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Friday
January 15, 1988

Briefing on How To Use the Federal Register—
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FOR: Any person who uses the Federal Register and Code of Federal Regulations.

WHO: The Office of the Federal Register.

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

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2. The relationship between the Federal Register and Code of Federal Regulations.
3. The important elements of typical Federal Register documents.
4. An introduction to the finding aids of the FR/CFR system.

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

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Presidential Documents

Title 3—

The President

Presidential Finding of January 12, 1988

Presidential Finding Concerning Alaska Natural Gas

This Administration has been dedicated to encouraging free trade and to removing regulatory impediments that inhibit the development of our Nation's natural resources. Proven natural gas reserves in the Prudhoe Bay area of Alaska's North Slope represent approximately 15 percent of total U.S. gas reserves. In addition, undiscovered, recoverable supplies of natural gas from Alaska's North Slope may exceed 100 trillion cubic feet. There can be no doubt the development of Alaskan oil has played an important role in ensuring adequate energy supplies at reasonable prices for American consumers. I believe efficient development of Alaska natural gas will provide similar benefits. Leaving this resource undeveloped benefits no one.

Efficient development of Alaska natural gas on the basis of market financing could encompass the export of some of this gas to other countries. Because world energy markets are interrelated, our Nation will benefit from an enlarged international gas supply. Production of Alaska reserves will increase the amount of secure energy sources available at market prices and, thus, displace less secure or more expensive energy sources, including oil from the Persian Gulf.

Before Alaska natural gas can be exported to nations other than Canada or Mexico, Section 12 of the Alaska Natural Gas Transportation Act (15 U.S.C. 719j) requires me to find exportation "will not diminish the total quantity or quality nor increase the total price of energy available to the United States." In order to make this finding, it has been necessary to assess the relationship of Alaska natural gas to the U.S. energy market.

There exist adequate, secure, reasonably priced supplies of natural gas to meet the demand of American consumers for the foreseeable future. This demand can be met by lower-48 production and already-approved Canadian imports. If necessary, this demand also can be met at lower delivered energy cost by coal, oil, imported liquified natural gas (LNG), natural gas from Mexico, and other energy sources.

Given these facts, exports of Alaska natural gas would represent a judgment by the market that the energy demands of American consumers can be met adequately from other sources at comparable or lower prices. Exports of Alaska natural gas would not diminish the total quantity or quality of energy available to U.S. consumers because world energy resources would be increased and other more efficient supplies would thus be available. Finally, exports would not increase the price of energy available to consumers since increased availability of secure energy sources tends to stabilize or lower energy prices.

Accordingly, I find that exports of Alaska natural gas in quantities in excess of 1,000 Mcf per day will not diminish the total quantity or quality nor increase the total price of energy available to the United States.

This finding removes the Section 12 regulatory impediment to Alaskan natural gas exports in a manner that allows any private party to develop this resource and sets up competition for this purpose. It is my belief that removal of this impediment to private sector development of Alaska's vast natural gas resources, using private sector resources with no government subsidy, will benefit our entire Nation.

This finding represents a determination that the effects of exports of Alaska natural gas on American consumers would comply with the market criteria of Section 12 in the context of current and projected future energy markets and that such exports would be consistent with our comprehensive energy policy. It does not assess the merits or feasibility of a particular project, but rather lets the marketplace undertake a realistic consideration of various options concerning Alaska natural gas. The operation of market forces is the best guarantee that Alaska natural gas will be developed efficiently and that there is an incentive to find additional reserves.

I do not believe this finding should hinder completion of the Alaska Natural Gas Transportation System (ANGTS). This Administration supports the timely, economic development of Alaskan natural resources. To this end the Administration has removed all regulatory barriers to the private sector's expeditious completion of this project. In particular, I want to reaffirm our support for the special regulatory treatment of the "prebuild" portion of ANGTS, including the minimum revenue stream guarantees.

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

Ronald Reagan

THE WHITE HOUSE,
Washington, January 12, 1988.

