC 20410.

Regulatory Flexibility Act

Under 5 U.S.C. 605(b) (the Regulatory Flexibility Act), the Undersigned hereby certifies that his rule does not have a significant economic impact on a substantial number of small entities, since the number of proceedings covered by the rule is extremely small.

Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance program numbers are 14.218, 14.219, 14.223, 14.225, 14.227, 14.228, 14.400, and 14.801.

List of Subjects

24 CFR Part 14

Equal access to justice; Lawyers; Claims.

24 CFR Part 20

Administrative practice and procedures; Government contracts; Organization and functions (Government agencies); Government procurement.

Accordingly, Title 24 of the Code of Federal Regulations is amended as follows:

1. Part 14 is added to read as follows:

PART 14—IMPLEMENTATION OF THE EQUAL ACCESS TO JUSTICE ACT IN ADMINISTRATIVE PROCEEDINGS

Subpart A—General Provisions

Sec.

Subpart B—Information Required From Applicants

Subpart C—Procedures for Considering Applications

Authority: Sec. 504(c)(1); The Equal Access to Justice Act (5 U.S.C. 504(c)(1)); Sec. 7(d); the Department of HUD Act (42 U.S.C. 3435(d)).

Subpart A—General Provisions

§ 14.50 Definitions.

"Act". The Equal Access to Justice Act, 5 U.S.C. 504, Title II of Pub. L. 96–481, as amended by Pub. L. 99–80.

"Adjudicative officer". The hearing examiner, administrative law judge, administrative judge of the HUD Board of Contract Appeals, or other officer designated by the Secretary or other responsible Department official, who presided at the adversary adjudication.

"Adversary adjudication".

(a) An adjudication under 5 U.S.C. 554 in which the position of the United States is represented by counsel or otherwise, but not including an adjudication for the purpose of establishing or fixing a rate or for the purpose of granting or renewing a license; and

(b) Appeals of decisions of contracting officers made pursuant to section 6 of the Contract Disputes Act of 1978 (41 U.S.C. 605) before agency boards of contract appeals as provided in section 8 of that Act (41 U.S.C. 607).

"Agency counsel"

(a) When the position of the Department is being represented, the attorney or attorneys designated by the Department's General Counsel to represent the Department in a proceeding covered by this part, and

(b) When the position of another agency of the United States is being

represented, the representative as designated by that agency.

"Department". The Department of Housing and Urban Development, or the organizational unit within the Department responsible for conducting an adversary adjudication subject to this part.

"Proceeding". An adversary adjudication as defined above.

"Secretary". The Secretary of Housing and Urban Development.

§ 14.100 Time computation.

Time periods stated in this part shall be computed in accordance with the Department's rules with respect to computation of time which apply to the underlying proceeding.

§ 14.105 Purpose of these rules.

The Act provides for the award of attorney fees and other expenses to eligible individuals and entities who are parties to certain administrative proceedings ("adversary adjudications") before the Department. An eligible party may receive an award when it prevails over an agency, unless the agency's position was substantially justified or special circumstances make an award unjust. The rules in this part described the parties eligible for awards and the proceedings that are covered. They also explain how to apply for awards and the procedures and standards that the Department will use to make them.

§ 14.110 When the Act applies.

The Act applies to any adversary adjudication pending or commenced before this Department on or after August 5, 1985. It also applies to any adversary adjudication commenced on or after October 1, 1984, and finally disposed of before August 5, 1985, provided that an application for fees and expenses, as described in subpart B of these rules, has been filed with the Department no later than 30 days after August 5, 1985, and to any adversary adjudication pending on or commenced on or after October 1, 1981, in which an application for fees and other expenses was timely filed and was dismissed for lack of jurisdiction.

§ 14.115 Proceedings covered.

(a) The proceedings to which this part applies are adversary adjudications conducted by the Department under:

(1) The Interstate Land Sales Full Disclosure Act, as amended, 15 U.S.C. 1701 *et seq.*, pursuant to 15 U.S.C. 1715 and 24 CFR Part 1720;

(2) Section 602 of the Civil Rights Act of 1964, 42 U.S.C. 2000d–1, and 24 CFR Parts 1 and 2;

(3) Section 505(a) of the Rehabilitation Act of 1973, as amended, 29 U.S.C. 794a, 28 CFR Part 41, and any applicable HUD regulations;

(4) Section 305(a) of the Age Discrimination Act of 1975, 42 U.S.C. 6104(a), 45 CFR Part 90 and any applicable HUD regulations;

(5) Section 3 of the HUD Act of 1968, 12 U.S.C. 170lu (Employment Opportunities for Business and Lower Income Persons in Connection with Assisted Projected), and 24 CFR Part 135;

(6) Debt Collection Act of 1982 (Salary Offset), 5 U.S.C. 5514, and 24 CFR 17.125–.140;

(7) Manufactured Home Construction and Safety Standards Act of 1974, 42 U.S.C. 5401 *et seq.*, and 24 CFR Part 3280;

(8) Section 111 of Title I of the Housing and Community Development Act of 1974, 42 U.S.C. 5311, and 24 CFR 570.913; or

(9) Appeals of decisions of contracting officers made pursuant to section 6 of the Contract Disputes Act of 1978 (41 U.S.C. 605) before the HUD Board of Contract Appeals as provided in section 8 of that Act (41 U.S.C. 607).

(b) The Department's failure to identify a type of proceeding as an adversary adjudication shall not preclude the filing of an application by a party who believes the proceeding is covered by the Act; whether the proceeding is covered will then be an issue for resolution in proceedings on the application.

(c) If a proceeding includes both matters covered by the Act and matters specifically excluded from coverage, any award made will include only fees and expenses related to covered issues.

§ 14.120 Eligibility of applicants.

(a) To be eligible for an award of attorney fees and other expenses under the Act, the applicant must be a party to the adversary adjudication for which it seeks an award. The term "party" is defined in 5 U.S.C. 551(3). The applicant must show that it meets all conditions of eligibility set out in this subpart and in Subpart B.

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

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

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

(3) A charitable or other tax-exempt organization described in section 501(c)(3) of the Internal Revenue Code, 26 U.S.C. 501(c)(3), with not more than 500 employees;

(4) A cooperative association as defined in section 15(a) of the Agricultural Marketing Act, 12 U.S.C. 1141j(a), with not more than 500 employees; or

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

(c) For the purpose of eligibility, the net worth and number of employees of an applicant shall be determined as of the date the proceeding was initiated. For the purpose of eligibility of applicants before the HUD Board of Contract Appeals, the net worth and number of employees of an applicant shall be determined as of the date the applicant filed its appeal under 41 U.S.C. 606.

(d) An applicant who owns an unincorporated business will be considered as an "individual" rather than a "sole owner of an unincorporated business" if the issues on which the application prevails are related primarily to personal interests rather than to business interests.

(e) The employees of an applicant include all persons who regularly perform services for remuneration for the applicant, under the applicant's direction and control. Part-time employees shall be included on a proportional basis.

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

(g) An applicant that participates in a proceeding primarily on behalf of one or more other persons or entities that would be ineligible is not itself eligible for an award.

§ 14.125 Standards for awards.

(a) A prevailing applicant may receive an award for fees and expenses incurred in connection with a proceeding, or in a significant and discrete substantive portion of the proceeding, unless the position of the agency over which the applicant has prevailed was substantially justified. The position of the agency includes, in addition to the position taken by the agency in the adversary adjudication, the action or failure to act by the agency upon which the adversary adjudication is based. The burden of proof that an award should not be made to an ineligible prevailing applicant because the agency's position was substantially justified is on the agency counsel, who may avoid an award by showing that its position was reasonable in law and fact.

(b) An award will be reduced or denied if the applicant has unduly or unreasonably protracted the proceeding, if the applicant has falsified the application (including documentation) or net worth exhibit or if special circumstances make the award sought unjust.

§ 14.130 Allowable fees and expenses.

(a) No award for the fee of an attorney or agent under these rules may exceed $75.00 per hour. However, an award may also include the reasonable expenses of the attorney, agent or witness as a separate item, if the attorney, agent or witness ordinarily charges clients separately for such expenses.

(b) In determining the reasonableness of the fee sought for an attorney, agent or expert witness, the adjudicative officer shall consider the following:

(1) If the attorney, agent or witness is in private practice, his or her customary fee for similar services, or, if an employee of the applicant, the fully allocated cost of the services;

(2) The prevailing rate for the kind and quality of services furnished in the community in which the attorney, agent or witness ordinarily performs services;

(3) The time actually spent in the representation of the applicant;

(4) The time reasonably spent in the light of the difficulty or complexity of the issues in the proceeding; and

(5) Such other factors as may bear on the value of the services provided.

(c) The reasonable cost of any study, analysis, engineering report, test, project, or similar matter prepared on behalf of a party may be awarded, to the extent that the charge for the services does not exceed the prevailing rate for similar services, and the study or other matter was necessary for preparation of the applicant's case.

§ 14.135 Rulemaking on maximum rates for attorney fees.

Any person may file with the Department a petition for rulemaking to increase the maximum rate for attorney fees as provided in 5 U.S.C. 504(b)(1)(A)(ii), in accordance with 24 CFR Part 10. The petition should identify the rate the petitioner believes the Department should establish and the types of proceedings in which the rate should be used. It should also explain fully the reasons why the higher rate is warranted. The Department will respond to the petition in accordance with 24 CFR 10.20(b).

§ 14.140 Awards against other agencies.

If an applicant is entitled to an award because it prevails over another agency of the United States that participates in a proceeding before the Department and takes a position that is not substantially justified, the award or an appropriate portion of the award shall be made against that agency.

Subpart B—Information Required From Applicants

§ 14.200 Contents of application.

(a) An application for an award of fees and expenses under the Act shall identify the applicant and the proceeding for which an award is sought. The application shall show that the applicant has prevailed and identify the position of the Department or other agencies that the applicant alleges was not substantially justified. Unless the applicant is an individual, the application shall also state the number of employees of the applicant and describe briefly the type and purpose of its organization or business.

(b) The application shall also include a statement that the applicant's net worth does not exceed $2 million (if an individual) or $7 million (for all other applicants, including their affiliates). However, an applicant may omit this statement if:

(1) It attaches a copy of a ruling by the Internal Revenue Service that it qualifies as an organization described in section 501(c)(3) of the Internal Revenue Code, 26 U.S.C. 501(c)(3), or, in the case of a tax-exempt organization not required to obtain a ruling from the Internal Revenue Service on its exempt status, a statement that describes the basis for the applicant's belief that it qualifies under such section; or

(2) It states that it is a cooperative association as defined in section 15(a) of the Agricultural Marketing Act, 12 U.S.C. 1141j(a).

(c) If the applicant is a partnership, corporation, association, or organization, or a sole owner of an unincorporated business, the applicant shall state that it did not have more than 500 employees at the time the proceeding was initiated, giving the number of its employees and describing briefly the type and purpose of its organization or business.

(d) The application shall also itemize the amount of fees and expenses for which an award is sought.

(e) The application also may include any other matters that the applicant wishes the Department to consider in determining whether and in what amount an award should be made.

(f) The application shall be signed by the applicant or an authorized officer with respect to the eligibility of the applicant and by the attorney of the applicant with respect to fees and expenses sought. The application shall contain or be accompanied by a written verification under oath or affirmation under penalty of perjury that the information provided in the application and all accompanying material is true and complete to the best of the applicant's or authorized officer's information and belief.

[Approved by the Office of Management and Budget under control number 2510–0001]

§ 14.205 Net worth exhibit.

(a) Each applicant except a qualified tax-exempt organization or a qualified cooperative association must submit with its application a detailed exhibit showing the net worth of the applicant and any affiliates (as defined in § 14.120(f) of this part) when the proceeding was initiated. The exhibit may be in any form convenient to the applicant that provides full disclosure of the applicant's and its affiliates' assets and liabilities, and is sufficient to determine whether the applicant qualifies under the standards of the Act and this part. The adjudicative officer may require an applicant to file additional information to determine its eligibility for an award.

(b) The net worth exhibit shall describe any transfers of assets from, or obligations incurred by, the applicant or any affiliate, occurring in the one-year period before the date on which the proceeding was initiated, that reduced the net worth of the applicant and its affiliates below the applicable net worth ceiling. If there were no such transactions, the applicant shall so state.

(c) Ordinarily, the net worth exhibit will be included in the public record of the proceeding. However, an applicant that objects to public disclosure of information in any portion of the exhibit

and believes there are legal grounds for withholding it from disclosure may submit that portion of the exhibit directly to the adjudicative officer in a sealed envelope labeled "Confidential Financial Information," accompanied by a motion to withhold the information from public disclosure. The motion shall describe the information sought to be withheld and explain, in detail, why it falls within one or more of the specific exemptions from mandatory disclosure under the Freedom of Information Act (5 U.S.C. 552(b) (1)–(9)), why public disclosure of the information would adversely affect the applicant, and why disclosure is not required in the public interest. The material in question shall be served on counsel representing the agency against which the applicant seeks an award, but need not be served on any other party to the proceeding. If the adjudicative officer finds that the information should not be withheld from disclosure, it shall be placed in the public record of the proceeding. Otherwise, any request to inspect or copy the exhibit shall be disposed of in accordance with the Department's established procedures under the Freedom of Information Act, 24 CFR Part 15. In either case, disclosure shall be subject to the provisions of the Privacy Act of 1974, 5 U.S.C. 552a, and the Department's procedures implementing the Privacy Act of 1974 at 24 CFR Part 16.

[Approved by the Office of Management and Budget under control number 2510–0001]

§ 14.210 Documentation of fees and expenses.

(a) The application shall be accompanied by full and itemized documentation of the fees and expenses, including the cost of any study, analysis, engineering report, test, project or similar matter, for which an award is sought.

(b) The documentation shall include an affidavit from any attorney, agent or expert witness representing or appearing in behalf of the party, stating the actual time expended and the rate at which fees and other expenses were computed and describing the specific services performed.

(c) The documentation shall also include a description of any expenses for which reimbursement is sought and a statement of the amounts paid and payable by the applicant or by any other person or entity for the services provided. Vouchers, receipts, logs, or other substantiation for any expenses paid or payable shall be provided.

(d) The adjudicative officer may require the applicant to provide additional substantiation for any expenses claimed.

[Approved by the Office of Management and Budget under control number 2510–0001]

§ 14.215 When an application may be filed.

(a) An application may be filed whenever the applicant has prevailed in the proceeding or in a significant and discrete substantive portion of the proceeding, but in no case later than 30 days after the Department's final disposition of the proceeding.

(b) For purposes of this rule, final disposition means the date on which a decision or order disposing of the merits of the proceeding or any other complete resolution of the proceeding, such as a settlement of voluntary dismissal, become final and unappealable, both within the Department and to the courts.

(c) If review or reconsideration (under HUD Board of Contract Appeals Rule 29, 24 CFR 20.10) is sought or taken of a decision as to which an applicant believes it has prevailed, proceedings for the award of fees shall be stayed pending final disposition of the underlying controversy. When the United States appeals the underlying merits of an adversary adjudication to a court, no decision on an application for fees and other expenses in connection with that adversary adjudication shall be made until a final and unreviewable decision is rendered by the court on the appeal or until the underlying merits of the case have been finally determined pursuant to the appeal.

Subpart C—Procedures for Considering Applications

§ 14.300 Jurisdiction of adjudicative officer.

Any provision in the Department's rules and regulations other than this part which limits or terminates the jurisdiction of an adjudicative officer upon the effective date of his or her decision in the underlying proceeding shall not in any way affect his or her jurisdiction to render a decision under this part.

§ 14.305 Filing and service of documents.

Any application for an award or other pleading or document related to an application shall be filed and served on all parties to the proceeding in the same manner as other pleadings in the proceeding, except as provided in § 14.205(c) for confidential financial information.

§ 14.310 Answer to application.

(a) Within 30 days after service of an application, agency counsel may file an answer to the application. Agency counsel may request an extension of time for filing. If agency counsel fails to answer or otherwise fails to contest or settle the application, the adjudicative officer, upon a satisfactory showing of entitlement by the applicant, may make an award for the applicant's fees and other expenses under the Act.

(b) If agency counsel and the applicant believe that the issues in the fee application can be settled, they may jointly file a statement of their intent to negotiate a settlement. The filing of this statement shall extend the time for filing an answer for an additional 30 days, and further extensions may be granted by the adjudicative officer upon request by agency counsel and the applicant.

(c) The answer shall explain in detail any objections to the award requested and identify the facts relied on in support of agency counsel's position. If the answer is based on any alleged facts not already in the record of the proceeding, agency counsel shall include with the answer either supporting affidavits or a request for further proceedings under § 14.325.

§ 14.315 Comments by other parties.

Any party to a proceeding other than the applicant and agency counsel may file comments on an application within 30 days after it is served, or on an answer within 15 days after it is served. A commenting party may not participate further in proceedings on the application unless the adjudicative officer determines that the public interest requires such participation in order to permit full exploration of matters raised in the comments.

§ 14.320 Settlement.

The applicant and agency counsel may agree on a proposed settlement of the award before final action on the application, either in connection with a settlement of the underlying proceeding, or after the underlying proceeding has been concluded, in accordance with the settlement procedure applicable to the underlying proceeding. If a prevailing party and agency counsel agree on a proposed settlement of an award before an application has been filed, the application shall be filed with the proposed settlement.

§ 14.325 Extensions of time and further proceedings.

(a) The adjudicative officer on motion and for good cause shown may grant extensions of time other than for filing an application for fees and expenses after final disposition in the adversary adjudication.

(b) Ordinarily, the determination of an award will be made on the basis of the written record. However, on request of either the applicant or agency counsel, or on his or her own initiative, the adjudicative officer may order further proceedings, such as an informal conference, oral argument, additional written submissions, or as to issues other than substantial justification (such as the applicant's eligibility or substantiation of fees and expenses), pertinent discovery or an evidentiary hearing. Such further proceedings shall be held only when necessary for full and fair resolution of the issues arising from the application, and shall be conducted as promptly as possible. Whether or not the position of the agency was substantially justified shall be determined on the basis of the administrative record, as a whole, which is made in the adversary adjudication for which fees and other expenses are sought.

(c) A request that the adjudicative officer order further proceedings under this section shall specifically identify the information sought or the disputed issues and shall explain why the additional proceedings are necessary to resolve the issues.

§ 14.330 Decision.

The adjudicative officer shall issue an initial decision on the application within 30 days after completion of proceedings on the application. The decision shall include written findings and conclusions on such of the following as are relevant to the decision:

(a) The applicant's status as a prevailing party;

(b) The applicant's qualification as a "party" under 5 U.S.C. 504(b)(1)(B);

(c) Whether the agency's position was substantially justified;

(d) Whether special circumstances make an award unjust;

(e) Whether the applicant during the course of the proceedings engaged in conduct that unduly and unreasonably protracted the final resolution of the matter in controversy; and

(f) The amounts, if any, awarded for fees and other expenses, with reasons for any difference between the amount requested and the amount awarded.

If the applicant has sought an award against more than one agency, the decision shall allocate responsibility for payment of any award made among the agencies, and shall explain the reasons for the allocation made.

§ 14.335 Departmental review.

(a) Either the applicant or agency counsel may seek review of the initial decision on the fee application, or the Secretary (or his or her delegate, if any) may decide to review the decision on his or her own initiative, in accordance with the Department's review or appeals procedures applicable to the underlying proceeding. If neither the applicant nor agency counsel seeks review and the Secretary (or his or her delegate, if any) does not take review on his or her own initiative, the initial decision on the application shall become a final decision of the Department in the same manner as a decision in the underlying proceeding becomes final. Whether to review a decision is a matter within the discretion of the Secretary (or his or her delegate, if any). If review is taken, the Department will issue a final decision on the application or remand the application to the adjudicative officer for further proceedings.

(b) Either party may seek reconsideration of the decision on the fee application in accordance with Rule 29, 24 CFR § 20.10.

§ 14.340 Judicial review.

Judicial review of final departmental decisions on awards may be sought as provided in 5 U.S.C. 504(c)(2).

§ 14.345 Payment of award.

An applicant seeking payment of an award shall submit a copy of the final decision granting the award to: Director, Office of Finance and Accounting, Room 2202, Department of Housing and Urban Development, Washington, DC 20410, with a copy to: Associate General Counsel for Equal Opportunity and Administrative Law, Room 10244, Department of Housing and Urban Development, Washington, DC 20410. A statement that review of the underlying decision is not being sought in the United States courts, or that the process for seeking review of the award, if initiated, has been completed, must also be included. The agency will pay the amount awarded to the applicant within 60 days, unless judicial review of the award or of the underlying decision of the adversary adjudication has been sought by the applicant or any other party to the proceeding.

PART 20—BOARD OF CONTRACT APPEALS

2. The authority citation for 24 CFR Part 20 continues to read as follows:

Authority: The Contract Disputes Act of 1978 (41 U.S.C. 601–613); Section 7(d) of the Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

3. Section 20.10 introductory text is revised to read as follows:

§ 20.10 Rules.

These rules govern the procedure in all matters before the Department of Housing and Urban Development Board of Contract Appeals, unless otherwise provided by applicable law or regulation. The Federal Rules of Civil Procedure may be applied where procedures are not otherwise provided in these rules. For applications and proceedings involving award of attorney fees and other expenses, the rules set forth in 24 CFR Part 14 shall apply.

* * * * *

Dated: July 8, 1987.

Samuel R. Pierce, Jr.,

Secretary of Housing and Urban Development.

[FR Doc. 87–16113 Filed 7–16–87; 8:45 am]

BILLING CODE 4210-32-M

federal register

Friday
July 17, 1987

Part IV

Office of Personnel Management

Proposed Demonstration Project—PACER SHARE: A Federal Productivity Enhancement Program; Notice

OFFICE OF PERSONNEL MANAGEMENT

Proposed Demonstration Project—PACER SHARE: A Federal Productivity Enhancement Program

AGENCY: Office of Personnel Management.

ACTION: Notice of proposed demonstration project.

SUMMARY: Title VI of the Civil Service Reform Act authorizes the Office of Personnel Management (OPM) to conduct demonstration projects which experiment with new and different personnel management concepts to determine whether a specified change in personnel management policies or procedures would result in improved Federal personnel management. This notice meets the legal requirement that OPM publish a project plan in the **Federal Register** before conducting, or entering into any agreement or contract to conduct, a demonstration project.

DATES:

Comment Date: To be considered, written comments must be received no later than September 15, 1987.

Hearing Date: A public hearing will be held on the proposed project plan on September 10, 1987, at McClellan Air Force Base, Sacramento, California, from 9:00 a.m. to 1:00 p.m.

ADDRESSES: Comment address: Send or deliver written comments to Donna Beecher, Assistant Director for Systems Innovation and Simplification, U.S. Office of Personnel Management, 1900 E Street, NW., Room 7H30, Washington, DC 20415.

Public hearing address: September 10, 1987, McClellan Air Force Base Theatre, A Street and Dudley Way, McClellan Air Force Base, CA.

FOR FURTHER INFORMATION CONTACT: (1) On proposed project and Sacramento, California, public hearing: Ms. Colene Krum, (916) 643–6030, 6064, or 2954; (2) on proposed project at OPM: Dr. Brigitte W. Schay, (202) 632–6164.

SUPPLEMENTARY INFORMATION: *On proposed demonstration project:* The Department of the Air Force has submitted a proposed demonstration project for consideration under chapter 47 of title 5, U.S. Code entitled, "PACER SHARE: A Federal Productivity Enhancement Program."

The purpose of the project is to demonstrate that the productivity of a Federal military installation can be improved significantly through the implementation of a more flexible personnel system and the establishment of a productivity gainsharing system. By removing some of the constraints and disincentives inherent in the current personnel system, it is expected that Federal employees will be able to improve both mission accomplishment and their quality of worklife.

To accomplish these purposes, this demonstration project proposes the following changes to current personnel management policies and procedures:

1. A simplified classification system that consolidates both job series and grades into broader categories and also applies revised criteria for grading supervisory positions;
2. A simplified compensation system with three new pay schedules for salaried, hourly, and supervisory/managerial employees and pay bands combining up to five grades in one band;
3. A productivity gainsharing system based on total organization performance, where 50 percent of the savings are returned to the Air Force and the remaining 50 percent are distributed on an equal dollar amount basis among all employees;
4. Elimination of annual employee performance ratings, to be replaced by Dr. W. Edwards Deming's procedures for statistical quality control; and
5. A modified version of the on-call employment program for most new hires, designed to permit managers to adjust the workforce quickly in response to workload and budgetary changes, intended to avoid costly reductions in force (RIFs) of the career workforce.

The demonstration project would cover all employees (approximately 2,000) in the Directorate of Distribution of the Sacramento Air Logistics Center at McClellan Air Force Base in Sacramento, California. These employees include supervisory General Schedule (GS) and Performance Management and Recognition System (PMRS) employees, non-supervisory GS and Federal Wage System (FWS) employees, and Wage Supervisors.

On public hearing: A public hearing will be held by OPM at McClellan Air Force Base, Sacramento, California, during which interested persons or organizations may present their written or oral views on the proposed demonstration project. The hearing will be informal in nature. However, anyone who wishes to testify at the hearing should contact the person listed under "For Further Information Contact" for a specific scheduled time, so that OPM can regulate the course of the hearing and provide enough time for all interested persons and organizations to present their comments. Priority will be given to those scheduled, and others will be heard in any remaining available time. Each speaker's presentation will be limited to 10 minutes. The hearing record will be left open until September 24, 1987 to receive additional written materials (data, views, arguments) from hearing participants.

U.S. Office of Personnel Management.

Constance Horner,

Director.

The proposed demonstration project plan reads as follows:

PACER SHARE: A Federal Productivity Enhancement Program

A Proposal for an Office of Personnel Management Demonstration Project Submitted by Sacramento Air Logistics Center, McClellan Air Force Base, California, Air Force Logistics Command, Department of the Air Force, Department of Defense

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I. Executive Summary

Purpose

This demonstration project is designed to involve Federal employees more directly in improving their organization's productivity and quality of worklife through the implementation of a more flexible and responsible personnel system and by making financial incentives available to all employees.

The following interventions will be tested:

(1) A simplified classification system that consolidates both job series and grades into broader categories and also applies revised criteria for grading supervisory positions;

(2) A simplified compensation system with three new pay schedules for salaried (DW), hourly (DH) and supervisory/managerial (DX) employees and pay bands combining up to five grades in one band;

(3) A productivity gainsharing system based on total organizational performance where 50 percent of the savings are returned to the Air Force and the remaining 50 percent are distributed on an equal dollar amount basis among all employees;

(4) Elimination of annual performance ratings to be replaced by Dr. W. Edwards Deming's procedures for statistical quality control; and

(5) A modified version of the on-call employment program for most new hires designed to permit managers to adjust the workforce quickly in response to workload and budgetary changes, intended to avoid costly reductions in force (RIFs) of the career workforce.