[FR Doc. 88-888
Filed 1-13-88; 2.3[illegible] pm]
Billing code 3195-[illegible]1-M

Rules and Regulations

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

DEPARTMENT OF AGRICULTURE

Office of the Secretary

7 CFR Part 1

Rules of Practice Governing Formal Adjudicatory Proceedings Instituted by the Secretary Under Various Statutes

AGENCY: Office of the Secretary, USDA.
ACTION: Final rule.

SUMMARY: This amendment will expand the scope and applicability of the Department's uniform rules of practice governing adjudicatory proceedings to include actions initiated under the Beef Promotion and Research Act, the Honey Research, Promotion, and Consumer Information Act, the Pork Promotion, Research, and Consumer Information Act, and the Watermelon Research and Promotion Act.

EFFECTIVE DATE: January 15, 1988.

FOR FURTHER INFORMATION CONTACT: Richard N. Hooper, Federal Assistance Officer, Financial Management Division, Agricultural Marketing Service, USDA, Room 3973–S, Washington, DC 20090–6456; telephone (202) 447–4906.

SUPPLEMENTARY INFORMATION: The Beef Promotion and Research Act (7 U.S.C. 2901–2911), the Honey Research, Promotion, and Consumer Information Act (7 U.S.C. 4601–4612), the Pork Promotion, Research, and Consumer Information Act (7 U.S.C. 4801–4819), and the Watermelon Research and Promotion Act (7 U.S.C. 4901–4916), each authorize the assessment of civil penalties and the issuance of cease and desist orders against any person found to be in violation of the respective Act, order, or regulation issued thereunder.

The Department's uniform rules of practice (7 CFR Part 1, Subpart H), which govern the conduct of adjudicatory proceedings under numerous statutes, have been in effect since February 1, 1977. Accordingly, to insure consistency and uniformity in the conduct of the Department's administrative proceedings, it has been determined that proceedings initiated under the Acts listed above should also be governed by these uniform procedures.

This action has been determined to be exempt from the procedures under Executive Order 12291 and Departmental Regulation 1512–1 because it is administrative in nature.

The provisions of the Administrative Procedure Act concerning notice and opportunity for comment on agency rulemaking (5 U.S.C. 553) do not apply to the promulgation of agency rules of practice. Further, this action simply extends the applicability of the Department's long established uniform rules of practice to newly-passed statutes. Accordingly, this action is made effective upon publication in the **Federal Register.**

In consideration of the foregoing, 7 CFR Part 1, Subpart H, is amended as follows:

PART 1—[AMENDED]

1. The authority citation for Part 1, Subpart H is revised to read as follows:

Authority: 5 U.S.C. 301; secs. 4, 5, 7, 23 Stat. 32, as amended; sec. 6, 26 Stat. 416, as amended; secs. 2, 3, 32 Stat. 792, as amended; sec. 6, 33 Stat. 1265, as amended; 34 Stat. 1260, as amended; secs. 9, 10, 37 Stat. 318, as amended; 37 Stat. 832; sec. 28, 39 Stat. 490; sec. 407, 42 Stat. 169; sec. 10, 42 Stat. 1519; sec. 15, 46 Stat. 537, as amended; sec. 402, 53 Stat. 1285; 56 Stat. 40, as amended; sec. 205(b), 60 Stat. 1090; sec. 108, 71 Stat. 34, as amended; sec. 14, 71 Stat. 447, as amended; sec. 6, 76 Stat. 131, as amended; sec. 11, 76 Stat. 132; sec. 21, 80 Stat. 353; sec. 2, 84 Stat. 202, as amended; sec. 9, 84 Stat. 1406; sec. 14, 84 Stat. 1629; sec. 11, 87 Stat. 897; sec. 310, 90 Stat. 2767; sec. 18, 90 Stat. 2884; sec. 13, 94 Stat. 2233; sec. 7, 95 Stat. 1078; 98 Stat. 3115; 99 Stat. 1597; 99 Stat. 1606; 99 Stat. 1622; 7 U.S.C. 61, 87e, 149, 150gg, 162, 163, 164, 228, 268, 499o, 1592, 1624(b), 2151, 2908, 3812, 4610, 4815, 4910; 15 U.S.C. 1828; 16 U.S.C. 1540(f), 3373; 21 U.S.C. 104, 111, 117, 120, 122, 127, 134e, 134f, 135a, 154, 463(b), 621, 1043; 43 U.S.C. 1740.

§ 1.131 [Amended]

2. Section 1.131(a) is amended by inserting the following statutory reference in the list of statutes in alphabetical order: Beef Promotion and Research Act of 1985, section 9 (7 U.S.C. 2908), Honey Research, Promotion, and Consumer Information Act, section 11 (7 U.S.C. 4610), Pork Promotion, Research, and Consumer Information Act of 1985, section 1626 (7 U.S.C. 4815), Watermelon Research and Promotion Act, section 1651 (7 U.S.C. 4910).

Done at Washington, DC; January 5, 1988.

John J. Franke, Jr.,
Assistant Secretary for Administration.

[FR Doc. 88–360 Filed 1–14–88; 8:45 am]
BILLING CODE 3410–02–M

Federal Crop Insurance Corporation

7 CFR Part 401

[Amdt. No. 7; Doc. No. 5158S]

General Crop Insurance Regulations; Soybean Endorsement

AGENCY: Federal Crop Insurance Corporation, USDA.
ACTION: Final rule; Correction.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) published a Final Rule in the **Federal Register** on Wednesday, November 25, 1987, amending the General Crop Insurance Regulations (7 CFR Part 401), effective for the 1988 and succeeding crop years, by adding a new section, 7 CFR 401.117, to be known as the Soybean Endorsement. In that publication an incorrect price per bushel, used in connection with adjustment of losses, was cited. The reference was to the price per bushel of U.S. No. 2 soybeans. That reference should have read U.S. No. 1. This notice is published to correct that error.

ADDRESS: Written comments on this correction should be sent to Peter F. Cole, Office of the Manager, Federal Crop Insurance Corporation, Room 4090, South Building, U.S. Department of Agriculture, Washington, DC 20250.

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

SUPPLEMENTARY INFORMATION: FR Doc. No. 87–27053, appearing at 52 FR 45152 to 45155 is corrected as follows:

In § 401.117, on page 45154, in the center column, subsection 7.b.(1)(b)(i) of the *Soybean Endorsement* is corrected to read "Dividing the value per bushel of

such soybeans by the price per bushel of U.S. No. 1 soybeans; and."

Done in Washington, DC on January 6, 1988.

Edward D. Hews,

Acting Manager Federal Crop Insurance Corporation.

[FR Doc. 88-719 Filed 1-14-88; 8:45 am]

BILLING CODE 3410-08-M

Animal and Plant Health Inspection Service

9 CFR Part 77

[Docket No. 87-184]

Tuberculosis in Cattle and Bison; State Designations

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule.

SUMMARY: We are amending the regulations governing the interstate movement of cattle and bison because of tuberculosis by raising the designations of the states of Virginia and Washington from modified accredited states to accredited-free states. This action is necessary because we have determined that Virginia and Washington meet the criteria for designation as accredited-free states.

DATES: Interim rule effective January 15, 1988. Consideration will be given only to comments postmarked or received on or before March 15, 1988.

ADDRESSES: Send an original and two copies of written comments to Steven B. Farbman, Assistant Director, Regulatory Coordination, APHIS, USDA, Room 728, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Specifically refer to Docket Number 87-184. You may review these comments at Room 728 of the Federal Building between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Dr. Ralph L. Hosker, Senior Staff Veterinarian, Domestic Programs Support Staff, VS, APHIS, USDA, Room 815, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436-8438.