The combined changes are expected to increase organizational flexibility in order to improve organizational productivity and enhance both peacetime and wartime readiness.

Participating Organizations

The demonstration project will be conducted in the Directorate of Distribution (DS) of the Sacramento Air Logistics Center (SM–ALC), located at McClellan Air Force Base, California. DS is one of six directorate in the SM–ALC and has a workforce of about 2,000 employees.

The RAND Corporation, Santa Monica, California, will serve as an independent project evaluator. RAND has worked with the Directorate of Distribution of the Office of Personnel Management (OPM) in developing an evaluating plan. OPM has provided technical assistance in the development of this proposal and will continue to be involved in the planning and conduct of the evaluation as necessary to meet the agency's statutory oversight responsibilities.

Types and Numbers of Participating Employees

The demonstration will cover all employees in the Directorate of Distribution, which (as of March 1987) includes 854 non-supervisory General Schedule (GS) employees, 104 supervisory GS and Performance Management and Recognition System (MPRS) employees, 855 non-supevisory Federal Wage System (FWS) employees and 84 Wage Supervisors, for a total of 1,897 eligible employees.

Labor Participation

Employees in DS are represented by three unions; the American Federation of Government Employees (AFGE) representing 87 percent of the workforce, and two smaller unions, the Techical Skills Association and the Engineer and Scientist Association. AFGE represents the interests of all three to the demonstration task force, and the chief union steward is a full-time member of the project staff. AFGE has been involved in the development of the project since its inception and the president of AFGE Local 1857 is a member of the project steering committee.

Methodology

The five interventions, or personnel system changes in the areas of classification, compensation, staffing, performance appraisal, and incentives, are described in detail in the proposal. These changes form an interrelated system and require the adoption of new, more participative management concepts, based in part on the philosophy of productivty expert Dr. W. Edwards Deming.

Training

The key to smooth transition management is training. A separate personnel office will be established for the Directorate of Distribution and all new staff will be trained in the administration of the demonstration personnel system but will not be part of the demonstration itself.

Managers and supervisors will be trained in participative management concepts and statistical process control (SPC) procedures. Training in SPC will also be extended to nonsupervisory employees who will be involved in the measurement processes. Project orientation for all employees will include: (1) A general description of the project and project philosophy; (2) conversion procedures into the new system; (3) explanation of the new process approach to classification; (4) pay-banding and pay adjustment processes; (5) new hiring program; (6) explanation of productivity gainsharing program; (7) project administration and evaluation; and (8) procedures for converting out of the project. Training for new supervisors and employees will be given throughout the 5 years of the project.

Evaluation Plan

A methodologically rigorous evaluation plan has been designed to assess project outcomes and to evaluate their generalizability to other Federal organizations. There are four other Air Logistics Centers in the country that will serve as non-equivalent control groups. The design is "quasiexperimental" and includes pre- and post-demonstration comparisons as well as experimental vs. control group comparisons.

The evaluation model postulates both specific effects of each individual intervention and effects of the combined interventions. Attempts will be made, to the extent possible, to establish cause-and-effect relationships. In order to assure a thorough assessment of the demonstration, the evaluation will cover three distinct phases: (1) an evaluation of the implmentation phase to determine that the project is implemented as designed and that the stated processes are stable and operational; (2) periodic assessments of the 5-year experimental phase; and (3) a summative evaluation of the project's overall impact upon completion of the project.

The collection of baseline data from the demonstration and control sites will begin prior to the implementation of the project and will cover measures relating to productivity and quality, a variety of personnel functions, and a diagnostic attitude survey which will be repeated annually to track the progress of the demonstration.

Waivers of Law and Regulation Required

Waivers of existing title 5, U.S. Code, laws and Title 5, CFR, regulations are required to conduct the demonstration project. Waivers are needed to change position classification, compensation, performance appraisal, and staffing procedures. The productivity gainsharing program can be undertaken within existing authorities.

Costs

The project will be funded by the Air Force and the participating Directorate of Distribution out of normal administrative overhead and training funds. Total project cost, including development and evaluation for the 5-year period, will be $5,095,488 (in FY 1987 dollars). It is projected that these costs will be recovered in the first 1 to 2 years of the project through savings returned to the Government.

Benefits of Proposed Project

The project is expected to demonstrate that a more flexible personnel system and financial incentives can lead to significantly increased productivity in a Federal military installation, without any resultant deterioration in quality of products and services. By removing some of the constraints and disincentives inherent in the current systems, both managers and employees will be able to work more effectively and efficiently and at the same time improve their quality of worklife. This demonstration project is also the first involving labor unions and hopes to set an example in labor-management relations.

II. Introduction

A. Purpose

This demonstration project is designed to involve Federal employees more directly in improving their organization's productivity and quality of worklife. The existing Federal personnel management system offers few incentives to managerial or non-managerial employees to improve organizational operations and reduce costs. The present system does not reward risk-taking and encourages a narrow focus and preoccupation with rule enforcement rather than organizational effectiveness. The purpose of this demonstration project is to implement and test new ways of motivating employees to improve organizational productivity. In order to do this, some existing impediments in the personnel management system will have to be removed and a more responsive and flexible system be installed. The project will demonstrate that significant productivity increases can be attained through the implementation of more flexible personnel management procedures and incentives and the elimination of negative incentives that tend to drive up costs.

Since the proposed demonstration site is within the Department of Defense, the enhanced capability to support not only peacetime but wartime performance, readiness and sustainability is a critical goal of the project. It is expected that mission accomplishment can be enhanced with the proposed system changes, and that by increasing employees' control over their work and work products, the general quality of worklife and employee job satisfaction can be improved as well. The project also intends to demonstrate that work quality will not deteriorate at the expense of increased productivity. Quality of work will be carefully monitored throughout the project.

This demonstration project is the first to be conducted in a unionized environment and hopes to set an example in labor-management relations. Union representatives have been directly involved in the project since its inception and have contributed to the development of the ideas presented here. In this era of resource scarcity, labor-management cooperation is critical if new methods are to be developed for "doing more with less." It is believed that most employees want to work effectively, and that by giving them direct incentives and encouraging more participation, employees will come up with better and more productive ways of doing their work.

B. Problems with the Present System

Federal managers are responsible for accomplishing their assigned workload as economically as possible. However, there are many elements of the Federal personnel system that do not support this requirement. The current personnel system causes many frustrations for managers and employees. This demonstration project addresses problems in a number of specific areas.

Classification and Compensation

The Federal job classification system is a complex system which divides the universe of work into a large number of small pieces. The General Schedule (GS) system defines about 440 different white collar occupations and is divided into 18 grades or levels of difficulty. The Federal Wage System (FWS) covers 330 blue collar occupations in 15 grades. Both systems classify jobs based on the rank-in-the-job method. This approach encourages rigid specialization and inefficient division of labor.

When a manager has to fill a new position, either the manager or personnel specialist writes a description of the job duties, and classifier then compares the job to a set of published job classification standards to determine the correct grade and occupational series. In order to avoid salary compression, supervisory jobs are usually evaluated as more responsible and complex.

Any job that changes substantially over the years also has to be redescribed and possibly reclassified. If the position is reclassified, a personnel action must be processed to record the action in the employee's personnel file. As a result, managers and personnel specialists devote much time and energy to the writing of frequently lengthy position descriptions required to justify narrow grade and series distinctions. The current system thus contributes to overhead costs that could be reduced under a simplified system.

Narrow job classification and the resulting over-specialization force managers to employ more personnel than are actually required to assure that all tasks are covered. Current supervisory grading criteria further encourage "empire-building" and the creation of additional layers of supervision.

Actually, neither the GS nor the FWS job classification and grading systems require managers to design narrow jobs that fit specific grades and series, but the emphasis placed on classification accuracy encourages the design of such narrow jobs. Managers who try to establish broader generalist jobs are likely to have trouble getting them classified and may also face recruitment difficulties because the system is built around narrow job distinctions. Additional problems are created by the narrow and restrictive qualification requirements that interfere with a supervisor's ability to assign work to employees as needed.

Another and even more critical problem with the present system is that white collar pay is rigidly tied to narrow grade levels without regard for local market conditions. Managers have little control over the pay rates of their employees. This makes it extremely difficult for a supervisor to reward an outstanding employee. Therefore, when market or other conditions call for a change in pay, managers have little choice but to attempt to use the complex classification system to change grade levels to make short-term pay adjustments. In order to justify higher pay and a higher grade, jobs have to be made more complex, which is often achieved by manipulating the two major classification factors, difficulty and responsibility. The process of reclassifying a job tends to be time-consuming and is not always successful, because the job classification system is being used in ways not intended, i.e., to solve pay problems.

The narrowness of the grades in the 18-grade structure of the current GS system is a source of frustration for supervisors and non-supervisors alike. Deserving employees often cannot be promoted or, conversely, they may seek merit promotions elsewhere and will be lost to the organization. This problem is compounded by the pay inversion between the General Schedule and the Federal Wage System that has occurred at McClellan Air Force Base. White-collar employees in the lower grade levels sometimes reluctantly switch to blue-collar jobs offering higher pay potential.

Consolidated job series and broader pay ranges combining several grades in one band would simplify the classification system, reduce the need for more frequent promotions and other personnel actions, and encourage managers to better utilize the talents of employees in the organization.

Staffing. Similar problems exist in the area of staffing. Paperwork is required every time an employee is assigned to different duties or given another level of work. It is required whether the action is permanent or temporary. Excessive paperwork and documentation consume time and personnel resources and interfere with getting vacancies filled quickly. Every fill action requires an analysis of job requirements, assessment of qualifications, the ranking of candidates and interviews. Regardless of individual capability, work assignments and training opportunities must be denied workers who are capable but do not meet the narrow qualification standards.

Other problems are created by the reduction in force (RIF) procedures for adjusting the size of the workforce to meet changes in workload. Large-scale RIFs can be time-consuming, disruptive to the existing workforce and costly in terms of processing the releases. It is expensive to train new workers during periods of expansion and also difficult to restructure work and train the remaining workers during contractions. There is also the inevitable impact on morale.

Incentives. The current incentive awards system provides inadequate tools for motivating the entire workforce. Awards generally go to only a small number of employees and are not perceived as widely available. In order to motivate every employee to work harder toward the goal of increasing organizational productivity, a bonus system is needed that potentially can reward every employee.

The idea of paying bonuses to employees based on productivity improvements is an old one. Productivity gainsharing programs are common throughout the private sector and are beginning to be adopted by the Federal Government as well. Recent successful Department of Defense (DoD) efforts were highlighted in a GAO report (66D–86–143BR) entitled "Gainsharing—DoD Efforts Highlight an Effective Tool for Enhancing Federal Productivity (September 1986)." Quality circles (QCs) are often a good basis from which to build such a gainsharing program. The Directorate of Distribution has been actively involved in a QC program since 1980 and now includes 50 percent of the workforce of QCs. QCs are primarily designed to promote employee participation in identifying and solving organizational problems in order to improve work quality and productivity. By offering to share the cost savings achieved through increased productivity, employees are provided with a stronger incentive to increase their participation in QCs and to work toward the goal of increased productivity and efficiency.

Performance Appraisal. The present performance appraisal system requires the development of performance plans with elements and standards for every employee, whose performance then has to be evaluated using five rating levels. The current Civilian Personnel and Promotion Appraisal form (AF 860) is six pages long and comes with two pages of instructions. While it is generally difficult, but possible, to develop appropriate objective measures of performance, the requirement to set and measure performance standards at five levels for every job, regardless of complexity, appears to be excessive. For many, especially low-skill jobs, it is unnecessary to make such fine distinctions. In many cases, in fact, a dichotomous distinction would be sufficient, e.g., boxes were loaded on time or not. It is difficult to see a payoff for the time invested in elaborately developed performance plans with individual ratings for each employee. Theoretically, each plan is supposed to be linked to the overall mission of the entire organization, but individual performance ratings may not be the only way to accomplish this goal. Performance measurement is important, but in an organization such as the Directorate of Distribution, measurements at aggregate levels are more meaningful than individual performance measures, which impose an unnecessary burden.

C. Changes Required

An interrelated system of changes is required to address the problems identified here and to accomplish the dual and complementary objectives of increased productivity and quality of worklife. This requires the adoption of a new management philosophy that encourages greater involvement of all employees in the problems and challenges faced by their organization. Part of this new philosophy will be to build a sense of "corporate" identity in every directorate member that will be reinforced by the productivity gainsharing program and the changes to the personnel management system.

The existence of quality circles represents a good starting point for the project, and the proposed introduction of statistical quality control procedures is expected to enhance efforts to achieve greater productivity through improved quality. The proposition that improved quality decreases costs and increases productivity is based on the work and successes of productivity expert Dr. W. Edwards Deming, whose statistical quality control procedures were eagerly adopted by the Japanese in the early 1950's and subsequently revolutionized Japanese quality and productivity. Many American corporations, including Ford, General Motors, and Hughes Aircraft, are now among Dr. Deming's clients. The Deming philosophy is quite comprehensive and would require total change in an organization, including its procurement methods. Changes in authority for this demonstration project are necessarily limited to personnel management issues. However, it has to be acknowledged that the development of the project was influenced in part by the Deming philosphy.

The following changes are required to accomplish the purpose fo the demonstration project:

1. A simplified classification system that combines current job series and groups jobs into broad categories to permit more flexible job assignments;

2. A revised pay system, with broader pay ranges, that supports the new classification system;

3. An organization-wide incentive system that motivates and rewards organizational productivity increases through productivity gainsharing;

4. The elimination of annual individual performance ratings for employees, to be replaced by performance measurement procedures that focus on unit measures and the total organizaiton;

5. A new on-call employment program that will permit greater flexibility to adjust the workforce in response to workload and budgetary changes.

D. Participating Organization and its Mission

The demonstration project, called PACER SHARE, will be conducted in the Directorate of Distribution (DS) of the Sacramento Air Logistics Center (SM–ALC), located at McClellan Air Force Base, California. The Sacramento ALC is one of five Air Logistics Centers with the Air Force Logistics Command, whose mission it is to provide total logistics support to all Air Force operational commands and bases worldwide. The Sacramento ALC has a workforce of over 14,000 civilians. There are six major directorates: Distribution, Maintenance, Materiel Management, Contracting and Manufacturing, Communications and Computer Systems, and Competition Advocacy.

The Directorate of Distribution has a workforce of about 2,000 employees who are about equally divided between white-collar and blue-collar jobs. DS is funded through the annual Federal appropriations process and receives its budget allocation from Operations and Maintenance (O&M) funds. DS does not have the flexibility of industrial funding.

DS is charged with management of the physical distribution function for the ALC, which includes receipt, storage, issue, and shipment of materiel, as well as quality control, packaging, inventory, and transportation functions. Given the strategic importance of the DS mission, the following critical productivity strategies have to be maintained during the demonstration: readiness, mobility, and surge capability.

Since DS is one of six directorates within the Sacramento ALC, the demonstration project and its new personnel system have to be designed to interface with the other five directorates. Approximately 4 percent of DS employees move into other directorates each year through the center-wide merit promotion system.

E. Participating Employees

Table 1 provides a list of all General Schedule employees currently eligible to participate in the demonstration project. Table 2 shows the distribution of Federal Wage System employees covered by the project. Table 3 summarizes the number of participating employees by pay category.

BILLING CODE 6325-01-M

Table 1. GS Employees Eligible to Participate in Demonstration Project

Series No.	Series Title	Supervisory	Non-Supervisory	All
GS-0260	Equal Employment Opportunity Specialist	0	1	1
GS-0301	Miscellaneous Administration and Program	2	22	24
GS-0303	Miscellaneous Clerk/Assistant	0	2	2
GS-0305	Mail and Files	0	2	2
GS-0318	Secretary	0	57	57
GS-0322	Clerk-Typist	0	8	8
GS-0332	Computer Operation	0	5	5
GS-0334	Computer Specialist	0	9	9
GS-0335	Computer Clerk and Assistant	0	1	1
GS-0343	Management Analysis	2	20	22
GS-0344	Management Clerical/Assistant	0	22	22
GS-0345	Program Analysis	0	4	4
GS-0356	Data Transcriber	2	16	18
GS-0392	General Communications	1	1	2
GS-0560	Budget Administration	0	1	1
GS-0801	General Engineering	0	1	1
GS-0802	Engineering Technician	0	1	1
GS-0818	Engineering Drafting	0	1	1
GS-0895	Industrial Engineering Technician	0	5	5
GS-0896	Industrial Engineering	3	14	17
GS-1020	Illustrating	0	2	2
GS-1152	Production Control	0	1	1
GS-1531	Statistical Assistant	0	2	2
GS-1910	Quality Assurance	7	33	40
GS-2001	General Supply	11	44	55
GS-2003	Supply Program Management	12	67	79
GS-2005	Supply Clerical/Technician	15	220	235
GS-2010	Inventory Management	15	100	115
GS-2030	Distribution Facilities and Storage Management	6	13	19
GS-2032	Packaging	4	21	25
GS-2101	General Transportation	8	4	12
GS-2102	Transportation Clerk/Assistant	1	2	3
GS-2130	Traffic Management	4	20	24
GS-2131	Freight Rate	3	36	39
GS-2132	Travel	1	6	7
GS-2134	Shipment Clerical	5	56	61
GS-2135	Transportation Loss and Damage Claims Examining	0	8	8
GS-2144	Cargo Scheduling	0	20	20
GS-2150	Transportation Operations	2	5	7
GS-2151	Dispatching	0	1	1
	Total General Schedule	104	854	958
	Mean Grade	10.42	6.68	7.11

Source: Directorate of Distribution, March 1987.

Table 2. FWS Employees Eligible to Participate in Demonstration Project

Series No.	Series Title	Supervisory	Non-Supervisory	All
WG-2606	Electronic Industrial Control Mechanic	1	3	4
WG-2610	Electronic Integrated Sytems Mechanic	0	6	6
WG-2805	Electrician	1	7	8
WG-3502	Laboring	1	12	13
WG-4102	Painting	1	6	7
WG-4104	Sign Painting	0	1	1
WG-4602	Blocking and Bracing	1	6	7
WG-4604	Wood Working	12	70	82
WG-4605	Wood Crafting	0	1	1
WG-4607	Carpentry	0	10	10
WG-5352	Industrial Equipment Mechanic	4	23	27
WG-5413	Fuel Distribution Systems Operation	4	40	44
WG-5701	Misc. Transportation/Mobile Equipment Operating	1	0	1
WG-5703	Motor Vehicle Operating	8	69	77
WG-5704	Fork Lifting Operating	0	6	6
WG-5706	Road Sweeper Operating	0	2	2
WG-5725	Crane Operating	0	4	4
WG-5803	Heavy Mobile Equipment Mechanic	0	2	2
WG-5806	Mobile Equipment Servicing	0	2	2
WG-6901	Misc. Warehousing and Stock Handling	34	178	212
WG-6904	Tools and Parts Attending	0	2	2
WG-6907	Warehouse Working	6	291	297
WG-6910	Materials Expediting	0	5	5
WG-6968	Aircraft Freight Loading	3	20	23
WG-7002	Packing	3	47	50
WG-7004	Preservation Packaging	4	42	46
	Total Federal Wage System	84	855	939
	Mean Grade	7.56	6.09	6.32

Source: Directorate of Distribution, March 1987.

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TABLE 3.—PARTICIPATING EMPLOYEES BY PAY SYSTEM

Category	Number
Nonsupervisory GS	854
Supervisory GS and GM	104
Nonsupervisory WG	855
Supervisory WS	84
Total	1,897

F. Labor Participation

Union representatives have been involved in the project since its inception. Employees in the Directorate of Distribution are represented by three unions: the American Federation of Government Employees (AFGE) representing 87 percent of the unionized DS workforce, and two smaller unions, the Technical Skills Association and the Engineer and Scientist Association. AFGE represents the interests of all three to the demonstration task force, and the chief union steward is a full-time member of the project staff. The project steering committee also operates with union input and includes the president of AFGE Local 1857.

III. Methodology

A. Project Design

The purpose of a demonstration project is to test changes under controlled conditions before making commitments to put them into effect system-wide. Since this experiment will be conducted in a natural environment and not under controlled laboratory conditions, the project is considered to be "quasi-experimental" in nature but will employ one or more control groups. Four other Air Logistics Centers are available to serve as control sites, i.e., they will not participate in the experiment, but will provide the same types of data collected at the experimental site. Although the four other ALC's perform similar missions, they do not constitute "matched" control groups because they are in different geographic locations: Hill Air Force Base, Ogden, Utah; Kelly Air Force Base, San Antonio, Texas; Robins Air Force Base, Warner-Robins, Georgia; and Tinker Air Force Base, Oklahoma City, Oklahoma. However, even a design with a non-matched control group is superior to a simple pre/post design without a control. If the difference on any measure for the experimental group between pre-test and post-test is greater than that for the control group, the case for postulating an effect of the demonstration project will be significantly strengthened.

B. Personnel System Changes

This section outlines in detail the system changes that are proposed under the demonstration project.

Classification System

Purpose. The PACER SHARE classification system is designed to replace the traditional General Schedule (GS) and Federal Wage System (FWS) classification systems with a simpler, more flexible system. Under this system, traditional, narrowly defined grades and occupational series are consolidated into fewer, broadly defined categories. The resulting classification structures are intended to promote greater flexibility in assigning work to employees while expanding employees' career and training opportunities. Specifically, the PACER SHARE classification system is intended to:

(1) Remove administrative restrictions and barriers to reassigning/moving employees to improve responsiveness to fluctuations in workload;

(2) Increase employees' access to training and job opportunities through job expansion and relaxed criteria for job changes; and

(3) Streamline and simplify the classification process by reducing the number and complexity of distinctions required to classify positions.

Characteristics of the Classification System—Grade Consolidation. Under both the PACER SHARE system and traditional GS and FWS classification systems, work is classified at different grades or classification levels to reflect differences in the level of difficulty and responsibility. The PACER SHARE system differes from the traditional system, however, in that substantially fewer grades or classification levels are required. Under the PACER SHARE system, the number of grades has been consolidated according to three separate classification structures, each corresponding to a new pay schedule:

(1) Demonstration Hourly (DH), covering all non-supervisory positions formerly designated as Wage Grade (WG) and Wage-Leader (WL);

(2) Demonstration Salaried (DW), covering all non-supervisory positions formerly designated as GS;

(3) Demonstration Supervisory (DX), covering all supervisory and managerial positions formerly designated as GM, GS, or WS.

In developing these classification structures, the Directorate of Distribution opted to link new classification levels to existing FWS and GS grades. In determining the number of levels to be established and the distinctions be made among them, the Directorate considered current patterns of assigning work and typical career progressions, and identified major similarities and differences in levels as defined in traditional classification standards. The points at which grade distinctions were judged to be most meaningful are reflected in the new classification levels. There are four classification levels for each of the three classification structures. Each classification level corresponds to a range of GS or FWS grades; see Table 4:

TABLE 4.—NEW CLASSIFICATION LEVELS

DH		WG [1]	DW		GS	DX		GS/GM
1	=	1-3	1	=	1-4	1	=	5-8
2	=	4-8	2	=	5-8	2	=	9-12
3	=	9-11	3	=	9-12	3	=	13-14
4	=	12-15	4	=	13-14	4	=	15

[1] WL positions will be assigned to DH bands consistent with demonstration grading criteria. WS positions will similarly be assigned to appropriate DX pay bands.

Within each classification level, employees may be required to perform work of varied difficulty and responsibility corresponding to the range of traditional grades. For example, an employee occupying a DW-2 position may perform work that previously would have been classified at a GS-5 through GS-8 level. By broadening the ranges of difficulty and responsibility for a single classification level, managers are given much greater freedom in assigning work to employees to best meet the organization's needs.

Series Consolidation. Under both the GS and FWS classification systems, work is allocated to occupational categories or series on the basis of similarities in the tasks performed and in the knowledges, skills, and abilities required. Under the PACER SHARE classification system, the allocation of work to specific categories is based on contribution to a common outcome, i.e., product or service. In this system, each category represents a process, defined as the progressive and interdependent

arrangement of events, machines, methods, and/or resources that produce a goods or service. All work contributing to a common goal is allocated to the same process, even though the actual tasks performed or the knowledges, skills, and abilities required, may vary.

Using this process approach, the Directorate of Distribution has identified six distinct processes critical to achieving its mission:

(1) Material Handling (DH-9400)—encompasses all work involved in physically receiving, examining, packing, moving, storing and issuing items;

(2) Facilities and Equipment Maintenance (DH-9401)—includes all work involved in physically maintaining and repairing the material processing equipment and facilities;

(3) Distribution (DW-9200)—includes all work involved in custody and transportation transactions;

(4) Management Operations (DW-9201)—includes all administrative work in providing clerical and general management support;

(5) Engineering (DW-9202)—includes all work involved in providing engineering services; and

(6) Supervisory (DX-9300)—includes all work involved in providing supervision.

Each process may encompass several kinds of work, and within each process, employees may be required to perform any or all of a wide variety of tasks. Exceptions are made for work that requires highly specialized qualifications, such as work requiring formal training or apprenticeship periods, or professional work requiring college preparation. Work of this type is allocated to subprocesses within the broad process categories. A total of nine subprocesses is recognized in the new classification structures, two under Engineering and seven under Facility and Equipment Maintenance:

Engineering Process (DW-9202)

1. Professional Engineering Subprocess
2. Engineering Technical Support Subprocess

Facilities and Equipment Maintenance Process (DH-9401)

1. Electronic Subprocess
2. Electrical Subprocess
3. Metal Working Subprocess
4. Painting Subprocess
5. Carpentry Subprocess
6. Industrial Equipment Repair Subprocess
7. Mobile Equipment Repair Subprocess

Under the PACER SHARE system, work previously allocated to 66 different occupational series (27 FWS and 39 GS series) will be allocated to processes and subprocesses as shown in Table 5.