SUPPLEMENTARY INFORMATION:

Background

The "Tuberculosis" regulations (contained in 9 CFR Part 77 and referred to below as the regulations) regulate the interstate movement of cattle and bison because of tuberculosis. The requirements of the regulations concerning the interstate movement of cattle and bison not known to be affected with, or exposed to, tuberculosis are based on whether the cattle and bison are moved from jurisdictions designated as accredited-free states, modified accredited states, or nonmodified accredited states. The criteria for determining the status of states (the term state is defined to mean any state, territory, the District of Columbia, or Puerto Rico) or portions of states are contained in a document captioned "Uniform Methods and Rules-Bovine Tuberculosis Eradication," 1985, edition, which has been made part of the regulations by incorporation by reference. The status of either states or portions of states is based on the rate of tuberculosis infection present and the effectiveness of a tuberculosis control and eradication program.

Before publication of this interim rule, Virginia and Washington were designated in § 77.1 of the regulations as modified accredited states. However, Virginia and Washington now meet the requirements for designation as accredited-free states. Therefore, we are amending the regulations by removing Virginia and Washington from the list of modified accredited states in § 77.1 and adding them to the list of accredited-free states in that section.

Executive Order 12291 and Regulatory Flexibility Act

We are issuing this rule in conformance with Executive Order 12291, and we have determined that it is not a "major rule." Based on information compiled by the Department, we have determined that this rule will have an effect on the economy of less than $100 million; will not cause a major increase in costs or prices for consumers, individual industries, federal, state, or local government agencies, or geographic regions; and will not cause a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

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

Cattle and bison moved interstate are moved for slaughter, for use as breeding stock, or for feeding. Changing the status of the states of Virginia and Washington may affect the marketability of cattle and bison from these states since some prospective cattle and bison buyers prefer to buy cattle and bison from accredited-free states. This may result in some beneficial economic impact on some small entities. However, based on our experience in similar designations of other states, the impact should not be significant.

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

Paperwork Reduction Act

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

Executive Order 12372

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

Emergency Action

Dr. Donald L. Houston, Administrator of the Animal and Plant Health Inspection Service, has determined that an emergency situation exists, which warrants publication of this interim rule without prior opportunity for public comment. It is necessary to change the regulations so that they can accurately reflect the current tuberculosis status of Virginia and Washington as accredited-free states and thereby provide prospective cattle and bison buyers with accurate and up-to-date information, which may affect the marketability of cattle and bison since some prospective cattle and bison buyers prefer to buy cattle and bison from accredited-free states.

Since prior notice and other public procedures with respect to this interim rule are impracticable and contrary to the public interest under these emergency conditions, there is good cause under 5 U.S.C. 553 for making this interim rule effective less than 30 days after publication of this document in the **Federal Register**. We will consider comments postmarked or received within 60 days of publication of this interim rule in the **Federal Register**. Any amendments we make to this interim rule as a result of these comments will be published in the **Federal Register** as soon as possible following the close of the comment period.

List of Subjects in 9 CFR Part 77

Animal diseases, Bison, Cattle, Transportation, Tuberculosis.

Accordingly, 9 CFR Part 77 is amended as follows:

PART 77—TUBERCULOSIS

1. The authority citation for Part 77 continues to read as follows:

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

§ 77.1 [Amended]

2. In § 77.1, the definition for "Modified accredited state" paragraph (2) is amended by removing "Virginia" and "Washington".

3. In § 77.1, the definition for "Accredited-free state" paragraph (2) is amended by adding "Virginia" and "Washington" immediately before "West Virginia".

Done in Washington, DC, this 12th day of January, 1988.

Donald Houston,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 88–614 Filed 1–14–88; 8:45 am]

BILLING CODE 3410–34–M

FEDERAL HOME LOAN BANK BOARD

12 CFR Parts 501 and 583

[No. 88–15]

Operations, Definitions

January 5, 1988.

AGENCY: Federal Home Loan Bank Board.

ACTION: Final rule.

SUMMARY: The Federal Home Loan Bank Board ("Board"), as operating head of the Federal Savings and Loan Insurance Corporation ("FSLIC"), is amending and consolidating its regulations on officers as agents by delegating to the Principal Supervisory Agents at each Federal Home Loan Bank, authority to designate Supervisory Agents to assist in the performance of duties delegated by the Board and the FSLIC. This change is being implemented to increase administrative efficiency and relieve the Board of a time-consuming, routine procedure. The designation of a Supervisory Agent by a Principal Supervisory Agent will be immediately communicated, in writing, accompanied by the individual's resume and statement of qualifications, to the Secretary of the Board, the Director of the Office of Regulatory Policy, Oversight and Supervision ("ORPOS"), and the Director of the Office of District Banks ("ODB"). The designation of the Principal Supervisory Agent and Director of Agency Functions, or equivalent position, at each Federal Home Loan Bank remains the responsibility of the Board.

EFFECTIVE DATE: January 15, 1988.

FOR FURTHER INFORMATION CONTACT: Randy Thomas, Legal Counsel, (202) 778–2524, Office of Regulatory Policy, Oversight and Supervision, Federal Home Loan Bank System, 900 Nineteenth Street NW., Washington, DC 20006.

SUPPLEMENTARY INFORMATION: The Board has previously delegated significant element of its supervisory and examination functions to the Federal Home Loan Banks ("FHLBanks") under the direction of the Principal Supervisory Agents. By establishing ORPOS (Board Resolution No. 86–755), the Board determined that its purpose of improving the effectiveness of its examination and supervisory functions would be furthered.

As part of this organizational restructuring, the Board, upon consideration of a recommendation by ORPOS and ODB, has determined that delegation of routine administrative duties presently performed by the Board can be more efficiently and effectively carried out by relying on the existing expertise at the FHLBanks.

This delegation does not diminish the statutory responsibility of the Board to oversee, control and, where necessary, improve the functions of examination and supervision. It will, however, expedite delivery of decisions.

Pursuant to 12 CFR 508.11 and 508.14, the Board finds that, because these amendments relate to rules of Board organization, procedure, and practice, notice and public procedure are unnecessary, as is the 30-day delay of the effective date.

List of Subjects in 12 CFR Parts 501 and 583

Claims,
Holding companies,
Savings and loan associations.

Accordingly, the Federal Home Loan Bank Board hereby amends Part 501, Subchapter A, and Part 583, Subchapter F, Chapter V, Title 12, *Code of Federal Regulations*, as set forth below.

SUBCHAPTER A—GENERAL

PART 501—OPERATIONS

1. The authority citation for Part 501 continues to read as follows:

Authority: Sec. 17, 47 Stat. 736, as amended (12 U.S.C. 1437); secs. 402, 403, 48 Stat. 1256, 1257, as amended (12 U.S.C. 1725, 1726); Reorg. Plan No. 3 of 1947, 12 FR 4981, 3 CFR, 1943–1948 Comp., p. 1071; Reorg. Plan No. 6 of 1961, *reprinted in* 12 U.S.C.A. 1437 App. (West Supp. 1986).

2. Amend § 501.10 by revising the introductory text of the section to read as follows:

§ 501.10 Officers as agents.

For the following purposes, officers and employees of a Federal Home Loan Bank, when designated by the Principal Supervisory Agent, shall be the agent of the Board and the Federal Savings and Loan Insurance Corporation. The Principal Supervisory Agent will immediately communicate, in writing, such designation, accompanied by the individual's resume and statement of qualifications to: The Secretary of the Board, the Director of the Office of Regulatory Policy, Oversight and Supervision, and the Director of the Office of District Banks. Counsel to the Bank shall render to agents so designated such legal services as may be necessary to enable them to properly carry out their duties:

* * * * *

3. Section 501.11 is amended by revising the heading of the section; by revising paragraph (a); and by adding a new paragraph (i) to read as follows:

§ 501.11 Designation of Principal Supervisory Agent and Supervisory Agents.