Table 5. Demonstration Project Processes and Subprocesses

Distribution Process (DW-9200)

GS-301 Contractor Monitor
GS-1152 Production Control
GS-1910 Quality Assurance
GS-2001 General Supply Specialist
GS-2003 Supply Management
GS-2005 Supply Clerk/Technician
GS-2010 Inventory Management
GS-2030 Storage/Distribution Facilities Specialist
GS-2032 Packaging Specialist
GS-2101 Transportation Specialist
GS-2102 Transportation Clerk and Assistant
GS-2130 Traffic Management Specialist
GS-2131 Freight Rate Specialist/Assistant
GS-2132 Travel Assistant/Clerk
GS-2134 Shipment Clerk
GS-2135 Transportation Loss/Damage Claims Examiner
GS-2144 Cargo Scheduler
GS-2150 Terminal Management/ Transportation Services
GS-2151 Dispatcher

Management Operations Process (DW-9201)

GS-260 EEO Specialist [1]
GS-301 Administrative Specialist/Quality Circle Facilitator
GS-301 Human Resources Analyst
GS-301 Industrial Management Relations Specialist
GS-301 Reserve Affairs Coordinator
GS-303 Clerk/Assistant/Technician
GS-305 File Clerk/Assistant
GS-318 Secretary
GS-322 Clerk-Typist
GS-332 Computer Operator
GS-334 Computer Programmer/Analyst
GS-343 Management Analyst
GS-344 Management Clerk/Assistant
GS-345 Program Analyst
GS-356 Data Transcriber
GS-392 Communications Operator
GS-560 Budget Analyst
GS-1001 Graphic Arts
GS-1020 Illustrator
GS-1531 Statistical Clerk/Assistant

Engineering Process (DW-9202)

Professional Engineering Subprocess

GS-801 General Engineer
GS-896 Industrial Engineer
GS-899 Engineering Student Trainee

Engineering Technical Support Subprocess

GS-818 Engineering Draftsman
GS-895 Industrial Engineering Technician

Material Handling Process (DH-9400)

WG-3502 Laboring
WG-4602 Blocking and Bracing
WG-4604 Wood Working
WG-5413 Fuel Distribution Systems Operating
WG-5703 Motor Vehicle Operating
WG-5704 Fork Lift Operating
WG-5706 Road Sweeper Operating
WG-5725 Crane Operating
WG-6901 General Equipment Examining
WG-6904 Tool and Parts Attending
WG-6907 Warehouse Working
WG-6910 Material Expediting
WG-6968 Aircraft Freight Loading
WG-7002 Packing
WG-7004 Preservation Packaging

Facilities and Equipment Maintenance Process (DH-9401)

Electronic Subprocess

WG-2606 Electronic Industrial Controls Mechanic
WG-2610 Electronic Integrated Systems Mechanic

Electrical Subprocess

WG-2805 Electrician

Metal Working Subprocess

WG-3414 Machinist
WG-3806 Sheet Metal Mechanic

Painting Subprocess

WG-4102 Painting
WG-4104 Sign Painting

Carpentry Subprocess

WG-4605 Woodcraftsman
WG-4607 Carpentry

Industrial Equipment Repair Subprocess

WG-5352 Industrial Equipment Mechanic

Mobile Equipment Repair Subprocess

WG-5803 Heavy Mobile Equipment Mechanic
WG-5806 Mobile Equipment Servicing

Supervisory Process (DX-9300)

All GS supervisory positions
All FWS supervisory positions (WS)
All PMRS supervisory positions (GM)

The decision to allocate all supervisory and managerial positions to a single process and pay schedule separate from DH and DW reflects a different philosophy than that traditionally recognized under the GS and FWS systems. Under PACER SHARE, a distinction is made between traditional first-line supervisory functions, such as "coaching" employees on day-to-day tasks, and what are seen as true supervisory and managerial functions: long-range planning, resource acquisition, goal integration, organizational simplification, and quality consciousness. According to the PACER SHARE philosophy, the "coaching" function is best performed by knowledgeable "super journeymen" within each process, while true supervisory and managerial functions, such as planning, are the same regardless of organization, people or mission involved, and are therefore best encompassed in a single, distinct process.

The consolidation of all supervisory and managerial positions into a single process will serve not only to maximize the organization's flexibility in assigning

supervisors and managers where needed, but will establish a framework for employees to move into supervision and management as a distinct career field. In addition, by establishing a parallel pay schedule for supervisory and managerial positions, the PACER SHARE system will eliminate much of the pressure on senior level technicians, professionals, and trades personnel to move into supervision as the only avenue of salary advancement.

As a result of series consolidation, nonsupervisory jobs are also greatly expanded and managers are given considerable flexibility in assigning different kinds of work. Coupled with grade consolidation, this aspect of the classification system provides the necessary latitude for the Directorate to respond quickly and effectively to fluctuations in workload.

It should be noted that the actual six processes and nine subprocesses reflected in the PACER SHARE classification structures are based on an existing organization and the current technology available to the Directorate of Distribution to carry out its assigned misison. Should the mission, organizational structure, and/or technology change substantially during the project, a modification of the process and subprocess categories might be warranted, and some of the sub-processes may be eliminated.

Classification Under the PACER SHARE System—Classification Responsibilities. Under the PACER SHARE system, as under the traditional GS and FWS systems, personnel specialists will be responsible for classifying most covered positions. However, a central Compensation Committee consisting of the Deputy Director of Distribution, all Division Chiefs, the Comptroller Project Officer, and a union representative, will be responsible for approving the establishment of positions and actions to fill positions, and for classifying supervisory positions.

Classification Standards. The PACER SHARE system, like traditional GS and FWS systems, requires the application of standards to classify work. However, as the processes and classification levels under the PACER SHARE system are broadly defined, the allocation of work is greatly simplified. Six classification standards (one for each process) incorporating three sets of grading criteria (one for each pay schedule) cover all of the positions under the demonstration project. Each standard contains a summary of the various types of work associated with each process, and all but one (the standard for supervisory and managerial positions) contain descriptions of the responsibilities and duties associated with each classification level. These level descriptions are adapted from existing GS grade definitions (5 U.S.C. 5104) and from FWS classification standards. The grading criteria for each pay schedule are outlined below.

DH Grading Criteria

DH LEVEL 1—(Equates to WG–1 through WG–3 in FWS)

Primarily performs manual work following specific and easily understood oral instructions. Manual tasks include those requiring very heavy physical effort. Instructions concern what to do; methods, material, and equipment to use; and when the work is to be completed. Continually handles objects weighing 10–40 pounds. May lead a work crew in accomplishing assigned tasks. Frequently handles objects weighing over 50 pounds. Operates relatively simple power equipment. Works inside in hot, humid, noisy, dusty or dirty areas or outside in all kinds of weather. Is subject to possibility of cuts, bruises, scrapes and burns.

DH LEVEL 2—(Equates to WG–4 through WG–8 in FWS)

Uses independent judgment to make decisions within a framework of oral and written instructions and accepted, standardized methods, techniques, and procedures to accomplish work of limited complexity. May lead a work crew in accomplishing assigned tasks. Occasionally handles objects weighing over 50 pounds. Works inside in hot, humid, noisy, dusty, or dirty areas or outside in all weather conditions. Subject to possibility of cuts, bruises, scrapes, and burns.

DH LEVEL 3—(Equates to WG–9 through WG–11 in FWS)

Exercises independent judgment in the accepted practices, processes, and procedures to perform moderately complex to complex work assignments.

Frequently handles objects weighing up to 50 pounds and occasionally handles objects weighing over 50 pounds. Frequently works in awkward or cramped positions. May lead a work crew in accomplishing assigned tasks. Works inside in areas that are unusually dirty and noisy and outside, sometimes in bad weather. Is exposed to the possibility of cuts, bruises, scrapes and burns. Experiences considerable discomfort while wearing safety equipment.

DH LEVEL 4—(Equates to WG–12 through WG–15 in FWS)

Masters the skills and knowledges of a single trade to perform a wide variety of tasks. Work may include responsibility for all of a planning or manufacturing process. Utilizes broad experience, originality, and ingenuity. Plans, lays out, modifies and fabricates work ranging from complex to unusually complex. Works to precise tolerances. Assignments include the application of advanced theories of physical science and frequent technological changes. May lead a work crew in accomplishing assigned tasks.

DW Grading Criteria

DW LEVEL 1—(Equates to GS–1 through GS–4 in GS)

Learns and applies standardized, well-established, directly applicable practices and procedures. Learns the organization and structure, operations and programs. Follows oral or written instructions or established procedures in processing routine, repetitive actions for relatively simple to standard, prescribed formats. Understands what is being done and how it must be accomplished. Applies regulations, policies, and procedures for routine actions. May lead other personnel in accomplishing assigned responsibilities.

DW LEVEL 2—(Equates to GS–5 through GS–8 in GS)

Applies regulations, policies, and procedures to accomplish a range of duties concerned with the substance or content of the action. Assignments involve the application of standard, general or specific instructions. Difficulty may range from the requirement to work out specific methods, procedures, steps, and sequences of operation, to the requirement to resolve nonrecurrent problems or to complete projects of limited scope. May lead other personnel in accomplishing assigned responsibilities

DW LEVEL 3—(Equates to GS–9 through GS–12 in GS)

Applies regulations, policies, and procedures to accomplish extremely complex duties.

Or: Carries out complete projects. Projects range in difficulty from those requiring the adaptation or application of established methods and procedures, precedents, or instructions to those requiring the development and recommendation of policies, procedures, and guidance documents that will

achieve the objectives of a major Directorate program.

DW LEVEL 4—(Equates to GS–13 through GS–14 in GS)

Serves as a highly knowledgeable specialist in complex subject matter areas. Solves unique or highly controversial problems involving a high level of public criticism or official concern. Assigned programs may range from agencywide to Governmentwide and involve unusually difficult or controversial matters requiring innovation and originality. They may be concerned with single or multiple disciplines. Exercises interpersonal and administrative skills sufficient to organize and coordinate thorough, systematic, and professional efforts to meet established or anticipated needs of decisionmakers.

DX Grading Criteria. The classification of supervisory and managerial positions under the demonstration project is based on a modified version of the OPM Executive, Managerial, and Supervisory Grade Evaluation Guide (EMSGEG). This modified version reflects a shift from the traditional practice of basing supervisors' grades in part on the number and grades of employees supervised, and instead emphasizes those factors that characterize the supervisors' worth and importance in the overall organization. The guide thus removes perceived disincentives for supervisors and managers to streamline their organizations through personnel and grade reductions.

In classifying positions according to the guide, points are awarded for each of six classification factors, and a classification level is assigned according to a point-to-level conversion table. The six factors are:

1. Workload of the Organizational Unit—encompasses program, administrative, and/or organizational responsibilities, including the size and/or scope of the program, organizational unit, and/or functions directed;

2. Position Criticality—measures the critical nature of duties as related to the accomplishment of the agency's overall mission;

3. Degree and Scope of Responsibility Delegated—covers the degree and scope of delegated executive, managerial, and/or supervisory authorities and responsibilities that are exercised on a regular and recurring basis;

4. Level and Purpose of Contacts—covers the nature, setting, and purpose of contacts, including advisory, representational, and negotiating responsibilities associated with executive, managerial, and supervisory work;

5. Kind, Degree, and Character of Supervision Exercised—measures the extent to which contingencies affect the complexity and difficulty of carrying out executive, managerial, and supervisory duties and authorities; and

6. Planning Horizon—credits the kinds, difficulty, complexity, and level of abstraction needed to adequately plan for the assigned organizational element and/or portion of the mission/workforce to the extent that it affects the complexity and difficulty of managing the work of the organizational unit.

Based on the total number of points awarded, positions are allocated to one of four DX classification levels. To encourage internal equity in classification and pay decisions, the first three of these levels were constructed to correspond to the top three DW classification levels. A fourth level covers the single GS–15 position of Deputy Director of Distribution.

Employee Mobility Under the PACER SHARE Classification System—Position of Record. Each employee covered under the PACER SHARE project will be assigned to a position description, similiar in format to those currently in use, containing the following: general position information (title; pay plan, process and level; and organizational assignment); a duties and responsibilities section; a personnel system data section; and a section for supervisor and classifier certifications. However, due to the consolidation of grades and series under the PACER SHARE classification system, these descriptions will be much broader in nature than the traditional position descriptions and will provide a range of tasks that might be performed, rather than specifying a limited few. As a result, managers will be able to assign new tasks to employees without revising position descriptions, except when the new assignment requires allocation to a different process or classification level. If a manager wants to assign an employee to a different organization performing work in the same process and at the same level, the manager can simply amend the organizational assignment section of the position description, without actually processing a position change.

Position Changes. Position changes, requiring assignment to new position descriptions, take place whenever an employee is assigned work in a new process or classification level. Three types of position changes are recognized under the PACER SHARE project:

(1) Promotions—defined as movement from one classification level to a classification level offering a greater basic salary potential—may occur within a single process or across processes.

(2) Reassignments—defined as movement from a classification level in one process to a classification level in another process with no greater basic salary potential.

(3) Changes to Lower Levels—defined as movement from one classification level to a classification level offering a lesser basic salary potential—may occur within a single process or across processes.

Competition Requirements. All promotions will require competition under the merit promotion procedures, except in the following cases:

1. Employees who occupied positions in career ladders leading to higher target grades at the time of conversion to the PACER SHARE system will receive equivalent career ladder promotions and/or pay adjustments at the time they would have been due under the traditional system.

2. Employees occupying positions in career ladders leading to higher target classification levels established under the PACER SHARE system may be promoted noncompetitively. It is expected that relatively few career ladders of this type will be established under the PACER SHARE system.

Reassignments and changes to lower levels will not require competition under merit promotion procedures, unless there is movement from a position with no career ladder potential or limited potential to a position with higher career ladder potential.

Qualification Requirements. Under the PACER SHARE system, traditional Handbook X–118, Qualification Standards for Positions Under the General Schedule, and Handbook X–118C, Job Qualification System for Trades and Labor Occupations, qualification standards will be replaced by position-specific qualification requirements developed locally by subject-matter experts and personnel specialists. The specific knowledges, skills, and abilities required; length, kind and quality of experience required; allowable training and education substitutions; and physical requirements will be determined on the basis of the Air Force's detailed job analysis method as applied to the positions to be filed. These qualification requirements will emphasize mission-related proficiency instead of artificial time or level requirements.

To be promoted under the PACER SHARE system, employees will be required to meet all job-specific

qualification requirements. For reassignments and changes to lower level, employees will not be required to meet qualification requirements (other than physical qualifications), except when moving to positions in recognized subprocesses with special training and/or education requirements. This practice parallels the military's approach to retraining based on individual aptitudes and provides management additional flexibility to assign work where and when needed.

Multiple Skills Training/Crediting. While the PACER SHARE classification system is specifically designed to enhance management's flexibility to assign work, this will be largely a function of how much multiple-skills training is provided. The development of a cadre of multi-skilled individuals will benefit both management and the employees. Multi-skilled employees represent a valuable asset in terms of mission accomplishment and productivity potential. Additionally, multiple-skills training makes employees more competitive for promotions. Training may be given formally or as on-the-job training (OJT), and will be distributed fairly and equitably among project employees with requisite skills. Where opportunities for training are limited, employees will be given consideration for training on the basis of seniority, counted from the date of initial appointment into the Directorate of Distribution. Ties will be broken by service computation date.

Standardized training guides will be developed for each skill level. Successful completion of training (classroom and/or OJT) will be defined in terms of mission-related proficiency instead of time or content requirements. Supervisors will certify proficiency which will then be documented in the employee's personnel file.

Merit Promotion Process. Vacancies within the Directorate of Distribution may be filled with outside hires or with current Federal Government employees under the following internal ranking process. Based on qualification requirements developed through the Air Force job analysis procedure, personnel specialists will identify candidates possessing the basic knowledges, skills, and abilities required for each position. These candidates will be requested to submit additional information describing work behaviors that are required by the position, but are not easily identifiable or measurable from personnel records. Personnel staff and managers will develop crediting plans to address these behaviors, and then rate candidates against the plans on the basis of their responses. A list of candidates, ranked according to qualifications, will be provided to the manager of the position to be filled, so that a selection can be made. The list of candidates, or register, will be valid for up to 1 year, with periodic updates to allow for consideration of new employees.

Time-in-Grade Requirements. Time-in-Grade requirements will not apply to promotions under the PACER SHARE system. Candidates for promotion need only demonstrate that they meet position-specific qualification requirements and, when applicable, that they have successfully competed under merit promotion procedures.

Compensation System

Purpose. The proposed demonstration compensation system has been designed to achieve two basic goals: (1) To allow employees a broader range of salary growth without formal promotion procedures, and (2) to support the new classification system in allowing managers more flexibility in the assignment of work to employees. The replacement of narrow pay grades with broader pay bands is intended to provide greater salary potential to many employees, particularly in low level white collar positions where pay inversion has historically motivated migration to FWS positions. The uncertain prospect of promotion for many employees will be replaced by a predictable pay progression system, and the burden on managers and personnel staff of processing promotions will be reduced.

New Pay Schedules. The proposed system will consist of three new pay schedules that will cover all employees in DS. All three have in common the banding together of current Federal pay system grades into broader ranges of pay. The new schedules retain from current Federal pay systems the concept of overlapping ranges of pay, such that a highly tenured employee in a lower band may have a greater rate of basic pay than a new employee in the next higher band.

The distinction between an hourly pay system for trades, crafts, or laboring positions and a salary system for professional, administrative, technical, or clerical positions will be retained for all nonsupervisory employees. The two pay schedules, DH and DW, will cover these two groups, respectively, and pay rates for all supervisory and managerial positions will fall under the DX pay schedule.

Demonstration Hourly (DH) Pay Schedule. The DH pay schedule will apply to all positions classified as Demonstration Hourly. As shown in Table 6, the DH pay schedule consists of four pay levels, encompassing the pay of grades WG–1 through WG–15 of the FWS system. Pay bands vary in range from 29 percent (DH–1) to 42 percent (DH–2), with an average range of 32 percent. Under the proposed system, the DH schedule will be adjusted in accordance with annual Sacramento area wage survey results.

TABLE 6. DEMONSTRATION HOURLY (DH) PAY SCHEDULE

Pay level	Corresponding FWS grades	Min pay ($/hr)	Max pay ($/hr)	Range percent
DH–1	WG–1 to WG–3	7.78	10.07	29
DH–2	WG–4 to WG–8	9.07	12.86	42
DH–3	WG–9 to WG–11	11.49	14.57	27
DH–4	WG–12 to WG–15	12.95	16.82	30

Source: Sacramento area Federal Wage System schedule, April 1986.

Demonstration Salaried (DW) Pay Schedule. The DW pay schedule will apply to all positions classified as Demonstration Salaried. As shown in Table 7, the DW pay schedule consists of four levels, encompassing grades GS–1 through GS–14 of the General Schedule. The proposed pay bands vary in range from 54 percent to 89 percent, with an average range of 75 percent. Under the new system, the DW schedule will be adjusted whenever a comparability increase changes the General Schedule.

TABLE 7.—DEMONSTRATION SALARIED (DW) PAY SCHEDULE

Pay level	Corresponding GS grades	Min. pay ($/year)	Max. pay ($/year)	Range percent
DW–1	GS–1 to GS–4	9,619	17,226	79
DW–2	GS–5 to GS–8	14,822	26,435	78

TABLE 7.—DEMONSTRATION SALARIED (DW) PAY SCHEDULE—Continued

Pay level	Corresponding GS grades	Min. pay ($/year)	Max. pay ($/year)	Range percent
DW-3	GS-9 to GS-12	22,458	42,341	89
DW-4	GS-13 to GS-14	38,727	59,488	54

Source: General Schedule, January 1987.

Demonstration Supervisory Level (DX) Pay Schedule. The DX pay schedule, which overlaps with the DW pay schedule, will apply to all positions that have been classified as supervisory. As shown in Table 8, the DX pay schedule consists of four levels, corresponding to levels DW–2, DW–3, and DW–4 in the DW pay schedule plus a fourth level covering the single GS–15 position in the Directorate of Distribution. The DX–1 level is equivalent to the DW–2 level, and so on. Like the DW schedule, the DX schedule will be adjusted whenever a comparability increase changes the General Schedule.

TABLE 8.—DEMONSTRATION SUPERVISORY (DW) PAY SCHEDULE

Pay level	Corresponding GS grades	Min. pay ($/year)	Max. pay ($/year)	Range percent
DX–1	GS–5 to GS–8	14,822	26,435	78
DX–2	GS–9 to GS–12	22,458	42,341	89
DX–3	GS–13 to GS–14	38,727	59,488	54
DX–4	GS–15	53,830	69,976	30

Source: General Schedule, January 1987.

Pay Progression. Within-grade increases, quality step increases, merit increases under the Performance Management and Recognition System (PMRS), and promotions to those grades subsumed by the pay bands will be replaced by annual pay adjustments. Each employee under the project whose rate of pay falls below the top of the pay band will receive an annual increase to base pay under the system described below.

Mechanics of the Demonstration Pay Progress System. Under the proposed pay progression system, annual pay adjustments will allow employees under the same pay schedule to progress from the bottom of a pay band to the top of the band in the same number of years. For the DH pay schedule, progression through a pay band will take 12 years (twice as long as it now takes to progress through a single grade in the WG system). For the lower levels of the DW and DX pay schedules (GS–1 to GS–12), an employee will move through a pay band in 25 years (approximately 40 percent longer than it now takes to move through a single grade in the General Schedule). Employees in the DW–4/DX–3 pay band (GS–13/14) will move through the band in 16 years. Progression through the DX–4 pay band will take 11 years. These progression times were chosen to approximate average progression through the grade levels of the current pay systems, with promotions taken into account.

There will be two different rates of progression within each pay band of the proposed system, except for the DW–4/DX–3 and DX–4 bands, which will have only one rate of progression. For those bands divided by a transition point, progression through the band will be more rapid for the lower range of the band, and slower for the upper range of the band. This system is intended to retain, in a much simplier form, the concept, found in all current Federal pay systems, of faster pay progression for employees new to a level of work. The dividing point in each pay band between the faster rate of progression and the slower rate is called the "transition point." This point is approximately equal to the arithmetic mean of the band. The computation of the transition point is based on a hypothetical salary distribution plotting the pay progression employees would have experienced under current pay systems in each of the grades that make up a pay band. (The details of the computations are explained in Appendix A.)

Table 9 shows the transition points for each pay band of the DH pay schedule. DH employees will progress from the bottom of the band to the transition point in 6 years, and from the transition point to the top of the band in 6 years.

TABLE 9.—TRANSITION POINTS FOR THE DH PAY BANDS

Pay Band	Min pay ($/hr)	Transition point	Max pay ($/hr)
DH–1	7.78	9.23	10.07
DH–2	9.07	11.28	12.86
DH–3	11.49	13.47	14.57
DH–4	12.95	15.37	16.82

Source: Sacramento area Federal Wage System Schedule, April 1986.

Table 10 shows the transition points for the DW–1 through DW–3 and corresponding DX pay bands. DW and DX employees in these bands will progress from the bottom of the band to the transition point in 12 years, and from the transition point to the top of the band in 13 years.

TABLE 10.—TRANSITION POINTS FOR THE DW & DX PAY BANDS

Pay Band	Min pay ($/year)	Transition point	Max pay ($/year)
DW–1	9,619	13,542	17,226
DX–1 and DW–2	14,822	21,081	26,435
DX–2 and DW–3	22,458	32,186	42,341

Source: General Schedule, January 1987.

Progression through all the pay bands will be accomplished through annual pay adjustments. Each employee under the demonstration will receive, on an annual basis, a percent increase to base pay that will be based on (1) which pay band the employee is in, and (2) for those bands that have a transition point, whether the employee's current pay is above or below the transition point for the band.

The annual pay adjustment factor for the lower range of each pay band is the annual rate of increase to base pay that, compounded over N years (where N=6 for DH and N=12 for DW/DX), will raise an employee's salary from the minimum pay rate for the band to the transition point.

The annual pay adjustment factor for the upper range of each pay band is the annual rate of increase to base pay that, compounded over N years (where N=6 for DH and N=13 for DW/DX), will raise an employee's salary from the transition point to the maximum pay rate for the band.

Table 11 shows the annual pay adjustment rates for the lower and upper ranges of the DH pay bands. Table 12 shows the annual salary adjustment rates for the DW & DX pay schedules. (The computation of the annual pay adjustment factors is explained in Appendix B.)

TABLE 11.—ANNUAL PAY ADJUSTMENT RATES FOR DH PAY SCHEDULE

Pay Band	Lower range (years 1 through 6)	Upper range (years 7 through 12)
DH-1	2.50%	1.46%
DH-2	3.34%	2.21%
DH-3	2.33%	1.32%
DH-4	2.54%	1.51%

TABLE 12.—ANNUAL PAY ADJUSTMENT RATES FOR DW AND DX PAY SCHEDULES

Pay band	Lower range (years 1 through 12)	Upper range (years 13 through 25)
DW-1	2.69%	1.87%
DX-1 and DW-2	2.98%	1.76%
DX-2 and DW-3	3.04%	2.13%
DX-3 and DW-4	2.72%	(1)
DX-4	2.50%	(2)

[1] Single rate—16-year progression.
[2] Single rate—11-year progression.

The Timing of Annual Pay Adjustments. All employees converted into the demonstration system at the time of implementation will receive their first annual pay adjustment in the first pay period of the third fiscal quarter (approximately 6 months) following the date of implementation. Such employees will receive subsequent annual pay adjustments the first pay period following anniversary dates of the first adjustment, as long as they remain in the same pay band. Employees who enter into the project after the implementation date will receive annual pay adjustments the first pay period following anniversary dates of their entry into the project. Employees who receive promotions within the project will receive subsequent annual pay adjustments the first pay period following anniversary dates of their promotions.

Comparability Increases and Prevailing Rate Adjustments. Under the demonstration project, all DW and DX employees will be eligible for full comparability increases. All DH employees will be eligible for the full amount of any increases to local prevailing wage rate schedules.

Promotions. Under the proposed system, employees promoted *within* the project will receive a 10 percent increase to their current pay or the minimum basic pay of the level to which they are promoted, whichever is greater. Employees promoted *into* the demonstration project will have their pay established by GS and FWS pay-setting practices (i.e., two-step increase for GS employees and 4 percent of representative pay for FWS employees).

Changes to Lower Level. Under the proposed system, employees who voluntarily accept a change to a lower level within any pay schedule of the project will retain their current pay or receive the maximum rate for the level, whichever is less. The same will be true for employees who voluntarily accept a change to a lower level upon entry into the demonstration system. Those employees who are assigned to a lower level due to reclassification of the positions they occupy at the time of project implementation will retain their current rate of pay, in accordance with 5 U.S.C. 5363 and 5 CFR Part 536.

Performance Awards, Incentive Awards and Suggestions. Under the proposed demonstration project, no provision will be made for granting monetary awards based on individual performance under 5 U.S.C. chapter 54 or 5 U.S.C. chapter 45. The primary incentive system under the demonstration will be the productivity gainsharing (PGS) system, described in the next section.

However, management will retain the flexibility to grant special awards to individuals or groups. The Compensation Committee will have the power to approve such awards. The Compensation Committee will also be responsible for setting in-hire rates, approving changes to labor standards, approving all supervisory-level classification actions, and developing recommendations to address compensation or gainsharing system issues that arise during the project.

Any money used for awards approved by the Compensation Committee will reduce the pool available for productivity gainsharing bonuses. Conversely, any cost savings accrued by the elimination of current award programs will be shared equally by all DS employees through the PGS system. Suggestions submitted by individual employees that directly affect productivity within DS will no longer be rewarded by cash payments to the individual. Instead, the savings from the suggestion will be distributed Directorate-wide through the PGS program.

Special Rates. The special rate schedule for engineers will be applied to a limited extent under the demonstration project. The range of the DW–2 and DW–3 pay bands will *not* be altered to conform with the special rate ranges. Retaining uniform pay bands for all processes in the DW pay schedule will facilitate noncompetitive reassignment of employees among those processes. However, DS will use the GS–5 and GS–7 rates of the current special rate schedule for engineers as a guide for establishing starting salaries for DW–2 engineers.

Hazard, Environmental, and Shift Pay Differentials. Provisions for granting hazard, environmental, and shift pay differentials, and the procedures for their payment, will remain unchanged under the Demonstration Project.

Productivity Gainsharing System

Purpose. Demonstration project authority under 5 U.S.C. chapter 47 is not required to implement a Productivity Gainsharing (PGS) system. What makes the proposed system unique is the *integration* of a PGS system with broad-based personnel system changes.

The proposed personnel system changes and the anticipated organizational climate/culture changes are designed to free management and employees from those elements in the current system that restrict advances in either quality of worklife or productivity. The changes are designed to create the opportunity for the people in the organization to build the teamwork and develop the knowledge and cooperation that will lead to improved quality and productivity. Once improved quality and increased productivity have occurred, productivity gainsharing is designed to equitably distribute the benefits earned by employees and the organization.

The PGS system is also intended to reinforce the current Quality Circle (QC) program in DS. By allowing project participants to share the cost savings achieved through increased productivity, employees will be provided with a stronger incentive to participate in the QC program. The PGS system will reinforce supervisors and managers for implementing improvements suggested by the QCs and experimenting with more flexible work assignments, statistical process control, and other new managerial approaches that increase productivity and quality.

General Characteristics of the PGS System. The PGS system will be based exclusively on labor costs. According to recent estimates, labor costs account for between 90 and 95 percent of total controllable costs for the Directorate of Distribution. The PGS system will monitor only these costs. Therefore, increases in productivity measured under the PGS system will be based on increases in the efficiency with which personnel dollars are used by the Directorate.

For PGS purposes, productivity will be defined as the ratio of work completed to labor hours expended. An increase in productivity under the PGS system will

mean that the Directorate is using labor hours more efficiently to accomplish its workload.

The PGS system will reward DS employees for cost savings, which can only be realized through decreasing total labor costs. Reducing the overall number of labor hours it takes to perform a workload will produce cost savings only to the extent that total labor costs are reduced. In this way, the PGS system will assure that increases in productivity are not achieved as the result of employing an overall more costly workforce, nor compromising quality which would generate rework in other areas of the Directorate.

PGS cost savings will be based on a comparison of labor costs during the project to what it "would have" cost to perform the same workload during a "baseline" period prior to project implementation. Based on the work performed by the Directorate each quarter, an estimate will be made of what it "would have" cost to perform the same work prior to the project. The difference between actual cost and "would have" cost, within budget constraints, will be the cost savings available for PGS.

Since cost savings will be shared equally between the Air Force Logistics Command and DS employees, 50 percent of the savings realized under the PGS system will be distributed among the employees of DS. The remaining 50 percent will be retained by the Air Force Logistics Command.

All PGS payments to DS employees will be distributed equally on a quarterly basis. The system is intended to reward organizational performance, and all members of the organization will receive equal shares of its benefits. All eligible project employees—hourly, salaried, and supervisory—will receive PGS bonuses of equal dollar amounts.

A major source of anticipated cost savings will be the attrition of employees. Cost savings under the PGS system will be realized only by performing the same work for fewer labor dollars or performing more work for the same labor cost. Unless the workload and funding for the Directorate are increased during the project, the major source of cost savings will be through the more efficient utilization of the existing workforce to absorb the workload of employees who leave through natural attrition processes.

Mechanics of the Productivity Gainsharing System. The model for the Productivity Gainsharing System is the set of formulas that will be used each quarter to determine what PGS cost savings have been realized. The SM-ALC Comptroller will be responsible for overall financial management of the PGS system, including auditing the accuracy of data input to the model and performing all the calculations necessary to determine the amount available for PGS bonus payouts. What follows is a description of the actual measurements and calculations necessary to compute PGS cost savings.

Since military personnel are precluded by law from receiving PGS bonuses, the labor inputs and estimated outputs of the military members assigned to DS will be excluded from all calculations.

Earned Hours, Actual Hours, and Total Cost.

Earned hours are a measure of the output of the Directorate of Distribution, as collected by the Logistics Support Cost Accounting System (HO73). Earned hours are computed on the basis of work standards, which are established for all direct labor activities in DS. Each time a particular workload is completed, the Directorate is credited with a certain number of earned hours according to the standard(s) for that workload.

Actual hours are the number of labor hours that are expended in the completion of a task or transaction. Direct actual hours are the number of hours of direct labor required to complete the workload. Indirect actual hours are the number of hours of indirect (overhead) labor used to support the direct labor involved in the process. Since the PGS system is concerned with overall organizational productivity, all actual hours measurements will include both direct and indirect labor hours.

The total cost for a particular period of time is the actual total civilian labor cost for the period, as reported in the General Ledger, including salary and benefits.

Baseline Measurements. At the end of each fiscal quarter, PGS savings will be calculated based on comparisons of data from the current quarter to corresponding data from a fixed baseline period, fiscal year 1987.

FY 1987 was chosen as the baseline period for two reasons. First, audit procedures to verify the accuracy of cost accounting data that will be used for calculating earned hours were put in place on 1 October 1986, assuring a high degree of validity to data accumulated during FY 1987. Historical data for previous fiscal years, although available, could not be validated. Second, DS was reorganized in 1986 to accommodate the standard Air Force Base Supply System, changing many of the procedures that had previously been used in producing earned hour outputs.

Two baseline measures will be calculated for the PGS model: the baseline productivity index and the baseline hourly rate. The baseline productivity index will be a measure of the efficiency with which labor hours, both direct and indirect, are used to produce earned hours. The baseline productivity index will be the ratio of earned hours to actual hours for the baseline period:

Baseline Productivity Index = Earned hours/Actual hours

The productivity index is always less than 1.0 because the actual hours include overhead cost.

The baseline hourly rate is the average cost per hour of actual labor during the baseline period. Hourly rate will be calculated by dividing the total cost by the total number of actual hours.

Baseline Hourly Rate = Total Cost/Actual Hours

Table 13 shows a hypothetical set of baseline measures and a productivity index of .60. The figures shown are for illustrative purposes, and have no relationship to actual DS data.

Table 13.—Hypothetical Baseline Measures

Earned Hours equals 480,000
Actual Hours equals 800,000
Actual Cost equals $9,600,000
Productivity Index equals .600 (Earned Hours / Actual Hours)
Hourly Rate equals $12.00 (Actual Cost / Actual Hours)

"Would-Have-Cost" Computations. The computation of PGS savings each quarter will begin with a "would-have-cost" calculation, an estimate of what it would have cost to produce the number of earned hours recorded for the current quarter, based on the baseline productivity index and the baseline hourly rate.

Three steps are necessary to compute the would-have-cost estimate. First, the current earned hours are divided by the baseline productivity index to obtain an estimate of how many hours it would have taken to produce the current number of earned hours at the baseline level of productivity. For example:

Earned Hours equals 500,000
Baseline Productivity Index equals .600
Would-have hours equals 500,000 divided by .600 equals 833,333

The second step in computing the would-have-cost is adjusting the baseline hourly rate to account for any comparability increases that have gone into effect since the baseline calculation. Because of this adjustment, estimated PGS savings will not be affected by increased labor costs due to comparability increases. For example,

suppose that a single comparability increase of 3 percent had gone into effect since the baseline period:

Baseline Hourly Rate equals $12.00
Comparability Increase equals 3.0%
Adjusted Baseline Hourly Rate equals $12.00 times 1.03 equals $12.36

The final step in computing the would-have-cost figure is multiplying the would-have hours by the adjusted baseline hourly rate. In the current example:

Would-Have Hours equals 833,333
Adjusted Baseline Hourly Rate equals $12.36
Would-Have-Cost equals 833,333 times $12.36 equals $10,299,996

Computation of PGS Savings. The PGS savings amount will be computed by subtracting the current actual cost from the would-have-cost. For example, if the current actual cost were $9,000,000:

Would-Have-Cost equals $10,299,996
Current Actual Cost equals $9,000,000
PGS Savings equals $10,299,995 minus $9,000,000 equals $1,299,996

Half of the PGS savings amount will go into the PGS pool for distribution to employees, and half of the savings amount will be retained by the Air force Logistics Command.

Performance-Related Losses. If not cost savings are realized during a quarter, no PGS bonuses will be paid. In the extreme case where actual cost exceeds would-have-cost or budget allocation, whichever is lower, PGS losses will be incurred instead of PGS savings. When such losses are incurred, the Compensation Committee will analyze the extent to which they are attributable to employee performance factors, and submit their findings to the PACER SHARE Steering Committee. Those losses that are attributed to employee performance by the Steering Committee will be deducted from cost savings realized in future quarters until the losses are offset (either in the current or following fiscal year).

If, for example, the following situation were to occur for a quarter, a loss rather than a PGS savings would be incurred:

Would-Have-Cost equals $10,000,000
Actual Cost equals $12,000,000
PGS Savings equals $10,000,000 Minus $12,000,000 equals −$2,000,000

In such a situation, the Steering Committee would be responsible for determining how much of the $2,000,000 loss is attributable to employee performance factors. If, for example, the Steering Committee should decide that $1,200,000 of the loss is attributable to employee performance, this amount would be deducted from future PGS savings. Hypothetical data for the subsequent quarter may be used to illustrate this process:

Would-Have-Cost equals $10,000,000
Actual Cost equals $7,800,000
PGS Savings equals $10,000,000 minus $7,800,000 equals $2,200,000

Because of the loss in the previous quarter which was attributed to employee performance, the PGS savings for the current quarter will be adjusted in the following manner:

PGS Savings equals $2,200,000
Performance-Related Loss From Previous Quarter equals $1,200,000
Adjusted PGS Savings equals $2,000,000 minus $1,200,000 equals $1,000,000

In this case, half the adjusted PGS savings, $500,000, will go into the PGS bonus pool for distribution to employees. The remaining $500,000 will be retained by the Air Force Logistics Command.

In order to allow for potential productivity losses during conversion to the demonstration project, any losses incurred during the first 6 months after project implementation will not result in deductions from future PGS savings.

Working Harder vs. Working Smarter. Cost savings and productivity gains can be achieved by one of two methods: working harder or working smarter. Working harder is defined as performing the same work, using the same methods, technology and equipment, with fewer labor hours and no deterioration in quality. This can only be achieved by exceeding the existing industrially engineered work standards, which by design reflect the capability of the average worker. Since the demonstration project promotes greater teamwork and more flexible work assignments, this will help employees to be more effective. At the same time the introduction of monetary incentives is expected to motivate employees to work harder to "beat" the standards.

Cost savings resulting from these efforts will not lead to changes in standards because it is accepted Industrial Engineering (IE) practice that the validity of the standards is not affected by motivational factors, i.e., workers whose efforts are either above or below the established norm. Therefore, cost savings that can be attributed to employees working harder will be rewarded by the PGS system for as long as productivity remains above baseline (fiscal year 1987) levels.

Working smarter is defined as using either improved technology and equipment, or new industrially engineered task methods and procedures to perform the same work with fewer labor hours, without lowering quality. Cost savings resulting from working smarter will be treated differently than savings derived from working harder and will be rewarded only for a limited period of time. At the end of that time period, work standards will be adjusted accordingly.

The length of time employees receive PGS benefits from working smarter is determined by the source of the technological innovation. If the suggestion comes from the demonstration project staff within DS, the benefits will be paid for 1 calendar year following the date of full implementation. If the improvement results from an externally mandated technology or method change, either wholly or in part, benefits for the appropriate portion will be limited to a 6-month period following the date of full implementation.

Quality Index. Quality is an important consideration in the PACER SHARE project, and it will have an impact upon the PGS system. Improvements in quality will reduce the amount of rework necessary, thereby contributing to increases in overall organizational productivity and PGS cost savings.

Increases in productivity will only be rewarded through the PGS system to the extent that they can be achieved without sacrificing quality. To assure this, a Quality Index will be computed on the basis of monthly input from Quality Programs in all areas of DS. As long as the Quality Index remains at or above a certain level determined by management, no adjustment in the PGS savings calculation will be made. If the Quality Index should fall below the predetermined level, a mathematical formula will be used to adjust the PGS savings estimate downward.

Because of the emphasis to be placed on quality under the demonstration project, it is unlikely that any adjustments in the PGS savings estimate will need to be made for degradation in the Quality Index.

Audit Adjustments. Given the volume of data involved in making PGS calculations each quarter, it will not always be possible to completely audit input to the model before payments can be made. Auditing of the PGS model inputs will be a continuous process. If discrepancies are found in the data that were used to make PGS payments for one quarter, adjustments will have to be made in PGS payments in subsequent quarters. These adjustments could have a positive or negative impact on the PGS savings estimate, depending on the nature of the discrepancies. If, for example, the number of earned hours for the first quarter was found to have been underestimated, the cost savings for that

period would have been understated. The difference between the amount of PGS bonuses paid and the amount that should have been paid will be added to the next quarter's payment. If cost savings are overstated in one quarter, downward adjustments to subsequent payments will be made in the next quarter.

DS Budget Ceiling. The PGS model provides a method for determining the fund available for gainsharing bonuses. However, budget constraints may force adjustments to the PGS payout formula. The simplest constraint on PGS payouts is the DS budget, which is fixed on an annual basis and reestimated quarterly. The PGS model is based on the assumption that the would-have-cost estimate each quarter is no greater than the amount budgeted to DS for labor costs. As long as this assumption is true, no adjustment for budget will be necessary in the PGS model. It is anticipated that this will be the case for the duration of the project. If actual cost or would-have-cost exceeds the budgeted amount, however, an adjustment to the PGS model will be made—the difference between actual cost and budgeted amount will place a ceiling on PGS savings. For example:

Would-Have Cost equals $12,000,000
Actual Cost equals $10,000,000
Budgeted Amount equals $11,000,000
PGS Savings equals $11,000,000 minus $10,000,000 equals $1,000,000

Under this scenario, the PGS model would indicate a savings estimate of $12,000,000 −$10,000,000 =$2,000,000. However, since the budgeted amount is less than the would-have-cost, the difference between actual cost and budgeted amount will place a ceiling on PGS savings. The PGS savings will be: $11,000,000 −$10,000,000 =$1,000,000. Ordinarily, half of this amount, $500,000, would go into the PGS pool for distribution to employees and half would be retained by the Air Force Logistics Command.

However, if the increased costs can be identified as an unfunded extra workload generated outside DS, the portion that would have been retained by the Logistics Command will be made available for PGS bonuses. If, in the present example, the extra costs were due to unfunded extra workloads, the entire $1,000,000 savings would go into the PGS pool.

Because DS operates on a fixed annual budget, budgets for each quarter are reestimated during the year based on expenses during previous quarters. If more is spent in the first quarter than was budgeted, budgets for the remaining quarters will be adjusted downward. This process will assure that the PGS system does not overspend in the event that actual cost for a particular quarter is greater than the budgeted amount.

If actual cost for a quarter exceeds the budgeted amount, no PGS bonuses will be paid out for that quarter. The budgeted amount for subsequent quarters will be adjusted downward based on the amount left in the annual budget. Since the budgeted amount for each quarter will place an automatic ceiling on the PGS savings, high productivity in a subsequent quarter will be rewarded with a reduced PGS payout.

PGS Bonus Payouts—Eligibility. Employees newly assigned to the project will be required to work in DS for a period of 90 days before they are eligible to receive PGS bonuses. The period will allow for the initial learning period and the cost of other employees providing on-the-job training to the new employees.

An employee must be in a pay status for the entire quarter to receive a full PGS share. For those employees who do not meet this requirement, there will be a prorated reduction for every hour the employee is in a nonpay status. If an employee leaves the project through promotion, reassignment, retirement, death, etc., PGS payment will be prorated for the time actually spent on the job during the last quarter.

Computing Payouts. Due to the nature of the accounting process at DS, it is not expected that PGS calculations for the quarter being measured will be completed until at least 15 days after the end of the quarter. PGS payments, however, will be processed for each eligible employee no later than two pay periods after the end of the quarter.

DS will furnish the Comptroller with a roster of the employees eligible for PGS and the number of eligible hours for each employee. The total number of eligible hours for the entire DS workforce will be divided into the PGS employee fund to determine a PGS bonus hourly rate. For example:

PGS Savings equals $1,299,996
PGS Employee Fund equals $1,299,996 divided by 2 equals $649,998
Total Eligible Hours equals 1,020,000
PGS Bonus per hour equals $649,998 divided by 1,020,000 equals $0.637
J. Doe's Eligible Hours equals 500
J. Doe's PGS Bonus equals 500 times $0.637 equals $318.50
R. Smith's Eligible Hours equals 200
R. Smith's PGS Bonus equals 200 times $0.637 equals $127.40

Elimination of Individual Annual Performance Ratings

Organizational Productivity Measures. It is proposed that the goal of increasing organizational productivity can be achieved without having to go through the process of annually rating every employee's performance. Since the Directorate of Distribution works with industrially engineered standards, measures of overall organizational productivity are currently available. The availability of organizational productivity measures thus constitutes a "bottom line" and serves as a control over Directorate performance.

The Deming Philosophy. Performance appraisal traditionally serves the purpose of communicating work expectations to the employee and appraising progress toward set goals in order to use those results for personnel decisions such as pay, promotions, training, and remedial action. The same functions can be performed without going through the labor-intensive process of preparing individual performance plans with elements and standards. In fact, productivity expert Dr. W. Edwards Deming believes that individual annual performance appraisal is counterproductive because it "nourishes short-term performance, annihilates long-term planning, builds fear, diminishes teamwork; nourishes rivalry and politics" (Deming, 1984). According to Deming, everyone in the organization should share the same goal; a never-ending dedication to constant improvement, to excellence in every process. This requires teamwork and cooperation at every level, especially in an organization like DS where work units are interdependent. By setting up a pay for individual performance system, the opposite goal would be promoted, i.e., competition. Deming has several suggestions for replacing the annual performance rating:

1. More careful selection and placement of employees. (He observes that there is no sure way to predict ability. Anyone in the wrong job will have trouble and give trouble.)

2. Better training and education after selection.

3. Improved leadership that provides specific guidance, rather than reliance on empty slogans.

4. Counseling and leading employees on a day-to-day basis to promote the team effort for constant improvement of quality.

Statistical Process Control. Instead of individual appraisal methods, Deming proposes the use of statistical process control (SPC), which focuses on indicators of work quality. Quality is defined as the improvement of the average, or mean, value of an output (product or service) and a decrease in the variability of individual outputs. For

example, if it is the function of an organization to make containers, increased quality would require both a general decrease in the average number of mistakes and less variation in the quality of each item produced. Statistical control is said to exist when all special causes, such as defective equipment and untrained operators, have been removed, leaving only the random variation of a stable process that will be predictable in the future. The major tenet of SPC is that productivity can only be attained through better quality. Once appropriate indicators are identified, information will be collected and process charts will be kept on which upper and lower control limits are calculated to specify a range within which predictable variations are expected to occur. Points outside of these ranges generally indicate a problem with the system that only mangement can solve.

The Directorate of Distribution proposes to use SPC throughout the organization and will use the results of the process not only to implement quality improvements but also to identify training needs and problem situations requiring reassignment of employees. Consistent with the Deming philosophy, management will take responsibility for the following:

1. Identify the organization's objectives.
2. Identify system outputs to meet those objectives.
3. Identify the specific system processes by which those outputs (services or products) will be produced.
4. Ensure that every person in the organization knows those objectives and outputs and how they relate to his/her job, and adopts the philosophy of constant improvement, of not accepting current levels of delays, mistakes, errors, defective products or defective workmanship in the processes they perform.
5. Identify and accept responsibility for performance problems/variances due to the system or individual efforts.
6. Focus attention on helping people do a better job at every level; eliminate the barriers to communication; ensure that immediate corrective action is taken on all reports regarding quality defects and problems in product, service, systems, operations, or tools.

DS will implement a training program to help accomplish these goals. Under the new system, management will be more directly responsible for performance problems. Every attempt will be made to match employees with the right jobs. If these attempts (training and reassignment) fail and employee performance does not improve, employees will be released. Personnel office records indicate that no performance-based (chapter 43) actions have been taken in DS for the past 5 years. Since actions based on performance (as well as conduct) may be taken under 5 U.S.C. chapter 75, the proposed waiver of 5 U.S.C. chapter 43 should not prevent removal of employees whose performance is unacceptable.

Performance Appraisal for Employees Leaving Project. Supervisors will provide employees who wish to be considered for jobs outside of the project with written ratings of record when required by the servicing personnel office. Any employees who leave the project following a transfer, reassignment, promotion, etc. will be provided written ratings of record. Section III of the Air Force's current Civilian Performance and Promotion Appraisal Form 860 will be used for this purpose.

Demonstration On-Call Employment Program

Purpose. The Demonstration On-Call (DOC) employment program is a modified version of the traditional on-call employment program, designed to permit management to adjust the size of its workforce quickly in response to workload and budgetary changes. By listening workforce adjustments to employees in the DOC program, management can confine impact to a single segment of the workforce, while protecting the majority of the workforce (full-time permanent employees) from disruption. By simplifying the procedures for workforce reductions, management can make adjustments in a more timely and cost-effective manner.

Characteristics of DOC Employment Program—Career-Conditional Appointments. New employees hired under the DOC program will be given career-conditional appointments under delegated examining agreements or from OPM registers. Current career-conditional and career employees will be excluded from the DOC program, but may serve on on-call schedules consistent with traditional provisions for other-than-full-time career employment.

On-Call Work Schedules. All employees covered by the DOC program will be placed on on-call work schedules. DOC employees will work regularly scheduled tours of duty in a pay status as needed, but will be subject to release and recall with a minimum 3 days notice.

Conversion to Career Status. Although DOC employees will serve on career-conditional appointments, conversion to career appointments after 3 years will not be automatic. Instead, conversion of DOC employees from career-conditional to permanent career status will be dependent on (1) the needs of the Directorate of Distribution and (2) employee seniority, but will not occur until after at least 1 year of DOC service. Seniority will be determined based on the date of the employee's initial appointment into the Directorate of Distribution (initial appointment date of IAD). Career-conditional employees not covered by the DOC program (e.g., employees already serving on full-time or part-time career-conditional appointments at the time of project implementation) will be converted to career status automatically after 3 years of continuous service, but may compete for earlier conversion to career status on the basis of their IAD's.

The DOC employment program will not preclude non-DOC hires. Management will retain the option of making appointments outside of the DOC authority, e.g., for temporary or summer employees or Veterans Readjustment Appointees (VRAs). It is expected that the number of employees covered by the DOC program will not normally exceed 25 percent of the total Directorate of Distribution workforce. Based on historical rates of attrition, this should permit conversion of most DOC employees to career appointments in slightly less than 3 years. However, to accommodate short-term workload increases when long-term forecasts require workforce decreases, the DOC workforce may be temporarily expanded to meet the surge. Under these conditions, conversion to career status may be suspended until the full-time permanent workforce is brought into line with long-term projections. Conversion from on-call to full-time employment will normally occur simultaneously with conversion from career-conditional to career status; exceptions will be made for employees who prefer to maintain on-call work schedules.

Probationary Period. Employees covered by the DOC program will serve the 1-year probationary period required for initial appointment to a competitive position. During this period, management will be responsible for determining employees' conduct and performance and for terminating appointments of employees who fail to demonstrate their qualifications for continued employment. Actions to separate probationary employees for performance or conduct reasons, or for conditions arising before employment,

will be taken according to the provisions for termination in 5 CFR 315, Subpart H.

Detail, Promotion, Reassignment, Reinstatement and Transfer Eligibility. Employees covered by the DOC employment program will be eligible for detail, promotion, reassignment, transfer, and reinstatement like all other career-conditional employees.

Release and Recall of DOC Employees. When budgetary constraints, workload fluctuations, and/or skills imbalances necessitate workforce expansion or reduction, management will first try to confine the required adjustments to DOC employees. Depending on the nature and severity of adjustment required, management may release DOC employees from a pay status to a nonpay status or actually separate DOC employees, recalling and/or reemploying them as conditions warrant.

The process for releasing or separating DOC employees will consist of a simpler, less time-consuming alternative to the traditional reduction-in-force process. Under this alternative, the order of retention will be the same, whether the action taken is a temporary layoff or an actual separation.

For each workforce reduction, management will first determine the processes and levels to be affected. Within those processes and levels, DOC employees will be released or separated on the basis of veteran preference and seniority, i.e., nonpreference eligibles will be released and/or separated prior to preference eligibles, and employees with the least seniority in either category will be released and/or separated prior to those with greater seniority. Seniority will be determined on the basis of the employees' IADs, and will not consider years of service outside of the DOC employment program. Employees separated under DOC procedures may appeal to MSPB.

DOC employees released or separated will not be entitled to severance pay but will be entitled to priority placement over any new hires. The basic period of priority recall or reemployment consideration will be 1 year from the date of placement in a nonpay status or separation. This period may be extended, if the DOC employee applies for an extension, or terminated sooner if the employee declines an offer to return to duty. DOC employees will be recalled and/or re-employed in reverse order of release and/or separation. DOC employees separated due to workforce reductions are also eligible for the DoD Priority Placement Program, Air Force Reemployment Priority List Program, and the Displaced Employee Program, to receive priority consideration for positions in other parts of Air Force and in other Federal agencies.

Only when all DOC employees have been separated and additional workforce reductions are still required, will non-DOC employees be subject to a RIF. These employees will be separated under existing (nondemonstration) RIF procedures, amended to reflect new processes and classification levels under the PACER SHARE classification structures.

Within pay plans, displacement will be based on the new pay band classification hierarchy. When crossing pay plans, the hierarchy will be determined by the basic salary potential of the affected band.

C. Entry Into and Exit From the Project

Prior to project implementation, all positions in the Directorate of Distribution will be reclassified using the newly developed broad-based standards. If application of the new classification standards results in an employee's assignment to a level lower than the one corresponding to his/her current grade, the employee will retain his/her current pay under 5 U.S.C. 5363 and 5 CFR Part 536, but will receive the new level designation. As discussed earlier, there will be three separate pay schedules: DW for demonstration salaried employees, DH for demonstration hourly employees and DX for supervisory level employees. Since work leader (WL) positions will be discontinued at project implementation, employees in the discontinued WL positions will be phased into the appropriate DH schedule with pay retention, as required.

Employees in career ladder positions who are entitled to non-competitive promotions will be converted to a level based on their current grade, not an intervening or target grade. If the intervening or target grade falls within the same level, pay will be adjusted at the time the promotion would have occurred. If the intervening or target grade falls into a higher level, the employee will receive a noncompetitive promotion when eligibility requirements under the old system are met. In both situations the employee must meet the criteria for the work described in the proficiency guide (a standardized training guide that will be developed for each skill level).

These conversion will procedures assure that all employees will be converted into the demonstration project without loss of pay.

New Hires

A majority of the salaried new hires will be recruited at the DW–1 Level (GS–1 to GS–4) and given training to qualify for the higher levels. In some situations the market rate may determine what salary should be offered to recruit new employees. The Compensation Committee will be responsible for approving all advanced in-hire rates. This flexibility of setting pay, within limits, will enable managers to hire the people they need. For example, if management wants to fill a DH–3 Material Handler position with an individual from the private sector earning more than the minimum DH–3 rate, pay at a higher than minimum level can be offered.

Project Termination

Should the project terminate at any time, either before the statutory 5-year period expires, or in case the demonstration provisions are not made permanent, the first decision that has to be made is whether to retain employees hired under the DOC employment program. Depending on the needs of the organization, some or all of these employees may be separated under DOC procedures, or retained as part of the post-demonstration workforce. If retained, DOC employees who have completed 3 years of service will be converted to career appointments, while those with less then 3 years of service will remain on career-conditional appointments. Designation as on-call or full-time will be determined by seniority within processes.

At project termination, all persons on detail from nonproject positions will be returned to their original organizations. All remaining positions will be reclassified in accordance with non-demonstration criteria to determine the traditional system series, pay plan and grade level. Employee placement rights will then be considered, as outlined below.

(1) An employee's new grade level will not be lower than his/her grade at project entry.

(2) If an employee is converted to a grade whose maximum rate falls below his or her current salary, the employee will retain his/her current pay under 5 U.S.C. 5363 and 5 CFR Part 536, but receive the lower grade designation.

(3) If an employee's salary falls betwen two steps, salary will be set at the higher rate, except for employees placed in a PMRS position (who will continue to receive their current rate of pay). The placement authority will be 5 CFR 335.102.

(4) Realignment placement, if necessary, will be based on RIF procedures.

D. Appeals and Grievance Procedures

This project does not waive any existing appeal or grievance procedures. Negotiated grievance procedures will apply for bargaining unit employees and the existing administrative grievance procedures will apply for employees not covered by negotiated procedures. No provisions of this project waive a right or remedy available to an employee under Equal Employment Opportunity (EEO) laws.

E. Project Implementation

Implementation Actions

During the transition period, and prior to project implementation, a number of prepartory actions will be taken, as summarized below:

1. Establish implementation task force including DS managers and union members.
2. Establish DS personnel office.
3. Establish Compensation Committee.
4. Work with control sites to collect baseline data.
5. Develop measurement criteria for statistical process control.
6. Establish new classification standards.
7. Test and validate new supervisory grading criteria.
8. Establish new position descriptions.
9. Complete conversion of all DS employees to pay bands and demonstration process designations.
10. Establish crediting plans for multiple-skills training.
11. Establish a formal suggestion system and review committees for productivity gainsharing program.
12. Conduct dry runs to prepare for conversion of computer support systems.
13. Conduct employee orientation.
14. Provide supervisory/staff training.

Task Force. The first step to be taken to prepare for implementation is the establishment of an implementation task force led by an organizational change expert. The task force, consisting of a representative group of DS managers and union members, will help set the agenda for implementation. The end product of the task force efforts will be operational procedures that specify how the various project interventions are to be applied in practice.

Standards. During the pre-demonstration period the new classification and qualification standards have to be finalized and the new classification standards and supervisory grading criteria have to be pilot-tested and validated. OPM will assist in the validation of the new supervisory grading criteria. Since all project positions will be reclassified, new position descriptions for the demonstration processes have to be developed. Also, procedures for crediting the acquisition of new skills have to be established jointly by the personnel office staff and supervisors.

Project Personnel Office. Since the Directorate of Distribution is currently served by a base-wide Civilian Personnel Office, it will be necessary to establish a separate personnel office staff for the project and train new staff to administer the demonstration personnel system.

Compensation Committee. There will also be a Compensation Committee composed of the Deputy Director of Distribution, all DS division chiefs, the Comptroller Project Officer, and a union representative. The committee will be responsible for developing recommendations to address compensation and PGS issues and for approving all project positions and hiring actions, including advanced in-hire rates, as recommended by the DS personnel office.

Steering Committee. The PACER SHARE Steering Committee consists of the Civilian Personnel Officer of SM-ALC, the Deputy Director of Distribution, the ALC's Deputy Comptroller, the Executive Assistant to the ALC Commander, and the President of AFGE Local 1857. The Steering Committee is responsible for all final policy decisions affecting the DS workforce and issues crossing Directorate lines involving Distribution, Personnel, Accounting, and the unions. The Steering Committee will continue to provide project leadership after PACER SHARE is implemented.

Statistical Process Control. Since individual performance appraisal will be eliminated and replaced by statistical process control, appropriate measurement criteria have to be developed for all critical DS processes. Conversion to statistical process control will continue after project implementation.

PGS Program. The implementation of the productivity gainsharing plan will require extensive preparation for employee participation. The key to the participative system is a formal suggestion system with review committees to process and follow up on suggestions. Existing Quality Circles will be used to initiate the process.

Dry Run. Once all personnel and computer systems have been converted to the demonstration system there will be at least one dry run in order to make the necessary adjustments and fine-tune the system prior to formal startup.

Baseline Data. Another important activity during the transition period is the collection of baseline data for all future project evaluation measures and the selection and establishment of cooperative agreements with all control groups. It is recognized that without the establishment of rigorous baseline measures, no valid pre- and post-intervention comparisons can be carried out to evaluate the effectiveness of the various changes.

Training

The key to smooth transition management will be training. Merely introducing a change program to an organization will not automatically ensure its effectiveness. Without employee commitment to those changes there is not chance of success. Training will be designed to communicate the philosophy that guided the development of this project, i.e., increased employee participation in solving work-related organizational problems. Managers have to adjust to their new roles in a participative environment and focus on overall organizational goals, not just the missions of their own divisions. Employee training will emphasize the need for open participation and the role of "every person a manager."

Training and orientation at the beginning of implementation will include the following elements:

1. A general description of the demonstration project and project philosophy;
2. Conversion procedures into the new system;
3. Explanation of the process approach to job series consolidation and new classification procedures for supervisors and non-supervisors;
4. Pay-banding and pay adjustment processes;
5. New hiring procedures;
6. Explanation of the productivity gainsharing program;
7. Statistical process control methods and basic Deming approach to quality and productivity;
8. Administration and evaluation of the demonstration project;
9. Procedures for converting out of the project.

Special training in statistical process control methods will be made available to all supervisors and, ultimately, all employees who will be involved in the measurement processes. The general project orientation briefings should require a minimum of 4 hours (2 sessions of 2 hours each) for each employee. Supervisory training, which will be more

intensive, should require at least 24 hours per supervisor and will include statistical process control and participative management concepts consistent with the Deming philosophy.

Post-implementation training will be provided for new DS employees and will also focus on additional job skills training for the broader work processes involving all DS employees.

F. Project Duration

This demonstration project will be conducted for a period of 5 years after the date of implementation. If OPM or the Air Force determines that the experiment is creating a substantial hardship, or is not in the best interest of the public, the Federal Government, employees, or eligibles, even though the experiment is being conducted properly, OPM or the Air Force may jointly or individually terminate the project.

IV. Evaluation Plan

A comprehensive and methodologically rigorous evaluation will be carried out by an external contractor to assess the merits of this experiment.

A. Evaluation Phases

Since the proposed demonstration project involves multiple changes in more that one area of personnel management, careful evaluation of all project phases will be necessary. These will include the following:

1. Implementation evaluation;
2. Experimental evaluation; and
3. Summative evaluation.

Implementation Evaluation

Once the control sites have been selected and the evaluation model has been finalized, the monitoring of the implementation phase begins. An evaluation of this phase is necessary to determine that the project is implemented as designed and that the stated processes are stable and operational. Following the project implementation phase, a report will be issued by the external evaluation team detailing all aspects of the implementation and offering suggestions on how to improve implementation. This report will also include an assessment of project training. Any changes made to the design during implementation will be carefully documented and the design revised. The report will be submitted to project officials and OPM.

Experimental Evaluation

The evaluation of the experimental phase will begin as soon as the project is determined to be operational and stable. Data collection initiated prior to implementation will continue on a periodic basis, as outlined in the evaluation model. Reports analyzing the effects of the various interventions will be issued by the external evaluator on at least an annual basis. These reports will be submitted to the Air Force, including the demonstration project site, and OPM.

Summative Evaluation

Upon conclusion of the experimental phase of the project, an overall assessment of the combined effects of the demonstration project interventions will be undertaken. Impacts of specific system changes will be discussed separately and in combination.

Cause-and-effect relationships will be established to the extent possible, using pre- and post- as well as experimental/control group data. The effectiveness of each intervention and the project as a whole in meeting stated objectives will be assessed. Efforts will be made to include an assessment of unanticipated positive, as well as negative, effects. A final project report will be issued by the external evaluator and made available to the Air Force, including the demonstration project site, and OPM.

B. Evaluation Design

Overview and Rationale. The demonstration project is intended to improve productivity, organizational flexibility, and the quality of worklife. These improvements are expected to result from the synergistic effects of five interventions: job series consolidation; pay banding; changed criteria for establishing supervisory grades; productivity gainsharing; and new hiring procedures.

An external consultant has worked with the Directorates of Distribution, Personnel, and Accounting and Finance at the Sacramento Air Logistics Center and with the Office of Personnel Management to design an evaluation plan to measure the effects of the interventions. The evaluation will measure the extent to which productivity, organizational flexibility, and quality of worklife within the Directorate of Distribution are improved during the demonstration. In addition, the demonstration's effects on the quality and timeliness of work will be assessed, because productivity enhancement or cost reduction cannot be allowed to occur at the expense of degradations in quality. Moreover, to the extent that improvements in the quality of worklife increase the identification of the workforce with directorate goals, an impetus to increase quality may be provided.

Four other Air Logistics Centers throughout the country perform functions similar to those of the Sacramento Air Logistics Center and, collectively, will serve as a comparison group. For the measures used to assess the impact of the demonstration project, baseline (pre-demonstration) levels for Sacramento and for (the average of) the four other Air Logistics Centers will be established. During the demonstration, changes at Sacramento will be compared with the average change at the four other Air Logistics Centers. This demonstration-versus-baseline, Sacramento-versus-comparison group framework will help separate effects of the demonstration from changes not related to the demonstration project.

The combined interventions are expected to improve quality of worklife in many ways, for example, by increasing job satisfaction and pay satisfaction. Organizational flexibility should be improved by simplifying the personnel system, increasing the freedom to assign workers where they are needed to meet daily work demands, and allowing greater flexibility in establishing supervisory positions. Changes in quality of worklife and organizational flexibility will be measured using both survey and nonsurvey measures. Data on all measures will be collected before the demonstration and on a regular basis thereafter to assess changes. Changes from the baseline at Sacramento will be compared with the average change across the comparison Air Logistics Centers.

Evaluation Model. Because the intervention will be implemented as a set, the effects of any single intervention cannot be isolated as though it were implemented in the absence of the others. However, each intervention does have expected measurable effects, although they must be taken in context with the other interventions. These measures cover specific costs, outputs, worker and supervisor attitudes, factors such as absenteeism and grievance rates, turnover rates, and the quality of work within the Directorate of Distribution. The five interventions, their expected effects, the measures that will be used to assess those effects, and the data sources for those measures are summarized in the evaluation model presented in Table 14. This model is not considered to be exhaustive at this point and additions and adjustments may be made during the evaluation phase.

TABLE 14.—EVALUATION MODEL

Intervention and expected effects	Measures	Data sources
I. Job series and grade consolidation:		
A. Simplified job classification process	1. Number of classification actions	Personnel records, Personnel Office Productivity Analysis (POPA).
	2. Hours, cost per classification action	POPA.
	3. Classification error rate	Personnel records, POPA.
	4. Number of classification appeals	Personnel records.
	5. Number and grades of personnel staff serving distribution.	Personnel records.
	6. Employee perceptions of classification process	Attitude survey.
B. Improved responsiveness to work/mission requirements through increased flexibility in making assignments to meet workload.	1. Details	Personnel records.
	2. Temporary promotions	Workforce Data Base (WFDB) from Personnel.
	3. Reassignments	WFDB.
	4. Loans	Personnel records.
	5. Perceived flexibility by supervisors	Attitude Survey.
	6. Skill base of workforce	WFDB.
C. Expanded career and training opportunities/ job enrichment.	1. Incidence of multiple-skills training	WFDB.
	2. Intrinsic work satisfaction	Attitude Survey.
	3. Satisfaction with career opportunities	Attitude Survey.
D. Reduced need for promotions	1. Number of promotions	Personnel records, POPA.
	2. Satisfaction with promotions	Attitude Survey.
E. Increased training cost (short term)	1. Formal training cost, hours	Personnel records, POPA.
	2. OJT cost, hours	Personnel records, POPA.
II. Pay-banding:		
A. Increased comparability of pay for GS and WG workers.	1. GS and WG salaries by experience level	WFDB.
	2. Application rates of DS workers for WG jobs	Personnel records.
	3. Crossovers	WFDB.
	4. Blue/white collar equity	Attitude Survey.
B. Increased pay satisfaction	1. Salary increases, bonuses by experience/classification.	WFDB.
	2. Extrinsic reward satisfaction	Attitude Survey.
	3. Pay satisfaction	Attitude Survey.
	4. Perceived equity (internal, external)	Attitude Survey.
C. Possible pay inversion	1. Supervisor vs. nonsupervisor salaries	WFDB.
	2. Salaries for current employees vs. new hires	WFDB
III. Changed supervisory grading criteria:		
A. Reduced disincentive for supervisors to reduce staff.	1. Supervisors' perceptions of grading criteria	Attitude Survey.
	2. Supervisors' willingness to recommend staff reductions.	Attitude Survey.
B. Increased dependence of pay level on job responsibilities.	1. Pay level by responsibility level on new criteria	WFDB, classification audits.
	2. Supervisors' perceptions of pay level determination.	Attitude Survey.
C. Streamlined organizational structure	1. Levels of supervision	WFDB.
	2. Supervisor/subordinate ratios	WFDB.
D. Increased flexibility in assignment of supervisors.	1. Perceptions of management	Attitude Survey.
IV. Demonstration On-Call Program:		
A. Capability to vary size of workforce and retain key skills/personnel.	1. Layoffs by skill	WFDB.
	2. Recalls by skill	WFDB.
	3. Staffing level; ratios of career to noncareer employees.	WFDB.
B. Differences in organizational commitment for career and noncareer employees.	1. Organizational involvement	Attitude Survey.
	2. Turnover intention	Attitude Survey.
	3. Turnover by career category	WFDB.
	4. Internal migration to other directorates by career category.	WFDB.
C. Reduced cost of adjusting workforce	1. Cost of workforce reduction	WFDB, POPA.
	2. Estimated cost of RIF	Personnel records.
V. Gainsharing:		
A. Link bonus pay with organizational performance.	1. Cost savings and gainshares paid (dollar value)	External cost savings analysis, Accounting Directorate cost savings.
	2. Productivity index: Earned/actual hours	Accounting Directorate data.
	3. Perceived link between organizational performance and bonus pay.	Attitude Survey.

TABLE 14.—EVALUATION MODEL—Continued

Intervention and expected effects	Measures	Data sources
VI. Combination of all interventions:		
A. Improved productivity	1. Production levels and cost savings	External and Accounting Directorate analyses of cost and production.
	2. Supervisors' perceptions of ability to meet workload changes.	Attitude Survey.
	3. Performance during surge periods and exercises	Distribution records.
B. Improved/maintained quality and timeliness	1. Quality and timeliness rates	External analysis of quality/timeliness data from Quality and Management.
	2. QC activities	Quality Circle records.
C. Improved ability to fill vacancies	1. Vacancy rate	Personnel records.
	2. Time to fill	Personnel records.
	3. Time, cost per action	POPA.
	4. Number of applications	Personnel records.
	5. Acceptance rate	Personnel records.
	6. Replacement cost	Personnel records, POPA.
D. Reduced turnover	1. Turnover by organization, skill, pay level, reason	WFDB.
	2. Applications for transfer to outside organizations	Personnel records.
	3. Turnover intention	Attitude Survey.
	4. Exit interviews	Structured Interviews.
E. Improved organizational climate	1. Organizational climate/involvement	Attitude Survey.
	2. Grievances/ULPs	Personnel records.
	3. Organizational influence	Attitude Survey.
	4. Union-management relations	Attitude Survey.
	5. Group functioning/teamwork	Attitude Survey.
	6. AWOL, LWOP, sick leave rates by type	WFDB.
	7. Adverse actions	Personnel records.
F. Increased job satisfaction	1. Job satisfaction	Attitude Survey.
	2. Extrinsic reward satisfaction	Attitude Survey.
	3. Intrinsic reward satisfaction	Attitude Survey.
G. Increased Personnel Office support	1. Employee perceptions	Attitude Survey.
	2. Personnel office productivity	POPA.
H. Improved supervision	1. Satisfaction with supervision	Attitude Survey.

Methods, Measures, and Data Sources. The following is an overview of the methods, measures, and data sources that will be used in the evaluation:

Cost Savings. The cost savings evaluation method will compare labor operating costs at the Sacramento Directorate of Distribution before and during the demonstration with the average costs for Directorates of Distribution at the other four Air Logistics Centers (combined). The chief method of analysis will be multivariate regression. This method will complement the average-cost calculations that will be undetaken by Sacramento to determine the gainsharing pool, and will also be based on production and cost data provided by the Directorates of Distribution and Accounting and Finance. In discussing the proposed cost evaluation analysis, it is useful to contrast the multivariate evaluation approach with the average-cost approach used to determine productivity gainsharing funds.

The average-cost approach provides a timely estimate of labor cost savings of the Directorate of Distribution. Specifically, it decomposes the change in cost from one period to the next into a change in efficiency (the number of actual hours required to accomplish a workload) and a change in wage rate per actual hour. Thus, the method offers a straight-forward means of tracking the trends in cost before and during the demonstration, and yields a readily understood estimate of overall savings in labor cost. The approach applies to Sacramento as well as the other Air Logistics Centers, facilitating overall cost comparisons. It will therefore be possible to determine whether, for instance, costs were falling (or rising) more rapidly at Sacramento than at the other Air Logistics Centers.

There are, however, several potential shortcomings of the average-cost method: no explicit control for the quality of work, no explicit statistical test of whether the estimate of cost savings is significant or merely a random deviation from past cost behavior, and no direct information on the chief sources of cost savings within the organization. The multivariate approach addresses the deficiencies listed above by employing data at the cost center level, i.e., for a branch or section of a branch within a division of the Directorate of Distribution. Such data can be aggregated to obtain a Directorate-wide estimate comparable to that provided by the average cost approach. Like the average cost approach, the multivariate approach relies on available data systems that offer monthly data. The multivariate analysis treats the cost center as the basic unit of observation and regresses its labor costs (cost of actual hours) on a set of explanatory variables. The latter include the cost center's own workload (as reflected by earned hours), the workload of related cost centers that interact with the cost center, and measures of the quality of work. Costs will be adjusted for nominal changes so that the regression shows the relationships between real labor cost, workload, and quality. The adjustment is similar in nature to the part of the average-cost computation that adjusts for the change in the hourly wage rate.

The multivariate cost analysis will estimate cost equations by cost center during the baseline period and during the demonstration period. Statistical

tests will show whether, as the demonstration progresses, the real cost of performing a given level of work at a given level of quality declines significantly.

The inclusion of measures of the quality of work is designed to control for the possibility that an observed decline in cost came at the expense of work quality or timeliness. The analysis prevents such declines from being erroneously attributed to increases in productivity. Further, given that the analysis will be conducted at the cost center level, the results should give direct insight into which cost centers account for most of the overall cost savings. The possibility of additional decomposition by work-load factors will be examined in the cost analysis, and may help pinpoint the sources of savings within cost centers. The cost savings analysis will be expanded periodically (at least annually) to examine changes in nonlabor costs, e.g., the cost of supplies, equipment, services, awards, travel, benefits, and facilities and related support. Finally, because the analysis will be done both for Sacramento cost centers and those of the other Air Logistics Centers, it will be possible to judge whether the other Air Logistics Centers experience a similar pattern of improvements in efficiency in handling their workloads.

Changes in Organizational Flexibility and the Quality of Worklife. The demonstration is designed to increase the flexibility of the Directorates of Distribution and Personnel in defining job duties, making personnel assignments, and providing expanded training that will allow Distribution and Personnel to be more effective in meeting workload requirements and reducing costs. Changes in operating costs at the Directorate of Distribution will be measured using the methods described above. Changes in workload and related costs among the personnel employees serving the Directorate of Distribution will be measured through audits of personnel records and a special assessment instrument currently being developed and tested by the Office of Personnel Management, the Personnel Office Productivity Analysis (POPA). Personnel records and results from the POPA will also be used to provide indicators of flexibility within the Directorate of Distribution, such as personnel details and loans.

In order to track the progress of all demonstration interventions, a diagnostic attitude survey will be used. The survey will be administered prior to project implementation and annually thereafter to DS employees in Sacramento and at the comparison sites. In addition to items unique to PACER SHARE, the survey includes items used by OPM in other demonstration projects and covers a range of quality of worklife issues, such as job satisfaction, pay satisfaction, organizational involvement, motivation, and supervision. Most of the items consist of brief statements followed by a 5-point Likert-type scale indicating level of agreement with the items. Appendix C includes a sampling of the items to be included in the survey.

Changes in the quality of worklife will also be measured using non-survey, or unobtrusive measures derived from information contained in the records and computerized data base maintained by the Directorates of Personnel and Accounting and Finance. Such measures will include job applications to work in DS, applications for transfers from DS, grievances, turnover, absenteeism, and adverse actions, among others. The data base also includes demographics of the DS workforce, the skill base of the workforce, supervisor-subordinate ratios, and layoffs and recalls.

Quality and Timeliness of Work. The quality and timeliness of work will be measured using data provided by the Quality and Management Divisions of the Directorate of Distribution. The analysis will focus on Air Force Logistics Command-directed indicators. This procedure guarantees that comparable measures will be available for all five Air Logistics Centers. The measures cover depot supply functions, such as control of recoverable assets, effectiveness of bench stock operation accuracy of local purchase documents and compliance with quality control, inspection, and administration programs; material processing functions, such as counts of controlled items, effectiveness of processing receipts for storage or issue, accuracy of receving in establishing tailgate dates, accuracy of central material locator records, accuracy of file maintenance, accuracy of stock selection for shipment, accuracy of stocklist change actions, and adequacy of material protection from damage or security compromise; transportation functions, such as effectiveness of packaging for preservation or shipment, compatibility of shipment records, and adequacy of in-checking of cargo and documents; reports of discrepancies by offbase activities; alerts to identify defective assets and movements into or out of suspended asset codes; compliance with monthly issue, shipment, and stock goals, such as processing for shipment within standards, depot supply stock rates, bench stock support, aircraft Non-Mission Capable-Supply (NMCS) rate, denial rate, and returns to maintenance; and inventory accuracy goals, such as percentage of Federal Stock Class reconciliation, inventory research effectiveness and timeliness, and the gross inventory dollar adjustment. The error rates on many of these individual indicators are very small. As a result, and to present a more coherent picture of changes, the types of individual indicators listed in this paragraph will be combined to form six to ten aggregate measure of quality and timeliness. The aggregate measures will provide the input for the assessment of quality and timeliness of work.

Data Collection and Analysis Plan. The data collection instruments/data bases, major areas covered by each instrument/data base, schedule for data collection and source for each instrument/data base are summarized in Table 15.

TABLE 15.—DATA COLLECTION AND ANALYSIS PLAN

Area of Analysis	Instrument/Method/Data Base	Data Collector	Collection Schedule	Sample/Source
Changes in productivity	Cost savings analysis	Directorate of Accounting and Finance.	Baseline; Monthly during demonstration.	Existing Accounting and Finance and Distribution automated data bases on costs and production.
		Directorate of Distribution		Available for Sacramento Air Logistics Center and comparison sites.

TABLE 15.—DATA COLLECTION AND ANALYSIS PLAN—Continued

Area of Analysis	Instrument/Method/Data Base	Data Collector	Collection Schedule	Sample/Source
Organizational flexibility and quality of work-life.	Diagnostic Attitude Survey..	External evaluator, Directorate of Distribution, and union (AFGE) staff.	Baseline; Annually during demonstration.	Distribution employees. Sacramento: large subsample of nonsupervisors in Distribution, most or all supervisors. Comparison sites: 25–33 percent of sample sizes at Sacramento.
	Personnel Office Productivity Analysis (POPA).	Directorate of Personnel.....	Baseline; Quarterly during demonstration.	All Directorate of Personnel employees servicing Distribution. Sacramento. Comparison: Ogden, other Air Logistics Center if it can be arranged.
	Personnel records.....	Directorate of Personnel.....	Baseline; Continuous during demonstration.	Existing automated and manual record systems pertaining to Distribution. Automated records available for Sacramento and comparison sites. Manual record tabulation may be limited to Sacramento and Ogden.
	Workforce Data Base (WFDB).	Directorate of Personnel.....	Baseline; Quarterly during demonstration.	Existing automated Personnel records for civilian employees of Directorate of Distribution, with additional data. Available at Sacramento and comparison sites.
Quality and timeliness of work in Directorate of Distribution.	Quality/timeliness analysis.	Quality and Management Divisions in Directorate of Distribution.	Baseline; Monthly to quarterly during demonstration.	Existing automated Distribution data on work quality and timeliness and authorized audits undertaken by Distribution. Available at Sacramento and comparison sites.

Analyses. Each of the analyses described below will assess changes occurring at the Sacramento Air Logistics Center during the demonstration as compared to the baseline period (i.e., pre-demonstration period), and will compare the extent of such changes with those occurring at the comparison Air Logistics Centers (taken as a group) during the same time period. This analytical framework distinguishes changes that occur uniquely at Sacramento from other systemic changes occurring throughout the Air Force Logistics Command. Following is an overview of the analyses that will be conducted:

Cost Savings. The cost savings analysis will regress the labor cost (i.e., actual hours charged) for individual cost centers on indicators of the Center's workload, including earned hours (derived from production counts), quality/timeliness measures, and other factors. During the demonstration, the equations will be applied on a quarterly basis as a corroborative analysis to the Directorate of Accounting and Finance analysis for determination of gain-sharing. The cost equations will be reestimated annually to help determine the source of cost savings and determine their statistical significance, by comparing the new regression coefficients with those derived in the baseline analysis and by comparing changes at Sacramento with those at the comparison Air Logistics Centers. Given the limited (i.e., monthly) data available and the time required for maturation of the interventions, trends in costs may require more than 1 year before they reach statistical significance. Further decomposition by workload factors (i.e., type of work) within cost centers will be attempted to help identify the sources of any changes in costs. In addition, changes in non-labor costs will be investigated annually.

Organizational Flexibility and Quality of Worklife. The analytical framework applied to the majority of results to assess changes in organizational flexibility and quality of worklife under the demonstration will consist of a multivariate analysis of covariance approach. This framework provides the means to determine the statistical significance of three types of effects: changes in organizational flexibility and quality of worklife within the Directorates of Distribution at the five Air Logistics Centers during the demonstration period; differences between Sacramento and the (collective) comparison sites; and the extent to which changes at Sacramento during the demonstation, as compared to the baseline period, differ from changes at the comparison sites during the demonstration. For nonsurvey measures, the analysis of covariance framework will be applied to the observed rate for most individual measures. For example, it would be applied to the number of job classification actions, number of grievances, monthly rate of absenteeism, rate of turnover, and so forth. Actions or behaviors that occur too infrequently or that cannot be measured routinely will not be evaluated in this framework. In

such cases, tests of the difference in proportions between Sacramento and the comparison Air Logistics Centers or other similar techniques will be applied.

For survey measures, there will be a greater variety of analyses applied. Significance tests of changes in the mean response to key items will be performed using analyses of variance and covariance. In addition, many of the individual items in the attitude survey will be combined into more broadly defined scales, based both on prior analyses of similar items and on the results of factor analyses that will be performed. The broad scales will cover areas such as intrinsic work satisfaction, organizational climate, and adequacy of supervision. Finally, interrelationships among responses on the attitudinal scales will be investigated using multiple regression techniques. Changes over time in these relationships or differences in the relationships found at Sacramento and the comparison sites will be investigated.

Quality and Timeliness of Work. Most individual indicators of quality will be combined into broad indexes, based on information provided by the Quality Division at the Directorate of Distribution. The mean error or total number of errors will then be computed for the index. In some cases, this may involve weighting of the individual indicators comprising the index to reflect their importance. When possible, results for each index will be analyzed using the multivariate analysis of covariance framwork described in the previous section. In instances where the number of observations is too small to permit such analysis, tests for differences in the proportion of errors at Sacramento versus the comparison sites or other similar techniques will be applied. Indicators of quality and timeliness in meeting monthly issue of shipment goals and inventory accuracy goals need not be combined into more broadly defined indexes. In these areas, rates for the individual indicators will be computed and changes in quality/timeliness will be evaluated using the analysis of covariance framework. Changes in quality and timeliness will be formally evaluated on an annual basis.

V. Waivers of Law and Regulation

Waivers of provisions of law and regulation will be required to conduct the demonstration project. Additional waivers may be required because of laws passed or rules and regulations established during the course of the project. Table 16 lists the necessary waivers.

TABLE 16.–Waivers of Law and Regulation [1]

Title 5, United States Code	
Section 3502	Order of retention, [only as it applies to employees under demonstration on-call (DOC) program].
Chapter 43	Performance appraisal [less subchapter II].
Chapter 45	Incentive awards.
Section 5101(1)(B) and (2).	Classification.
Section 5102(a)(4) & (5).	Definition of class or class of positions and grade.
Section 5104	Basis for grading positions, [except for position classification appeals to OPM].
Section 5105(c)	Standards for classifying positions.
Section 5106(a) & (b).	Basis for classifying positions.
Section 5107	Classification of positions.
Section 5110	Review of classification of positions.
Section 5111	Revocation and restoration of authority to classify positions.
Section 5113	Classification records.
Section 5331 thru 5338.	GS pay rates and step increases.
Section 5341(3)	Prevailing rates, policy.
Section 5342	Prevailing rate definitions, application.
Section 5343(a)(4) & (e).	Prevailing rate determinations; wage schedules.
Section 5346(a) & (b).	Job grading system.
Chapter 54	Performance Management and Recognition System.
Section 5595	Severance pay, [only as it applies to DOC employees].
Title 5, Code of Federal Regulations	
Section 2.2	Appointments [only as it applies to DOC employees].
Section 210.102	Definitions.
Section 230.201	Standards and requirements for agency personnel actions.
Section 300, Subpart F.	Time-in-grade restrictions.
Section 315.201(a) & (b).	Service requirement for career tenure.
Part 335	Promotion and internal placement.
Section 340.402	Appropriate use [of on-call employment].

TABLE 16.–Waivers of Law and Regulation [1]—Continued

Section 351.201	Use of Regulations [only as it applies to DOC employees].
Section 351.202	Coverage [only as it applies to DOC employees].
Section 351.203	Reduction in force (RIF) definitions.
Section 351.401	Determining RIF retention standing.
Section 351.402(b)	Competitive area (RIF).
Section 351.403	Competitive level (RIF).
Section 351.404	Retention register for RIF [only as it applies to DOC employees].
Section 351.501	Order of RIF retention [only as it applies to DOC employees].
Section 351.503	Length of service (in RIF) [only as it applies to DOC employees].
Section 351.504	Credit for performance (in RIF).
Section 351.603	Actions subsequent to release from competitive level (in RIF) [only as it applies to DOC employees].
Section 351, Subpart G.	RIF assignment rights.
Section 351, Subpart H.	Notice to employees of RIF [only as it applies to DOC employees].
Section 351.1004	Duration of eligibility (RIF reemployment priority) [only as it applies to DOC employees].
Part 430	Performance Management.
Part 432	Reduction in grade and removal based on unacceptable performance.
Part 511, Subpart B.	Classification Coverage of the General Schedule.
Part 531	Pay under the General Schedule.
Section 532.203	Structure of regular wage schedule (prevailing rate).
Section 532.401	Pay administration, definitions (prevailing rate).
Section 532.403	New appointment (prevailing rate).
Section 532.407	Promotion (prevailing rate).
Section 532.417	Within-grade increases (prevailing rate).
Section 532.601	Job grading system (prevailing rate).
Part 540	Performance Management and Recognition System.

TABLE 16.–Waivers of Law and Regulation [1]—Continued

Part 550 Subpart G..	Severance pay [only as it applies to DOC employees].

[1] Waiver required only to the extent that the project conflicts with pertinent provisions of law and regulation.

In addition, OPM position classification issuances and OPM Handbooks X–118 and X–118C will not be applied to project positions since new standards have been designed specifically for the project.

VI. Costs

The costs associated with the project will be borne by the Air Force and the participating Directorate of Distribution, with funding provided out of normal administrative overhead and training funds. Major costs to date have been for project development, and future costs will be for training, implementation and evaluation. The total cost of the project for the 5-year period is estimated to be $2,987,627 (in fiscal year 1987 dollars). Table 17 summarizes development costs to date and includes estimates of future project costs. Government savings are projected to amortize total project costs in the first 1 to 2 years of the project.

Table 17.—Summary of Demonstration Project Costs

	Amount
Project Development (Jan. 1983–Oct. 1987)	$2,107,861
Implementation [1]	1,358,627
Training [1]	54,000
External Evaluation [1] (FY 1988–FY 1993)	1,575,000
Total Project Cost	5,095,488

[1] Beginning with FY 1988.

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APPENDIX A. PAY BAND TRANSITION POINT COMPUTATIONS

Within all of the DH pay bands and within the DW-1 through DW-3/DX-2 pay bands, there will be two rates of pay progression. Progression through these bands will be more rapid for the lower range of the band and slower for the upper range of the band. The point in the band at which the slower rate of progression will be applicable is called the "transition point." This appendix describes the computation of the transition point for each pay band.

Computation of the transition points for DW and DX pay bands is based on the average rate of pay employees "would have" received under the GS system, in each grade covered by the band, had they remained in the same grade for 25 years. Computation of the transition points for DH pay bands is based on the average rate of pay employees "would have" received under the WG system, in each grade covered by the band, had they remained in the same grade for 12 years.

Under the GS system, an individual takes 18 years to progress from the bottom of a grade (step 1) to the top of the grade (step 10). If an individual were to stay in the same grade for 25 years (the time it will take for a DS employee to progress from the bottom of a pay band to the top of the pay band), that individual would follow the pay progression pattern illustrated in Table A-1.

Table A-1. Twenty-Five Year Pay Progression For an Employee under the GS System.

Year	Pay Rate
0	Step 1
1	Step 2
2	Step 3
3	Step 4
4	Step 4
5	Step 5
6	Step 5
7	Step 6
8	Step 6
9	Step 7
10	Step 7
11	Step 7
12	Step 8
13	Step 8
14	Step 8
15	Step 9
16	Step 9
17	Step 9
18	Step 10
19	Step 10
20	Step 10
21	Step 10
22	Step 10
23	Step 10
24	Step 10
25	Step 10

The first step in computing the transition point for a DW pay band is to compute the 25-year pay progression of an employee in each grade in the band under the current system. For example, the DW-2 pay band consists of the GS grades 5, 6, 7, and 8. To compute the transition point for the DW-2 band, the first step is to compute the pay progression that an employee in each grade covered by the band would experience over 25 years, exclusive of comparability increases. Table A-2 shows the 25-year GS pay progressions for grades 5 through 8, based on General Schedule rates effective January, 1987.

Table A-2. 25-Year Pay Progression for GS Grades 5 through 8

Year	Grade 5	Grade 6	Grade 7	Grade 8
0	14,822	16,521	18,358	20 333
1	15,316	17,072	18,970	21,011
2	15,810	17,623	19,582	21,689
3	16,304	18,174	20,194	22,367
4	16,304	18,174	20,194	22,367
5	16,798	18,725	20,806	23,045
6	16,798	18,725	20,806	23,045
7	17,292	19,276	21,418	23,723
8	17,292	19,276	21,418	23,723
9	17,786	19,827	22,030	24,401
10	17,786	19,827	22,030	24,401
11	17,786	19,827	22,030	24,401
12	18,280	20,378	22,642	25,079
13	18,280	20,378	22,642	25,079
14	18,280	20,378	22,642	25,079
15	18,774	20,929	23,254	25,757
16	18,774	20,929	23,254	25,757
17	18,774	20,929	23,254	25,757
18	19,268	21,480	23,866	26,435
19	19,268	21,480	23,866	26,435
20	19,268	21,480	23,866	26,435
21	19,268	21,480	23,866	26,435
22	19,268	21,480	23,866	26,435
23	19,268	21,480	23,866	26,435
24	19,268	21,480	23,866	26,435
25	19,268	21,480	23,866	26,435

The second step in computing the transition point for the band is to calculate the mean of the 25-year progression for each grade in the band. The 25-year pay progression mean is the average salary an employee would receive over 25 years in the same GS pay band. Table A-3 shows the means for the 25-year progressions of the four grades in the DW-2 pay band.

Table A-3. 25-Year GS Pay Progression Means for Grades 5 through 8

Grade 5	Grade 6	Grade 7	Grade 8
17,845	19,893	22,103	24,482

The final step in computing the transition point is to take the average of the 25-year pay progression means for all the grades in the band. The result of this computation is the transition point for the band. In the current example, the transition point is:

$$\text{transition point} = \frac{17,845 + 19,893 + 2,2103 + 2,4482}{4}$$

$$= \frac{84,323}{4}$$

$$= 21,081$$

Similar calculations are used to compute the transition points for the DW-1 through DW-3/DX-2 pay bands. The DW-4/DX-3 and DX-4 pay bands do not have transition points.

To calculate the transition points for the DH pay bands, the first step is to compute the pay progression for an employee in each WG grade within the pay band over 12 years, the time it will take a DH employee to progress through a pay band. The means of the 12-year progressions, averaged over all of the WG grades in a band, yield the transition point.

APPENDIX B. COMPUTING ANNUAL PAY ADJUSTMENT FACTORS

There will be two different annual pay adjustment factors within each DH pay band and within the DW-1 to DW-3/DX-2 pay bands of the proposed system. Within these pay bands, the annual pay adjustment factor for the lower range of each band will be greater than the factor for the upper range. This appendix describes the steps that were used to compute the annual pay adjustment factors.

Definitions

Three terms are essential to understanding the annual pay adjustment factor computations: t, P_t, and r.

- t = time (measured in years)

- P_t = Pay at time t, where t = 0, 1, 2, 3, 4, ...

  Examples:

  P_0 = pay at year 0 (beginning of pay progression)

  P_1 = pay at year 1 (after the year 1 increase)

  P_{12} = pay at the end of 12 years (after the year 12 increase)

- r = annual pay adjustment factor

  = each year's pay increase as a proportion of prior year's pay

  = $(P_{t+1} - P_t) / P_t$

Computations

The formula for r, the annual pay adjustment factor, is based on the ratio of the pay rate at the top of the range to the pay rate at the bottom of the range. For the lower range of the DW-1 through DW-3/DX-2 pay bands, r is based on the ratio of the pay rate after the year 12 increase (P_{12}) to the minimum pay for the band (P_o).

The ratio P_{12}/P_o provides a measure of the total progression of pay over the 12-year period during which the same annual pay adjustment factor is in effect. The annual rate of progression, r, is a function of the total progression over the 12-year period. Because of the compounding effect of increasing pay by the same rate each year, r is a logarithmic function of the ratio P_{12}/P_o.

After 12 years of service, a DW employee's pay is at the top of the lower range of the pay band. The employee's P_{12} pay rate may be represented in terms of the starting pay rate, plus 12 compounded increases:

$$P_{12} = P_o (1 + r)^{12}$$

Therefore, the ratio of P_{12} to P_o may be represented as:

$$\frac{P_{12}}{P_o} = \frac{P_o (1 + r)^{12}}{P_o}$$

which simplifies to:

$$\frac{P_{12}}{P_o} = (1 + r)^{12}$$

In order to solve for r, it is necessary to take the natural logarithm (ln) of both sides of the equation:

$$\ln\left(\frac{P_{12}}{P_0}\right) = \ln\left[\ (1 + r)^{12}\ \right]$$

The logarithmic transformation makes it possible to remove the exponent (12). Because of the mathematical rule:

$$\ln\ (x^y) = y\ \ln\ (x)$$

the preceding equation is equivalent to:

$$\ln\left(\frac{P_{12}}{P_0}\right) = 12\ \ln\ (1 + r)$$

Both sides of this equation may be divided by 12 to obtain:

$$\frac{\ln\left(\frac{P_{12}}{P_0}\right)}{12} = \ln\ (1 + r)$$

The definition of a natural logarithm may be used to remove the ln() from the right side of the equation. The definition is:

if $\ln(x) = y$, then $e^y = x$

where e = the constant 2.71828

Therefore:

$$e^{\left(\frac{\ln\left(\frac{P_{12}}{P_0}\right)}{12}\right)} = 1 + r$$

The final computational formula for r is obtained by subtracting 1 from both sides of the equation:

$$r = e^{\left(\frac{\ln\left(\frac{P_{12}}{P_0}\right)}{12}\right)} - 1$$

The preceding explanation is based on the computation of annual pay adjustment factors for the lower range of the DW-1 through DW-3/DX-2 pay bands. The same logic has been applied to the other pay adjustment factors, resulting in the following computational formulas:

For the upper range of the DW-1 through DW-3/DX-2 bands:

$$r = e^{\left(\frac{\ln\left(\frac{P_{25}}{P_{12}}\right)}{13}\right)} - 1$$

For the lower range of the DH bands:

$$r = e^{\left(\frac{\ln\left(\frac{P_6}{P_0}\right)}{6}\right)} - 1$$

For the upper range of the DH bands:

$$r = e^{\left(\frac{\ln\left(\frac{P_{12}}{P_6}\right)}{6}\right)} - 1$$

A Computational Example

For the lower range of the DW-1 pay band, the following values are plugged into the annual pay adjustment factor formula:

P_0 = $9,619

P_{12} = $13,542

To compute r, first compute the ratio:

$$\frac{P_{12}}{P_0} = \frac{13,542}{9,619} = 1.4079$$

Next, take the natural log of that figure:

$$\ln\left(\frac{P_{12}}{P_0}\right) = \ln (1.4079) = .3421$$

Divide the result by 12:

$$\frac{\ln\left(\frac{P_{12}}{P_0}\right)}{12} = \frac{.3421}{12} = .0285$$

Now take the exponent of e raised to the power of the result:

$$e^{\left(\frac{\ln\left(\frac{P_{12}}{P_0}\right)}{12}\right)} = e^{.0285}$$

$$= 2.7818^{.0285} = 1.0289$$

Finally, subtract 1 from the result to obtain r:

$$e^{\left(\frac{\ln\left(\frac{P_{12}}{P_0}\right)}{12}\right)} - 1 = 1.0289 - 1$$

$$= .0289 = r$$

The annual pay adjustment factor for the lower range of the DW-1 pay band is .0289, or 2.89%.

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Appendix C. Sample of Items in Diagnostic Attitude Survey

1. In general I am satisfied with my job.

2. My co-workers encourage each other to give their best effort.

3. What happens to this organization is really important to me.

4. My pay is fair considering what other employers in this area pay.

5. During the next year I will probably look for a new job outside this organization.

6. Management is flexible enough to make changes when necessary.

7. Coordination among work groups is good in this organization.

8. My supervisor encourages subordinates to participate in important decisions.

9. I have to depend on work performed by co-workers in order to get the materials or information I need to do my job.

10. Supervisors here feel their ability to manage is restricted by unnecessary personnel rules and regulations.

Note.—All items have the following response scale: (1) Strongly disagree (2) disagree (3) undecided (4) agree (5) strongly agree.

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federal register

Friday
July 17, 1987

Part V

Environmental Protection Agency

EBDC Pesticides; Initiation of Special Review; Notice

ENVIRONMENTAL PROTECTION AGENCY

[OPP-30000/53; FRL-3234-6]

EBDC Pesticides; Initiation of Special Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of initiation of special review.

SUMMARY: This notice announces that EPA is initiating a Special Review of the ethylene bisdithiocarbamate (EBDC) pesticides. There are five such active ingredients currently registered, mancozeb, maneb, metriam, nabam, an zineb. All registrations of amobam products are now cancelled. A common contaminant, metabolite, and degradation product of these pesticides is ethylenethiourea (ETU), which has been classified as a Group B2 carcinogen based on oncogenic effects in mice and rats. ETU has also caused effects on the thyroid in three species of animals, and has been shown to be teratogenic in animal studies. EPA has determined that exposure to ETU from the registered uses of the EBDC pesticides may pose risks of concern to the Agency, including an oncogenic risk to humans from deitary exposure, and a risk to applicators and mixer/loaders for thyroid and teratogenic effects. Accordingly, the Agency concludes that the EBDC pesticides meet or exceed the criteria for initiation of Special Review set forth in 40 CFR 154.7(a)(2) and 154.7(a)(6), and that a Special Review of these products is appropriate to determine whether additional regulatory actions are required. During the Special Review, EPA will carefully examine the risks and benefits of using the EBDC pesticides as compared to the risks from alternative pesticides, and will determine whether such uses should be cancelled or otherwise regulated. The documents cited as references in Unit VII of this Notice constitute the technical documents in support of this action.

DATE: Comments, evidence to rebut the presumptions in this Notice, and other relevant information must be received on or before October 15, 1987.

ADDRESS: Submit three copies of written comments, bearing the document control number "OPP 30000/53," by mail to:

Information Services Section, Program Management and Support Division (TS-757C), Office of Pesticide Programs, Environmental Protection Agency, 401 M Street SW., Washington, DC 20460

In person, bring comments to: Rm. 236, Crystal Mall Building #2, 1921 Jefferson Davis Highway, Arlington, VA.

Information submitted in any comment concerning this Notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR Part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public docket. Information not marked confidential may be disclosed publicly by EPA without prior notice to the submitter. All non-CBI written comments, will be available for public inspection in Room 236 at the Virginia address given above, from 8 a.m. to 4 p.m. Monday through Friday, excluding legal holidays.

FOR FURTHR INFORMATION CONTACT:

By mail: David Giamporcaro, Reigistration Division (TS-767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460

Office location and telephone number: Rm. 1008, Crystal Mall Building #2, 1921 Jefferson Davis Highway, Arlington, VA (703-557-0481)

For a copy of documents in the public docket, to request information concerning the Special Review, or to request indices to the Special Review public docket, contact Frances Mann (703-557-2805).

SUPPLEMENTARY INFORMATION: This Notice is organized in the following units. Unit I is a description of the Agency's Special Review Process. Unit II sets forth the regulatory history of the EBDC pesticides to date, and describes the basis of the Agency's decision to initiate this Special Review. Unit III provides a use profile and solicits benefits information for the EBDC pesticides. Unit IV sets forth the duty to submit information on adverse effects. Unit V describes the public comment opportunity and the procedures for submission of public comments to the Agency. Unit VI describes the contents of the public docket for this Notice. Unit VII lists the references in support of this action.

I. Background

A. Legal Requirements

A pesticide product may be sole or distributed in the United States only if it is registered or exempt from registration under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended (7 U.S.C. 136 et seq.). Before a product can be registered it must be shown that it can be used without "unreasonable adverse effects on the environment" [FIFRA section 3(c)(5)], that is, without causing "any unreasonable risk to man or the environment, taking into account the economic, social, and environmental costs and beneifits of the use of the pesitcide" [FIFRA section 2(bb)]. The burden of proving that a pesticide meets this standard for registration is, at all times, on the proponent of intial or continued registration. If at any time the Agency determines that a pesticide no longer meets the standard, the Administrator may cancel this registration under section 6 of FIFRA.

The Special Review process provides a mechanism to permit public participation in EPA's deliberations prior to issuance of any Notice of Final Determination describing the regulatory action which the Administrator has selected. The Special Review process is described in 40 CFR Part 154, published in the **Federal Register** of November 27, 1985 (50 FR 49015). During the Special Review process the Agency: (1) Announces and describes the basis for the Agency's finding that use of the pesticide meets one or more of the risk criteria set forth in § 154.7; (2) establishes a public docket; (3) solicits comments from the public regarding whether the use of a pesticide product as currently registered or as it is proposed to be registered satisfies any of the risk criteria for initiation of Special Review set forth at 40 CFR 154.7, whether any risks posed by the use or proposed use of the product that satisfy the risk criteria at 40 CFR 154.7 are unreasonable, taking into account the economic, social, and environmental costs and benefits of the use of the product, and what regualtory action, if any, the Agency should take with respect to the use of the product; and (4) solicits comment from the Secretary of Agriculture and the Scientific Advisory Panel if the Administrator proposes to cancel, deny, or change the classification of the registration of a pesticide product which is the subject of a Special Review, or to hold a hearing under FIFRA section 6(b)(2) on whether to take any of those actions. Issuance of this Notice means that potential adverse effects associated with the use of the EBDC pesticides have been identified and will be examined further to determine their extent and whether, when considered together with the benefits of these pesticides, such risks are unreasonable.

B Preliminary Notification

Registrants of the EBDC pesticides were notified by letter dated March 31, 1987, under 40 CFR 154.21(a), that the Agency was considering initiation of Special Review on these pesticides (Ref. 1).

II Determination to Initiate A Special Review

A. Regualtory Background of the EBDC Pesticides

In 1977, the Agency initiated a Rebuttable Presumption Against Registration, or RPAR process on the EBDC pesticides. (The Agency now uses the term "Special Review" for the process previously called the RPAR process). The RPAR was based on the presumption that the EBDCs and ETU posed three kinds of risk to human health or the environment: oncogenicity, teratogenicity, and acute toxicity to aquatic organisms. Three additional areas of concern were also identified: thyroid toxicity, mutagenicity, and skin sensitization.

In 1982, the Agency concluded the RPAR by issuing a Decision Document reporting the results of its evaluation, and adopting risk reduction measures to preclude unreasonable adverse effects pending development of additional data needed to arrive at a more realistic assessment of the risks. (Ref. 2). The Agency concluded that the potential risk of acute toxicity to aquatic organisms could be reduced through the addition of a label statement warning users of a hazard to fish. Potential risks to applicators from teratogenic and thyroid effects could be adequately reduced by requiring protective clothing. Potential dietary expousre resulting from consumption of EBDC-treated home grown produce was addressed by a label statement highlighting preharvest intervals on labels of home use products.

The Agency also concluded that there were insufficient exposure data to reach any regulatory conclusions regarding the potential risk of oncogenic effects to man. Additional data were required to be submitted to address mutagenic effects. The skin sensitization effect was determined not to meet the criteria for an RPAR.

B. Initiation of Special Review on the EBDC Pesticides

During the course of the Agency's reassessment of the EBDC pesticides, concerns have surfaced about the potential oncogenic risk to consumers from consumption of foods treated with this category of pesticides. The Agency is also concerned about the potential for exposure to ETU to induce thyroid and teratogenic effects among applicators and mixer/loaders who mix and apply these pesticides. Based on consideration of oncogenicity and teratogenicity studies and other studies described below, crop residue and exposure data for applicators and mixer/loaders, EPA has determined that the uses of the EDBC pesticides have met the criteria for initiation of Special Review set forth in 40 CFR 154.7(a)(2); specifically, that these pesticides "[m]ay pose a risk of inducing in humans an oncogenic, heritable genetic, teratogenic, fetotoxic, reproductive effect, or a chronic or delayed toxic effect. . . ." Further, based on the subchronic thyroid and the exposure data described below, the uses of the EBDC pesticides also meet the criteria of 40 CFR 154.7(a)(6)—that the use of these pesticides "[m]ay otherwise pose a risk to humans * * * of sufficient magnitude to merit a determination whether the use of the pesticide product offers offsetting social, economic, and environmental benefits that justify initial or continued registration."

The Agency is initiating this Special Review based on an assessment of the risks from exposure to ETU present in, or formed as a result of metabolic conversion from, pesticide products containing the active ingredient mancozeb. ETU, a potential human carcinogen, teratogen, and thyroid toxicant, is present as a contaminant, degradation product, and metabolite of all the EBDC pesticides. The Agency therefore believes that the level of potential risk from mancozeb products, coupled with the presence of and conversion to ETU in all other EBDC pesticide products, warrants an assessment of the risks and benefits of all EBDC pesticides as a group.

The Agency believes that initiation of a Special Review is appropriate at this time because of the improved exposure data base available. The Agency's estimate of dietary exposure in 1982 was based on limited data pertaining to residues of the EBDC pesticides and ETU. Dietary exposure to the EBDC pesticides was calculated for the United States population based on estimated consumption of dietary residues of ETU in treated crops (Ref. 2). With limited ETU data, assumptions were made about the conversion of the EBDC pesticides to ETU in treated crops. Data on possible residues in drinking water, meat, milk, eggs, animal feed, and processed foods were not available. Uncertainty in the dietary exposure estimates was introduced because of limited data on: (1) ETU residue data on most raw agricultural commodities, (2) conversion of EBDC pesticides to ETU during food processing and (3) animal metabolism data.

Applicator exposures to ETU were estimated for inhalation or dermal absorption, as well as from metabolic conversion of the EBDC pesticides, during mixing/loading and during ground spray or aerial applications. Field data from two studies were used along with reasonable assumptions to estimate daily, seasonal and annual exposures (Ref. 2). The fact that the available studies were not comprehensive and that the Agency did not have adequate dermal penetration data for the EBDC pesticides and ETU added uncertainty to the exposure estimates.

Since 1982, the Agency has received data on the dermal absorption of mancozeb (Ref. 3), on subchronic feeding and inhalation effects of mancozeb, on animal and plant metabolism, on the level of residues of mancozeb and ETU on 21 different raw agricultural commodities, and on ETU levels in processed foods as a result of conversion of the EBDC pesticides (Refs. 4, 5 and 6). The Agency has also obtained better information, through consultation with U.S.D.A. extension service personnel, university plant pathologists, State agricultural advisors and publicly-available agricultural journals such as *Fungicides and Nematicide Trials*, on typical rates and numbers of applications, acres treated, estimates of numbers of hours exposed, and numbers of applicators and mixer/loaders (Refs. 7 and 8). Based on these new data, the Agency believes its present calculations provide more realistic estimates of the dietary and mixer/loader and applicator exposure and risks of ETU from the use of the EBDC pesticides.

The Agency therefore believes that it has ample basis to initiate a Special Review of the EBDC pesticides based on a concern that these pesticides may pose a risk of inducing an oncogenic, teratogenic, or thyroid effect in humans. A discussion of the Agency's concerns about dietary and applicator and mixer/loader exposure appears below.

This Special Review applies to all registrations of the EBDC pesticides, including suspended registrations. Suspended registrations are included because uses which are suspended may be reactivated upon satisfaction by the registrant of the condition(s) which led to the suspension. Nabam products are consequently within the scope of this Special Review as are suspended registrations of any other EBDC pesticides. All field or food crop uses of

nabam pesticide products are currently suspended, with the exception of use in sugar beet flume water (Ref. 9).

As is described more fully below, the exposure and dietary risk assessments are based principally on data obtained on mancozeb. The Agency has required the submission of additional crop residue, processing, animal feeding, and storage stability studies on maneb and metiram. These data are due to be submitted on March 1, 1988, and can be used to refine the overall assessment of dietary risk. Residue and storage stability data are due for zineb on December 31, 1988.

1. *Toxicology Studies.* ETU is a common contaminant, degradation product, and metabolite of the EBDC pesticides. ETU has been classified by the Agency as a Group B2 oncogen (probable human carcinogen). The Agency's classification of ETU was made in accordance with its guidelines for carcinogen risk assessment. 51 FR 33992 (September 26, 1986). These guidelines categorize the evidence on carcinogenicity of chemicals in terms of how likely it is that the chemical is a human carcinogen. Under this scheme, Group B2 categorization is appropriate if there is "sufficient evidence" of the chemical's carcinogenicity from animal studies. "Sufficient evidence" of carcinogenicity is established according to the guidelines, when there is "an increased incidence of malignant tumors or combined malignant and benign tumors: (a) In multiple species or strains; or (b) in multiple experiments (e.g., with different routes of administration or using different dose levels); or (c) to an unusual degree in a single experiment with regard to high incidence, unusual site or type of tumor, or early age at onset. Additional evidence may be provided by data on dose-response effects, as well as information from short-term tests or on chemical structure".

ETU induced an increased incidence of thyroid follicular cell adenomas and adenocarcinomas in Charles River CD rats (Refs. 10, 11, and 12), and hepatomas in two strains of mice (Ref. 13). ETU induced the thyroid tumors in rats after one year or less of treatment and the magnitude of response in both the rat and mouse studies was unusually high. The classification as a Group B2 oncogen is also supported by structure-activity reasoning since several other thyroid inhibitors which are structurally related to ETU (e.g., thiouracil and thiourea) have been found to induce hepatomas and/or thyroid tumors in rodents.

The Agency received several comments in response to its preliminary notification letter which questioned the Agency's reliance on the rat and mouse oncogenicity studies (Ref. 14). Commenters asserted that the Agency had declared the studies invalid for risk assessment purposes in the 1982 Decision Document (Ref. 2), and that the Agency should therefore not now initiate a Special Review of the EBDC pesticides based on these same studies. (Commenters raised several other toxicological issues which are addressed in separate memoranda included in the public docket for this action (Ref. 15)).

While acknowledging in the 1982 Decision Document the existence of some deficiencies in the exposure data and in the chronic data base for the parent EBDC pesticides, the Agency believed then, and continues to believe, that the animal studies constituted sufficient evidence to show that ETU is oncogenic. In fact, the Agency relied on the Innes chronic mouse study on ETU (Ref. 13) to conduct a quantitative risk assessement, and stated its position throughout the 1982 Decision Document that ETU is a strong animal carcinogen and consequently has the potential to induce cancer in humans. The toxicological deficiencies to which the Agency referred in 1982 concerned the usefulness of the studies on the *parent* EBDC compounds for purposes of conducting a quantitative risk assessment, and to such issues as selection of an appropriate risk assessment model and determination of the mechanism of action of the EBDC pesticides and ETU. The uncertainties did not pertain to whether ETU induced tumors in animals.

The Toxicology Branch Peer Review Committee in the Office of Pesticide Programs reexamined the toxicological data base on the EBDC pesticides and ETU in 1986. The Committee expressly addressed the question of the adequacy of the chronic animal studies, and concluded that "each of the studies considered do not meet today's standards for oncogenicity studies but that they were adequate to conclude that ETU is oncogenic to rats and mice due to the magnitude of the response seen." (Ref. 12).

The National Toxicology Program (NTP) has been conducting its own oncogenicity study of ETU. The results are expected in the next year. The Agency will review the NTP study as part of this Special Review if it is available in time to be incorporated.

ETU has been shown to be a teratogen in studies with rats and hamsters (Refs. 16 and 17). In rats, ETU produces a wide variety of anomalies in the central nervous, urogenital, and skeletal systems, as well as in other organs at dosages that do not produce maternal or fetotoxicity (Ref. 18).

ETU has also demonstrated thyroid hyperplasia, decreased uptake of iodine, and decreased serum T_3 and T_4 in subchronic feeding studies in rats (Refs. 18 and 19).

2. *Dietary Exposure and Risk Assessment.* The Agency's concern about the potential dietary risk to consumers of food treated with EBDC pesticides was prompted by the recently completed assessment of dietary exposure and risk for mancozeb. That assessment is set forth in the Guidance for the Reregistration of Pesticide Products Containing Mancozeb as the Active Ingredient (Mancozeb Registration Standard) (Ref. 20).

The Agency's concern is founded on the fact that consumers are exposed to ETU due to residues in or on treated crops or manufactured products or commodities, as well as through *in vivo* conversion of the EBDC pesticides into ETU. The Agency calculated the cumulative risk from exposure to ETU for commodities treated with mancozeb. The calculations are described below.

The mancozeb dietary exposure analysis indicates that the average consumer in the U.S. population receives a dietary exposure of 3.6×10^{-5} mg/kg/day of ETU from conversion of mancozeb residues on crops. This analysis was based on average field trial residues of ETU obtained from studies submitted in response to the October 19, 1984, DCI Notice. The ETU residues for processed products were calculated by taking into account the rate of conversion of mancozeb into ETU during processing of each raw agricultural commodity (Ref. 4). These residues were then reduced by the percent of crop treated with mancozeb, obtained from actual usage data.

The potential dietary risk from exposure to ETU residues was then calculated by multiplying the daily estimated exposure to ETU by the cancer potency factor for ETU, designated as Q_1^* ($0.14\ (mg/kg/day)^{-1}$):

$$\text{Dietary Risk} = \text{Exposure} \times Q_1^*$$
$$= 3.6 \times 10^{-5}\ mg/kg/day \times 0.14\ (mg/kg/day)^{-1}$$
$$= 5 \times 10^{-6}$$

In addition, there is dietary risk from exposure to ETU from conversion of mancozeb *in vivo* after eating food containing mancozeb residues. Metabolism studies in rats show that 50 percent of the mancozeb residues are absorbed through the gastrointestinal tract and that 24 percent are then

metabolically converted to ETU (Ref. 21). Dietary exposure to mancozeb for the U.S. population was estimated to be 9.7×10^{-4} mg/kg/day. In order to determine the dietary exposure to ETU from conversion of mancozeb residues *in vivo*, the mancozeb dietary exposure of 9.7×10^{-4} mg/kg/day is multiplied by 12 percent (50 percent x 24 percent) to yield an exposure of 1.2×10^{-4} mg/kg/day ETU. Multiplying this by the Q_1^* yields a risk of 1.7×10^{-5}.

The total potential dietary risk from exposure to ETU from use of mancozeb on food crops is obtained by adding 5×10^{-6} (which is equal to $.5 \times 10^{-5}$) and 1.7×10^{-5}:

Total Dietary Oncogenic Risk = 2.2×10^{-5}

As noted above, EPA has acceptable residue data on only one of the EBDC pesticides—mancozeb. Residue data on the remaining pesticides have been required through DCI Notices. Nevertheless, given the potential elevated oncogenic risk from consumption of food treated with a single EBDC pesticide, the Agency believes that the criteria for initiation of Special Review under 40 CFR 154.7(a)(2) have been met, and that initiation of a Special Review to examine the dietary risk posed by the presence of ETU as a contaminant, degradation product, and metabolite of all these substances is warranted. Mancozeb accounts for approximately 50 percent of the total poundage of active ingredients of EBDC pesticides used in agriculture (Ref. 22). In addition to agriculture, certain EBDC pesticide products are also registered for industrial food uses, which result in additional dietary exposure—paper and sugar manufacturing processes. Consequently, the total dietary oncogenic risk of ETU estimated above represents only a portion of the overall ETU risk to consumers from all the EBDC pesticides.

3. *Applicator and Mixer/Loader Exposure and Risk.* EPA has also assessed the potential risk to applicators and mixer/loaders from exposure to ETU. Exposure is by both the dermal and inhalational route (Ref. 23).

The Agency examined teratogenic, thyroid, and oncogenic effects. EPA calculated margins of safety (MOS) for the teratogenic and thyroid effects from exposure to mancozeb and ETU (Refs. 20 and 23). In addition to the mancozeb exposure data previously available to the Agency, dermal and inhalation exposure was calculated by using a large current surrogate data base with multiple replicates (Ref. 7).

The Agency's MOS calculations for systemic and teratogenic effects are based on the use of the personal protective equipment specified in the Mancozeb Registration Standard, issued in April 1987 (Ref. 20). During application, a long-sleeve shirt and long pants, or coveralls that cover all parts of the body except head, hands and feet, chemical resistant gloves, shoes, socks, and goggles or a face shield must be worn. A chemical resistant apron is required during mixing and loading. During application from an enclosed cab or an enclosed cockpit, a long-sleeve shirt and long pants may be worn in place of the above protective clothing.

In assessing margins of safety, the Agency assumed 100 percent dermal absorption of ETU for applicators and mixer/loaders, in the absence of data on the rate of dermal absorption. Since the Agency used this assumption, the actual margin of safety may be higher than estimated. In the absence of data on the actual rate of dermal absorption of ETU, however, the Agency is justified in using this assumption. Based on submitted data, the Agency where appropriate applied a one percent rate for dermal absorption of mancozeb, and a 24 percent conversion factor was used to account for metabolic conversion of mancozeb into ETU (Refs. 3 and 23).

Several margins of safety were below the threshold of concern (100). Airblast applicators on apples had margins of safety of 87 for teratogenic effects and 11 for thyroid effects from exposure to ETU. Sprinkler applicators on potatoes have margins of safety for thyroid effects of only 9 from exposure to ETU. Other margins of safety below 100 for thyroid effects from exposure to ETU included ground boom applicators on onions, potatoes, and tomatoes, and potato seed piece applicators (Ref. 23). Hence an applicator risk of concern is presented by the teratogenic and thyroid effects from exposure to ETU.

The Agency has also calculated the oncogenic risk to applicators and mixer/loaders from exposure to ETU from both mancozeb absorbed and metabolized to ETU, and from direct exposure to ETU as a contaminant in the tank mix. The Agency's estimates were based on use of protective clothing as specified in the Mancozeb Registration Standard (Ref. 20). The risk to mixer/loaders was estimated to be in the range of 10^{-6} to 10^{-7} (Ref. 23). The risk to applicators ranged from 10^{-5} for airblast and ground boom application, to 10^{-7} for home users and some types of aerial application (Ref. 23). In view of the small population of applicators and mixer/loaders potentially exposed, and the relative risk range, the Agency does not believe that the oncogenicity criterion for initiation of Special Review has been met. If as a result of comments received or further analysis it is determined that the oncogenic risk is greater than expected at this time, the Agency will incorporate that finding in subsequent regulatory decisions.

III. Use Profile and Benefits Information

A. Use Profile of the EBDC Pesticides

Approximately 18.5 million pounds of EBDC pesticide active ingredients are used annually in the United States on agricultural crops and non-agricultural use sites, based on 1985 data (Ref. 22). (These figures do not include amobam whose registrations are cancelled). In their agricultural uses, the EBDCs are broad spectrum fungicides used to prevent crop damage by fungi and to protect harvested crops from deterioration. Some EBDC pesticide products are also used as industrial biocides in some applications.

Mancozeb is registered on 28 food crops, and is used primarily on apples, grapes, potatoes, sweet corn, tomatoes, and onions. The major use sites for metiram include apples and potatoes. Maneb is registered for control of early and late blights, and is used primarily on apples, potatoes, and tomatoes. The major use sites for zineb include citrus crops, apples, mushrooms, and pears. Nabam is registered for a variety of food, field and food crop, terrestrial non-food uses, and industrial food and non-food uses; all of its uses other than industrial food and industrial non-food uses are currently suspended. Amobam was registered for use as a miticide on citrus, and as a fungicide on several fruits and vegetables.

B. Benefits Information

The Agency is soliciting the information described below to support its assessment of the benefits of the EBDC pesticides, and the economic impact of regulatory action on this group of pesticides. Because of the number of uses for which the EBDC pesticides are registered, the Agency will focus its benefits analysis during the course of this Special Review on the principal uses; i.e., those that account for a high percentage of the total amount of the EBDC pesticides used in the United States, or, in the case of agricultural use, those in which a high percentage of the total crop is treated. The Agency also encourages the submission of benefits data on all other registered agricultural and non-agricultural uses. In the absence of such benefits information for these sites, the Agency may conclude that the benefits are negligible.

The user community, other government agencies, and the interested public are encouraged to submit data to support any benefits claims on all registered uses. Persons who desire to submit benefits information should provide the following kinds of information for each use addressed, along with any other information they believe relevant and desire to include.

1. *Comparative Efficacy Reports.* The Agency is requesting all relevant field test results comparing EBDCs with possible chemical and nonchemical alternatives at recommended or reduced dosage rates and methods of application or implementation. Field tests in order to be useful should preferably not be over 10 years old and include:

a. In the case of agricultural uses, data relating to yield and quality (using current agricultural practices, plot designs, and statistical analyses) that compare the EDBC pesticides with possible alternatives.

b. Growing conditions and other pertinent factors that impact on the results of agricultural use.

c. In the case of industrial use, data relating to the results of use of the EBDC pesticides compared with possible alternatives. Include discussion of pertinent factors that impact on results of the use.

d. Data on nontarget organisms (e.g., predators, parasites, pathogens, and other introduced or endemic species) that are affected by the EBDC pesticides and other pesticides or pest management programs being tested (e.g., integrated pest management data [IPM]).

e. Information on the development of resistance by target pests to the EBDC pesticides or their alternatives.

f. Information on pest spectrum controlled by each pesticide and its alternatives including identification of primary and secondary pests.

g. Data on methods and equipment used for pesticide application.

2. *Pesticide Profile and Economics Information.* The Agency is requesting additional information concerning pesticide use practices, including the following:

a. Data on pesticide or pest management program characteristics that determine the choice of pesticides or other control strategies including their restrictions, limitations, and benefits in agricultural and industrial uses.

b. Pest management programs currently used by growers (or other users) and any other research programs which could modify pest management practices within the next several years.

c. For each use site addressed, typical use patterns of the EBDC pesticides and any alternatives preferably by target pest(s) (as may be appropriate to the particular use site) in terms of acres treated, number of applications per season, formulations, pounds of active ingredient (quantities expressed by State or region are preferable to national totals), and application intervals, and pre-harvest intervals.

d. Actual application rate(s) (individual amount or a range where appropriate) in terms of active ingredient per acre or unit in agricultural or industrial uses.

e. Retail cost of the EBDC pesticides and alternatives in terms of dollars per acre of treatment or similar unit. When grower applied, submit use rates as specified in crop production budgets. Submit similar cost data for industrial uses of these pesticides.

f. Economic profile of current users of the EBDC pesticides and of "downstream" processors potentially affected by price or supply shifts of the crop or manufactured product or commodity in question.

g. Enterprise or crop budget data (costs and returns) for the typical user.

h. Price elasticity of demand (raw commodity and at the retail level) for the crop or manufactured product or commodity in question.

i. Information on crop or manufactured product or commodity exports and imports that has a bearing on the regulatory decision.

IV. Duty To Submit Information on Adverse Effects

Registrants are required by section 6(a)(2) of FIFRA to submit any additional information regarding unreasonable adverse effects on man or the environment which comes to their attention at any time. For further information on this requirement consult the Agency's enforcement policy for section 6(a)(2), published in the **Federal Register** of July 12, 1979 (44 FR 40716). The registrants of EBDC pesticide products must submit immediately published or unpublished information, studies, reports, analyses, or reanalyses regarding adverse effects associated with these pesticides, their impurities, metabolites and degradation products in humans or animal species, and claimed or verified accidents to humans, domestic animals, or wildlife which have not been previously submitted to EPA. These data must be submitted with a cover letter specifically identifying the information as being submitted under section 6(a)(2) of FIFRA. In light of this Special Review and the requirements of FIFRA section 6(a)(2), the registrants must notify EPA of the results of any studies on the EBDC pesticides currently in progress to the extent specified in the section 6(a)(2) enforcement policy cited above. Specifically, information on any adverse toxicological effects of the EBDC pesticides, their impurities, metabolites, and degradation products must be submitted.

V. Public Comment Opportunity

All registrants and applicants for registration have been notified by certified mail of the Special Review being initiated on their EBDC pesticide products. The Agency is providing a 90-day period to comment on this Notice. Comments must be submitted by [insert date 90 days from the date of this publication]. The Agency invites all interested persons to submit further information concerning the risks and benefits associated with the use of the EBDC pesticides, as discussed in this Notice. All interested persons are also invited to comment on whether the use of the EBDC pesticides satisfies any of the risk criteria listed at 40 CFR 154.7, whether risks posed by use of the EBDC pesticides are unreasonable, and what, if any, regulatory action should be taken by the Agency. All comments and information should be submitted in triplicate to the address given in this Notice under ADDRESS to facilitate the work of EPA and others interested in inspecting them. The comments and information should bear the identifying notation OPP–30000/53.

During the comment period, interested members of the public or registrants may request a meeting to discuss factual information available to the Agency, to present any factual information, to respond to presentations by other persons, or to discuss what regulatory actions should be taken regarding the EBDC pesticides. Persons interested in arranging such meetings should contact the person listed in this Notice under "FOR FURTHER INFORMATION CONTACT."

VI. Public Docket

The Agency has established a public docket [OPP–30000/53] for the EBDC pesticides Special Review. This public docket includes or will include: (1) The preliminary notification to the registrants concerning the EBDC Special Review, (2) all written comments and materials (other than claimed confidential business information) submitted to the Agency in response to the preliminary notification; (3) this Notice of Special Review and all documents specifically referenced herein; (4) the Notice of Preliminary Determination and Notice of Final Determination concerning the EBDC Special Review and all documents specifically referenced therein; (5) all

written comments or other materials (other than claimed confidential business information) concerning the EBDC Special Review submitted to the Agency by any person or party outside of government; (6) all documents or other written materials concerning the EBDC Special Review provided by the Agency to any person or party outside of government; (7) a memorandum describing each meeting concerning the EBDC Special Review between Agency personnel and any person or party outside of government; (8) any written response to the Notice of Preliminary Determination by the Secretary of Agriculture or the FIFRA Scientific Advisory Panel; (9) a transcript of all public meetings held by the Scientific Advisory Panel or the Agency concerning the EBDC Special Review; and (10) a current index of all materials in the docket. All such materials will be available for public inspection and copying at Room 236, Crystal Mall Building #2, 1921 Jefferson Davis Highway, Arlington, VA. from 8 a.m. to 4 p.m. Monday through Friday, excluding legal holidays. The Agency will also distribute a compendium of indices for new materials in Special Review dockets by mail, on a monthly basis, to those members of the public who have specifically requested such material. To request inclusion on this mailing list, contact Frances Mann (703–557–2805).

VII. References

The following list of references includes all documents cited in this Notice. These documents are part of the public docket for this Special Review (docket number OPP–30000/53). The Agency will continue to supplement the public docket with additional information as it is received.

The record includes the following information:

1. EPA, Preliminary Notification letter (March 31, 1987).

2. EPA, Decision Document: Final Resolution of Rebuttable Presumption Against Registration (October 14, 1982).

3. Haines, L., Dithane M–45 Percutaneous Absorption in Rats (1980) (unpublished).

4. EPA, Reassessment of Dietary Exposure of Mancozeb and Ethylene thiourea (November 19, 1986).

5. EPA, Mancozeb Task 2: Residue Chemistry Chapter (August 15, 1986).

6. EPA, Mancozeb Task 4: Update of the Registration Standard—Product and Residue Chemistry Chapters (December 15, 1986).

7. EPA, Memorandum, Harold Day to Anne Barton (December 19, 1986); Memorandum, Harold Day to Anne Barton (August 8, 1986).

8. EPA, Use Practices Report on Mancozeb (July 3, 1986).

9. EPA, Guidance for the Reregistration of Pesticide Products Containing Nabam as the Active Ingredient (April 1987).

10. Graham, S. L., et al., "Effects of Prolonged Ethylene Thiourea Ingestion on the Thyroid of the Rat", 13 *Food Cosmetic Toxicology* 493 (1975).

11. Ulland, S. M., et al., "Thyroid Cancer in Rats from Ethylene Thiourea Intake", 49 *Journal of the National Cancer Institute* 583 (1972).

12. EPA, Peer Review of Ethylenethiourea (December 2, 1986).

13. Innes, J. R. M., et al., "Bioassay of Pesticides and Industrial Chemicals for Tumorigenicity in Mice: A Preliminary Note", 42 *Journal of the National Cancer Institute* 1101 (1969).

14. Comments received in response to EPA preliminary notification letter (March 31, 1987).

15. EPA, Toxicology Branch Rebuttal to Company Comments in Response to Grassley-Allen Letter on the EBDC's (May 22, 1987).

16. Khera, K.S., "Ethylenethiourea: Teratogenicity Study in Rats and Rabbits", 7 *Teratology* 243 (1973).

17. Teramoto, S., Shingu, A., Kameda, M., and Saito, "Teratogenicity Studies with Ethylenethiourea in Rats, Mice, and Hamsters", 18 *Congenital Anomalies* 11 (1978).

18. Freudenthal, R. I., Kirchner, G.A., Persing, R.L., and Baron, R.L., "Dietary Subacute Toxicity of Ethylene Thiourea in the Rat", 1 *Journal Environmental Pathology and Toxicology* 147 (1977).

19. Graham, S.L., and Hansen, W.H., "Effects of Short-Term Administration of Ethylenethiourea upon Thyroid Function of the Rat", 7 *Bulletin of Environmental Contamination Toxicology* 19 (1972).

20. EPA, Guidance for the Reregistration of Pesticide Products Containing Mancozeb as the Active Ingredient (April 1987).

21. DiDonato, L.J., Longacre, S.L., Mancozeb pharmacokinetic study in rats (May 21, 1985) (unpublished).

22. EPA, Preliminary Quantitative Usage Analysis for Mancozeb (Feb. 5, 1986), Metiram (Jan. 14, 1986) Maneb (Feb. 28, 1986), Nabam (Dec. 1985), Zineb (May 7, 1985).

23. EPA, Dietary and Worker Exposure and Risk Analyses for Mancozeb and Ethylene Thiourea (ETU), (April 1, 1987).

Dated: July 10, 1987.

John A. Moore,

Assistant Administrator for Pesticides and Toxic Substances.

[FR Doc. 87–16316 Filed 7–15–87; 10:15 am]

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federal register

Friday
July 17, 1987

Part VI

Department of the Interior

Bureau of Land Management

43 CFR Part 3190

Delegation of Authority, Cooperative Agreements, and Contracts for Oil and Gas Inspections by Non-Federal Employees; Final Rulemaking

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[Circular No. 2599; AA-540-07-4111-02]

43 CFR Part 3190

Delegation of Authority, Cooperative Agreements, and Contracts for Oil and Gas Inspections by Non-Federal Employees

AGENCY: Bureau of Land Management, Interior.

ACTION: Final rulemaking.

SUMMARY: This final rulemaking establishes administrative procedures for programs for the inspection of federally supervised oil and gas leases by other than Federal employees. These procedures are designed to implement certain provisions of the Federal Oil and Gas Royalty Management Act of 1982. While Subpart 3190 establishes a framework for all such programs, the specific procedures in Subpart 3191 apply only to delegations of authority to States under section 205 of the Act.

EFFECTIVE DATE: August 17, 1987.

ADDRESS: Any inquiries or suggestions should be sent to: Director (540), Bureau of Land Management, Room 303 Premier Building, 1800 C Street NW., Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Susan Pepperney, (202) 653-2200.

SUPPLEMENTARY INFORMATION: A proposed rulemaking to establish a new Part 3190 in Group 3100, implementing the authority contained in the Federal Oil and Gas Royalty Management Act (30 U.S.C. 1701 *et seq.*) relating to programs for the inspection of federally supervised oil and gas leases by other than Federal employees, was published in the **Federal Register** on October 14, 1986 (51 FR 36565). Comments were invited for a period of 60 days ending December 15, 1986, during which period a total of 21 comments were received, with 9 from business entities, 3 from Indian Tribes, 2 from law firms representing tribes and 1 from a law firm representing a corporation, 2 from State government agencies, 2 from Federal Government agencies, 1 from a business association, and 1 from an individual. Each of the comments has been given careful consideration during the decisionmaking process on this final rulemaking.

Several comments expressed general support or general opposition to the proposed rulemaking. These do not require specific discussion in the **SUPPLEMENTARY INFORMATION** except to state that promulgation of these regulations is necessary for the orderly execution of the Federal Oil and Gas Royalty Management Act. Most of the comments contained discussion of specific sections of the proposed rulemaking and in many instances recommended changes, some of which have been adopted in this final rulemaking. This preamble will discuss only those sections that were the subject of specific comments or were changed.

Section 3190.0-1—Purpose

One comment stated that this and other sections in Subpart 3190 should be rewritten to apply only to States. The proposed rulemaking contained only Subpart 3190, which is a general section addressing delegation of authority, cooperative agreements, and contracts, and Subpart 3191, which covers delegations of authority. Although Subpart 3191 pertains only to delegations, which are applicable only to States, Subpart 3190 is a general introduction not only to Subpart 3191, but also to Subparts 3192 and 3193 on cooperative agreements and contracts, which will be published later. Since cooperative agreements and contracts may be arranged with Indian tribes and States, it would be inappropriate to limit the scope of Subpart 3190 to States. It was also deemed more efficient to have 1 general subpart rather than 3 to reduce duplication. The comment has not been adopted in the final rulemaking.

Another comment suggested that § 3190.0-1 could be interpreted to include as a purpose of Part 3190 provision of procedures for delegations of authority for inspection, enforcement and investigation activities related to surface management and drilling operations as well as verification of oil and gas production. The comment requested that delegations be restricted to the authority to verify production. Although delegations are limited by the terms of this section to "activities related to oil and gas operations in Federal and Indian lands under the provisions of the Federal Oil and Gas Royalty Management Act," which emphasizes oil and gas production and product accountability, this section has been amended in the final rulemaking to make it clear that activities to be carried out under delegations and other transfers are restricted to producing leases.

Section 3190.0-5—Definitions

Several comments addressed the Definitions section of the proposed rulemaking. One suggested that a definition of "enforcement" should be added, because enforcement is one of the functions subject to delegation. This suggestion has been adopted. Another suggested that a definition for "Indian lands" should be added as well, and that the term should include lands whose surface only is owned by Indian Tribes, with minerals reserved to the United States. The definition of Indian lands provided in FOGRMA has been added. Instances where the surface is Indian land with minerals reserved to the United States will be considered on a case-by-case basis.

One comment pointed out that the Osage Tribe of Indians, by virtue of the terms of the Act of June 28, 1906 (34 Stat. 539), are not subject to the proposed rulemaking, and urged that the final rulemaking should state this explicitly. This suggestion has been adopted in the final rulemaking.

One comment suggested that the regulations should include a narrowly drawn definition of "proprietary data". This suggestion has been adopted in the final rulemaking.

Section 3190.1—Proprietary Data

Two comments questioned the provision in § 3190.1(a)(4) that requires Indian Tribes to "waive sovereign immunity by express consent for wrongful disclosure" of proprietary data made available to them pursuant to a cooperative agreement. The comments expressed concern that this provision would be an unlawful infringement on Tribal self-government. The requirement for Tribes to waive sovereign immunity by "express consent for wrongful disclosure" is specified in the Act. In order to benefit from receiving proprietary data, a Tribe should be willing to be held responsible for its wrongful disclosure. A waiver of sovereign immunity limited to the consequences of a specified act or class of acts does not compromise the general sovereign immunity of a Tribe. The comments are not adopted in the final rulemaking.

One comment expressed concern about the possibility that proprietary data may be inadvertently disclosed when provided to non-Federal employees. This possibility is the reason that both the statute and this rulemaking provide that those receiving such data are required to accept liability for wrongful disclosure.

One comment suggested that proprietary data should not be made available unless the recipient demonstrates that the persons who receive it, as well as being directly involved in an investigation under 30 U.S.C. 1732, also "have a need to know." This suggestion has been adopted in the final rulemaking.

The same comment suggested that a new section should be inserted providing that disclosure of confidential data may not be compelled under State law. This comment has been adopted, and a new § 3190.1(b)(2) has been added in the final rulemaking.

Section 3190.2–3—Audits

One comment recommended that this section include a requirement that those conducting audits under delegations, contracts, or cooperative agreements, comply with generally accepted accounting principles, auditing standards, and industry ethical standards. Audits referred to in this section are those of funds paid to States, Tribes, and contractors, not audits of oil and gas lessees. The provision has been edited to make its application more clear, but there is no need to refer to energy industry ethical standards.

Section 3190.2–2—Funding

One comment opposed the provision in § 3190.2–2(b)(2) that the cost incurred by a party to a cooperative agreement may be reimbursable up to 50 percent, while, under § 3190.2–2(b)(1), the costs of a party to which a delegation of authority has been made may be reimbursable up to 100 percent. The comment argued that this would be unfair to tribes, which are eligible only to enter cooperative agreements and are not as well funded as States, which are eligible to be delegated authority and collect the majority of taxes from production on Indian land. This rule is consistent with the 50 percent funding provided for cooperative agreements by the Minerals Management Service (MMS) at 30 CFR 228.105. MMS pointed to the cooperative nature of this activity as support for 50 percent, rather than 100 percent, funding. 49 FR 37336, 37342 (September 21, 1984). More recently, the Secretary of the Interior affirmed the policy reflected in this regulation in his response to the recommendations of the Royalty Management Advisory Committee on funding guidelines. Since the Tribes receive the full financial benefit from their mineral resources, no change is made in the final rulemaking in response to these comments.

Section 3190.3—Sharing of Civil Penalties

Several comments addressed this section of the proposed rulemaking, which would provide that 50 percent of any civil penalties collected should be retained by the United States, with the remaining 50 percent going to the State or Indian Tribe, and that the amount paid to the State or Tribe would be deducted from the amounts appropriated for that entity to conduct inspections. The comments feared that this provision would provide little incentive for Tribes to pursue civil penalties, and argued that penalties collected by Tribal inspections should accrue entirely to Tribes conducting inspections on their own land. One comment urged explicitly that a distinction should be drawn between Federal lands and Indian lands, and that penalties from the latter should be distributed to the beneficial owners of the lands. Another comment feared that the provision for sharing civil penalties will lead to abuses. The distribution of civil penalties provided for in this rulemaking is required by statute. No change is made in the final rulemaking in response to these comments.

Section 3191.1—Petition for Delegation

Two comments urged that Indian Tribes should be eligible for delegations of authority. This suggestion cannot be adopted because section 205 of FOGRMA does not provide for delegation of authority of Tribes.

One comment suggested that this section should provide that delegations of authority are allowed for auditing leases, rather than for enforcing the law, to be consistent with 30 U.S.C. 1735. Another stated that section 205(a) unequivocally limits the Secretary's delegation authority to conducting inspections, audits, and investigations. It is the policy of the Department of the Interior to include enforcement as a delegable activity. It is not specifically prohibited in the Act. Enforcement is an integral part of the inspection process that is the subject of delegations. Requiring enforcement by separate Federal personnel would be wasteful and fragment the program. Further, it would be needlessly burdensome upon the industry to subject operators to inspection by one agency and enforcement by another. The comment is not adopted in the final rulemaking.

Section 3191.1–3—Action Upon Petition

One comment addressed this section, stating that paragraph (c) implies piecemeal regulation that will result in duplication and additional burdens on operators and the oil industry. Actually, this paragraph expressly provides for coordination between delegated and non-delegated functions to avoid unreasonable burdens on lessees. The section is adopted as proposed.

Section 3191.1–4—Public Hearing on Petition

One comment urged that the notice of proposed delegation published in the **Federal Register** contain all the information, terms, and provisions of the proposed delegation in order to allow public and industry scrutiny of the entire matter before such delegations are implemented. This comment is adopted in the final rulemaking, which has been amended to make it clear that the proposed delegations will be published in full in the **Federal Register**, with an opportunity for public comment.

Section 3191.2—Terms of Delegation

One comment stated that this section, particulary paragraphs (f) through (i), would cause inconsistent actions and confusion for States, operators, and the oil and gas industry, if abused. The comment conceded that the intent of the section appears meritorious. The Department of the Interior will monitor all delegations as part of its oversight program, insuring that States do not abuse their delegated authority.

Section 3191.3—Termination and Reinstatement

One comment stated that there is no statutory provision for a State to submit a correction plan for deficiencies in delegation programs, as provided for in § 3131.3–1(d), and no statutory provision for reinstatement of a terminated delegation, as provided for in § 3191.3–2. The comment stated that these provisions could result in delays and extensions that could burden lessees. The Department of the Interior has determined that there should be a mechanism for correction deficiencies in a State program before permanently revoking the delegation of authority. Therefore, a policy decision was made to allow States to correct deficiencies. The requirement in § 3191.3–2(b) that a State be fully capable of resuming the activities carried out under the delegation will reduce movement of the program back and forth between the Federal and State agencies.

Editorial changes have been made as necessary.

The principal authors of this final rulemaking are Susan Pepperney and Stephen Spector of the Energy and Minerals Staff, assisted by the staff of the Division of Legislation and Regulatory Management, Bureau of Land Management.

It is hereby determined that this rulemaking does not constitute a major Federal action significantly affecting the quality of the human environment and that no detailed statement pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)) is required.

The Department of the Interior has determined that this document is not a

major rule under Executive Order 12291 and that it will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

This rulemaking will not have a significant economic effect on the States involved because they will be reimbursed for costs incurred as required by the Federal Oil and Gas Royalty Management Act of 1982.

This final rulemaking will not have a major impact on Federal and Indian lessees. Much of the information required by State regulatory agencies from a lessee or operator is essentially a duplicate of that presently required by the United States. In addition, under the existing system, a lessee or operator is often required to comply with 2 sets of operating regulations and is subject to twice the regulatory presence. The reduction in duplication of effort by State and Federal Governments resulting from this final rulemaking should result in less burdensome conditions for a lessee or operator.

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.* The information collection requirements contained in 43 CFR Part 3190 require fewer than 10 responses annually. Of the 29 States eligible to participate in the delegation of authority or cooperative agreement programs authorized by this part, only 2 States have expressed interest in a delegation of authority and only 1 State has expressed interest in a cooperative agreement. The Bureau of Land Management currently has non-funded cooperative agreements with 3 Indian Tribes and has received indications of interest from 3 additional Tribes. Therefore, it is anticipated that participants in any of the programs authorized by this part will be less than 10 annually.

List of Subjects in 43 CFR Part 3190

Administrative practice and procedure, Government contracts, Indian lands—mineral resources, Intergovernmental relations, Mineral royalties, Oil and gas production, Public lands—mineral resources, Reporting and recordkeeping requirements.

Under the authority of the Mineral Leasing Act of 1920, as amended and supplemented (30 U.S.C. 181 *et seq.*), the Mineral Leasing Act for Acquired Lands of 1947, as amended (30 U.S.C. 351–359), the Act of March 3, 1909, as amended (25 U.S.C. 396), the Act of May 11, 1938, as amended (25 U.S.C. 396a–396q), the Act of February 19, 1891, as amended (25 U.S.C. 397), the Act of May 29, 1924 (25 U.S.C. 398), the Act of March 3, 1927 (25 U.S.C. 398a–398e), the Act of June 30, 1919, as amended (25 U.S.C. 399), and the Federal Oil and Gas Royalty Management Act of 1982 (30 U.S.C. 1701 *et seq.*), Group 3100, Subchapter C, Chapter II of Title 43 of the Code of Federal Regulations is amended by adding a new Part 3190 as set forth below:

May 11, 1987.

J. Steven Griles,

Assistant Secretary of the Interior.

PART 3190—DELEGATION OF AUTHORITY, COOPERATIVE AGREEMENTS AND CONTRACTS FOR OIL AND GAS INSPECTION

Subpart 3190—Delegation of Authority, Cooperative Agreements and Contracts for Oil and Gas Inspections; General

Sec.

Subpart 3191—Delegation of Authority

Authority: The Mineral Leasing Act of 1920, as amended and supplemented (30 U.S.C. 181 *et seq.*), the Mineral Leasing Act for Acquired Lands of 1947, as amended (30 U.S.C. 351–359), the Act of March 3, 1909, as amended (25 U.S.C. 396), the Act of May 11, 1938, as amended (25 U.S.C. 396a–396q), the Act of February 18, 1891, as amended (25 U.S.C. 397), the Act of May 29, 1924 (25 U.S.C. 398), the Act of March 3, 1927 (25 U.S.C. 398a–398e), the Act of June 30, 1919, as amended (25 U.S.C. 399) and the Federal Oil and Gas Royalty Management Act of 1982 (30 U.S.C. 1701 *et seq.*).

Subpart 3190—Delegation of Authority, Cooperative Agreements and Contracts for Oil and Gas Inspections; General

§ 3190.0–1 Purpose.

The purpose of the part is to provide procedures for approval, implementation and administration of delegations of authority, cooperative agreements and contracts for inspection, enforcement and investigative activities related to oil and gas production operations on Federal and Indian lands under the provisions of the Federal Oil and Gas Royalty Management Act of 1982 (30 U.S.C. 1701 *et seq.*).

§ 3190.0–3 Authority.

The Federal Oil and Gas Royalty Management Act of 1982 (30 U.S.C. 1701 *et seq.*).

§ 3190.0–4 Objective.

The objective of this part is to assure that delegations of authority, cooperative agreements and contracts as provided for under the Federal Oil and Gas Royalty Management Act are carried out in accordance with the provisions of the Act and this title.

§ 3190.0–5 Definitions.

As used in this part, the term:

(a) "Inspection" means the examination of oil and gas lease sites, records or motor vehicle documentation by an authorized representative of the Secretary of the Interior to determine if there is compliance with applicable regulations, Onshore Oil and Gas orders, approvals, Notices to Lessees and Operators, approvals, other written orders, the mineral leasing laws, and the Federal Oil and Gas Royalty Management Act.

(b) "Investigation" means any inquiry into any action by or on behalf of a lessee or operator of a Federal or Indian lease, or transporter of oil from such lease.

(c) "Contractor" means any individual, corporation, association, partnership, consortium or joint venture who has contracted to carry out activities under this part.

(d) "Enforcement" means action taken by an authorized representative of the Secretary in order to obtain compliance with applicable regulations, Onshore Oil and Gas Orders, Notices to Lessees and Operators, approvals, other written orders, the mineral leasing laws, and the Federal Oil and Gas Royalty Management Act.

(e) "Indian lands" means any lands or interests in lands of an Indian tribe or an Indian allottee held in trust by the United States or which is subject to Federal restriction against alienation, including mineral resources and mineral estates reserved to an Indian tribe or Indian allottee in the conveyance of a surface or nonmineral estate, except that such term does not include any lands subject to the provisions of

section 3 of the Act of June 28, 1906 (34 Stat. 539).

(f) "Proprietary data" means information obtained from a lessee that constitutes trade secrets, or commercial or financial information that is privileged or confidential, or other information that may be withheld under the Freedom of Information Act (5 U.S.C. 552(b)).

§ 3190.0-7 Cross references.

(a) 25 CFR 211.18; 212.24; 213.34.
(b) 30 CFR Part 229.
(c) 43 CFR Part 3160.

§ 3190.1 Proprietary data.

With regard to any data or information obtained by a State, Indian tribe or individual, whether under a delegation of authority, cooperative agreement or contract, the following applies:

(a) Proprietary data shall be made available to a State or Indian tribe pursuant to a cooperative agreement under the provisions of 30 U.S.C. 1732 if such State or Indian tribe:

(1) Consents in writing to restrict the dissemination of such information to such persons directly involved in an investigation under 30 U.S.C. 1732 who need the information to conduct the investigation;

(2) Agrees in writing to accept liability for wrongful disclosure;

(3) In the case of a State, the State demonstrates that such information is essential to the conduct of an investigation or to litigation under 30 U.S.C. 1734; and

(4) In the case of an Indian tribe, the tribe demonstrates that such information is essential to the conduct of an audit or investigation and waives sovereign immunity by express consent for wrongful disclosure.

(b)(1) Any person or State that obtains proprietary data pursuant to a delegation of authority, cooperative agreement or contract under this part is subject to the same provisions of law with respect to the disclosure of such information as would apply to any officer or employee of the United States.

(2) Disclosure of proprietary data obtained pursuant to a delegation of authority, cooperative agreement, or contract under this part may not be compelled under State law.

§ 3190.2 Recordkeeping, funding and audit.

§ 3190.2-1 Recordkeeping.

(a) Records and accounts relating to activities under delegations of authority, cooperative agreements or contracts shall be identified in the delegation, cooperative agreement or contract.

(b) All records and other materials relating to a delegation of authority, cooperative agreement or contract shall be maintained by the State, Indian Tribe or contractor for a period of 6 years from the date they are generated or such other period as may be specified in the delegation, cooperative agreement or contract.

§ 3190.2-2 Funding.

(a) States and Tribes shall provide adequate funding for administration and execution of activities carried out under a delegation or cooperative agreement.

(b) Reimbursement for allowable costs incurred by a State, Indian tribe or contractor as a result of activities carried out under a delegation of authority, cooperative agreement or contract shall be as negotiated, with the following limitations:

(1) Up to 100 percent for a delegation of authority; or

(2) Up to 50 percent for a cooperative agreement.

(c) Funding shall be subject to the availability of funds.

(d) States, Indian tribes or contractors shall maintain financial records relating to the funds received and expended under a delegation of authority, cooperative agreement or contract as specified in the delegation of authority, cooperative agreement or contract.

(e) Reimbursement shall be at least quarterly and only shall be made upon submission of an invoice or request for reimbursement to the authorized officer.

§ 3190.2-3 Audit.

In maintaining financial records relating to the funds received and expended under a delegation of authority, cooperative agreement, or contract, States, Indian tribes and contractors shall comply with generally accepted accounting principles and audit requirements established by the Department of the Interior and Bureau of Land Management.

§ 3190.3 Sharing of civil penalties.

Fifty percent of any civil penalty collected by the United States as a result of activities carried out by a State under a delegation of authority or a State or Indian tribe under a cooperative agreement shall be payable to that State or Indian tribe upon receipt by the United States. Such amount shall be deducted from compensation due to the State or Indian tribe by the United States under the delegation of authority or cooperative agreement.

Subpart 3191—Delegation of Authority

§ 3191.1 Petition for delegation.

§ 3191.1-1 Petition.

The Governor or other authorized official of any eligible State may request in writing that the Director delegate all or part of his/her authority and responsibility for inspection, enforcement and investigation on oil and gas leases on Federal lands within the State and on Indian lands within the State where the affected Indian tribe or Indian allottee has given written permission for such inspection, enforcement and investigation. Requests by a State for delegation of other activities may be granted by the Director with the approval of the Secretary.

§ 3191.1-2 Eligibility.

Any State with producing oil or gas leases on Federal or Indian lands may request a delegation of authority.

§ 3191.1-3 Action upon petition.

Upon request for a delegation of authority, the Director shall determine if:

(a) The State has proposed an acceptable plan for carrying out the delegated activities and will provide adequate resources to achieve the purposes of 30 U.S.C. 1735. This plan shall, at a minimum:

(1) Identify specific authorities and responsibilities for which the State is requesting a delegation of authority and whether it is applicable to Federal lands only or includes Indian lands;

(2) Provide evidence of written permission of the affected Indian tribe(s) or allottee(s) for such lands;

(3) Include specifics for carrying out the delegated activities;

(4) Indicate the inspector resources for carrying out the delegated activities and documentation of inspector qualifications;

(5) Describe the proposed record keeping for funding purposes;

(6) Detail the frequency and method of payment; and

(7) Include copies of any non-Federal forms that are to be used.

(b) The State has demonstrated that it will effectively and faithfully administer the rules and regulations of the Department of the Interior in accordance with the provisions of 30 U.S.C. 1735.

(c) The delegation will be carried out in coordination with activities retained by the Bureau so that such delegation will not create an unreasonable burden on any lessee.

§ 3191.1–4 Public hearing on petition.

Prior to the granting of any delegation of authority, the notice of proposed delegation shall be published in the **Federal Register**. The **Federal Register** notice shall provide an opportunity for a public hearing in the affected State.

§ 3191.2 Terms of delegation.

(a) Delegations shall be continuing, contingent upon available funding, providing that there is an annual finding by the Director that the provisions of the delegation and the mineral leasing laws are still being carried out and that the requirements of § 3191.1–3 (a), (b) and (c) of this title are still in effect.

(b) Authority delegated to a State under this subpart shall not be redelegated.

(c) The State regulatory authority shall maintain sufficient qualified, personnel to comply with the terms and purpose of the delegation.

(d) Inspection identification cards shall be issued by the authorized officer to all certified State inspectors for the purpose of identifying the bearer as an authorized representative of the Secretary. Identification cards remain the property of the United States.

(e) The delegation shall provide for coordination with designated offices of the Bureau of Land Management, the Minerals Management Service, and, where appropriate, the Bureau of Indian Affairs, Forest Service, and other surface management agencies.

(f) The delegation shall provide for annual program review.

(g) The delegation shall provide for annual budget and program reporting in conjunction with the Federal Budget process.

(h) The Director reserves the right to make inspections on Federal and Indian leases inspected by a State under this subpart for the purpose of evaluating the manner in which the delegation is being carried out.

(i) The Director reserves the right to act independently to carry out his/her responsibilities under the law.

§ 3191.3 Termination and reinstatement.

§ 3191.3–1 Termination.

(a) The delegation may be terminated by mutual written consent at any time.

(b) The Director may revoke a delegation if it is determined that the State has failed to meet the minimum standards for complying with the delegated authority.

(c) Prior to any action to revoke a delegation, the Director shall notify the State in writing of the deficiencies in the program leading to such revocation.

(d) Upon notification of intent to revoke a delegation, the State shall have 30 days to respond with a plan to correct the cited deficiencies. If the Director determines that the plan of correction is acceptable, the Director shall then approve the plan and specify the timeframe within which the cited deficiencies shall be corrected.

(e) In the event the Director makes a determination to revoke a delegation of authority, the State shall be provided an opportunity for a hearing prior to final action.

§ 3191.3–2 Reinstatement.

Terminated delegations of authority may be reinstated as set out below:

(a) For a delegation terminated by mutual consent under § 3191.3–1(a) of this title, the State shall apply for reinstatement by filing a petition with the Director, who shall determine whether such reinstatement should be granted.

(b) For a delegation of authority revoked by the Director, the State shall file a petition requesting reinstatement. In applying for reinstatement, the State shall provide written evidence that it has remedied all defects for which the delegation was revoked and that it is fully capable of resuming the activities carried out under the delegation. Upon receipt of the petition, the following actions shall be taken:

(1) The authorized officer, after review of the petition, may recommend approval of the reinstatement but shall provide proof that the deficiencies have been corrected and that the State is fully capable of carrying out the delegation.

(2) The Director shall review the petition and the recommendation of the authorized officer and may approve the reinstatement of a delegation upon a determination that the findings of the authorized officer are acceptable.

§ 3191.4 Standards of delegation.

(a) The Director shall establish minimum standards to be used by a State in carrying out activities established in the delegation.

(b) The delegation shall identify functions, if any, that are to be carried out jointly.

(c) A delegation shall be made in accordance with the requirements of this section.

(d) Copies of delegations shall be on file in the Washington Office of the Bureau and shall be available for public inspection.

§ 3191.5 Delegation for Indian lands.

§ 3191.5–1 Indian lands included in delegation.

(a) No activity under a delegation made under this subpart may be carried out on Indian lands without the written permission of the affected Indian tribe or allottee.

(b) A State requesting a delegation involving Indian lands shall provide, as evidence of permission, a written agreement signed by an appropriate official(s) of the Indian tribe for tribal lands, or by the individual allottee(s) or their representative(s) for allotted lands. The agreement shall at a minimum specify the type and extent of activities to be carried out by the State under the agreement, and provisions for State access to carry out the specified activities.

(c) Delegations covering Indian lands shall be separate from delegations covering Federal lands.

§ 3191.5–2 Indian lands withdrawn from delegation.

(a) When an Indian tribe or allottee withdraws permission for a State to conduct inspection and related activities on its lands, the Indian tribe or allottee shall provide written notice of its withdrawal of permission to the State.

(b) Immediately upon receipt of a notice of withdrawal of permission, the State shall provide written notification of said notice to the authorized officer, who immediately shall take all necessary action to provide for inspection and enforcement activities on the affected Indian lands.

(c) No later than 120 days after receipt of a notice of withdrawal of permission draw from an Indian tribe or allottee, the delegation on the lands covered by the notice shall terminate.

(d) Upon termination of a delegation covering Indian lands, appropriate changes in funding shall be made by the authorized officer.

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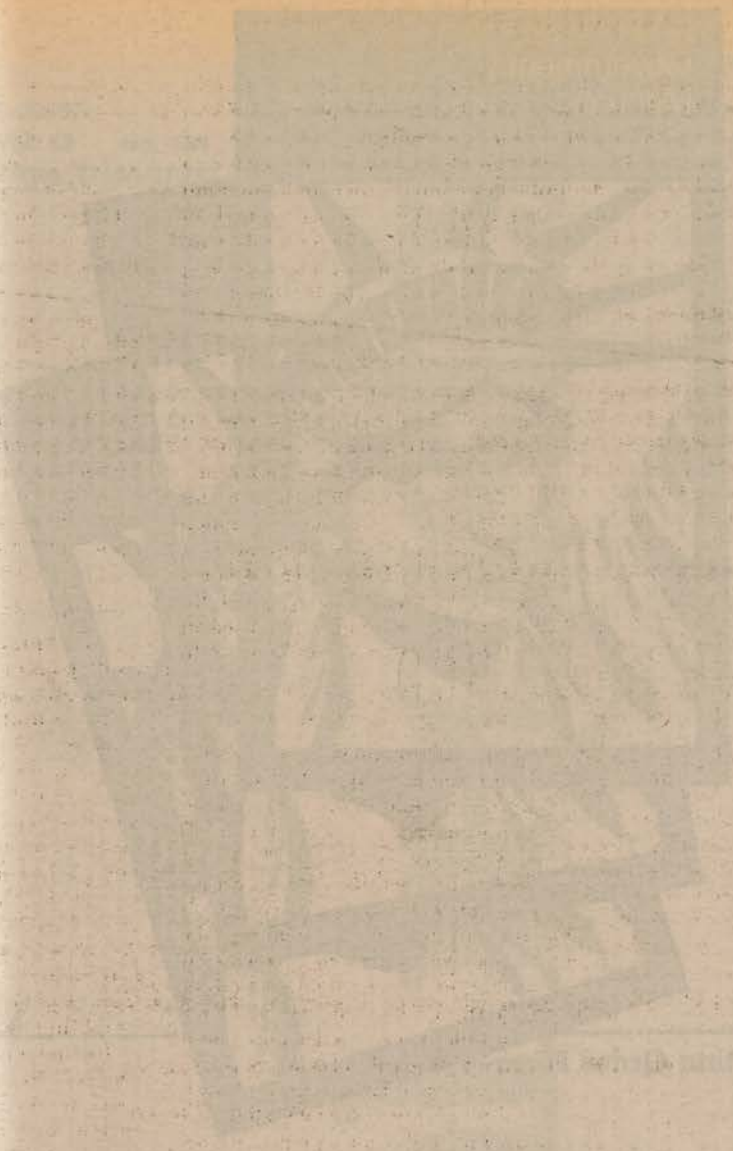

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