(a) For the following purposes, the President of each Federal Home Loan Bank also shall be the Principal Supervisory Agent of the Board and the Federal Savings and Loan Insurance Corporation. *Provided, however,* that when designated by the Principal Supervisory Agent, in accordance with criteria developed by the Office of Regulatory Policy, Oversight and Supervision, some officer or employee of the Bank other than, or in addition to, the President may act as agent of the Board and the Federal Savings and Loan Insurance Corporation. Such persons appointed by the Principal Supervisory Agent shall be designated Supervisory Agents. The Principal Supervisory Agent will immediately communicate, in writing, such designation, accompanied by the individual's resume and statement of qualifications to: The Secretary of the Board, the Director of the Office of Regulatory Policy, Oversight and Supervision, and the Director of the Office of District Banks. Two supervisory agent designations, those of Principal Supervisory Agent and Director of Agency Functions, or equivalent positions, remain the province of the Board. Counsel to the Bank shall render to all such agents legal services as may be necessary to

enable them to properly carry out their duties.

* * * * *

(i) Said agent shall have the authority to administer savings and loan holding company regulations as contained in Subchapter F of this Title.

SUBCHAPTER F—REGULATIONS FOR SAVINGS AND LOAN HOLDING COMPANIES

PART 583—DEFINITIONS

4. The authority citation for Part 583 continues to read as follows:

Authority: Sec. 2, 48 Stat. 128, as amended (12 U.S.C. 1462); sec. 5, 48 Stat. 132, as amended (12 U.S.C. 1464); secs. 401–403, 405–407, 48 Stat. 1255–1257, 1259–1260, as amended (12 U.S.C. 1724–1726, 1728–1730); sec. 408, 82 Stat. 5, as amended (12 U.S.C. 1730a); Reorg. Plan No. 3 of 1947, 3 CFR, 1943–1948 Comp., p. 1071.

5. Revise 583.5 to read as follows:

§ 583.5 Supervisory Agent.

The term "Supervisory Agent" means: (a) The President of the Bank of the Federal Home Loan Bank district in which the subsidiary insured institution of the registrant or applicant has its principal office, or in which the principal savings and loan or savings bank business of the registrant or applicant is located (as indicated in the designation, if any, filed pursuant to § 584.1 of this subchapter), or (b) any other person who is specifically authorized by the Principal Supervisory Agent or the Board to act on the Corporation's behalf in the administration of this subchapter.

By the Federal Home Loan Bank Board.

John F. Ghizzoni,

Assistant Secretary.

[FR Doc. 88–731 Filed 1–14–88; 8:45 am]

BILLING CODE 6720–01–M

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12 CFR Part 563

[No. 88–1]

Operations; Annual Report Disclosure Requirements

Dated: January 4, 1988.

AGENCY: Federal Home Loan Bank Board.

ACTION: Final rule.

SUMMARY: The Federal Home Loan Bank Board ("Board"), as operating head of the Federal Savings and Loan Insurance Corporation, is amending its regulations on Annual Report ("AR") disclosure requirements by expanding the authority delegated to the Principal Supervisory Agent ("PSA"). This expansion of authority will establish a shorter decision process and enable the agency to respond more quickly and efficiently to annual report disclosure waiver requests and review of AR disclosure reports requiring preapproval.

EFFECTIVE DATE: January 15, 1988.

FOR FURTHER INFORMATION CONTACT: Robyn Dennis, Financial Analyst, Office of Regulatory Policy, Oversight and Supervision, (202) 778–2660, Federal Home Loan Bank Board System, 900 19th Street NW., Washington, DC 20006.

SUPPLEMENTARY INFORMATION: The Board has previously delegated significant elements of its supervisory and examination functions to the Federal Home Loan Banks ("FHLBanks") under the direction of the PSA. By establishing the Office of Regulatory Policy, Oversight and Supervision ("ORPOS") (Board Resolution No. 86–755), the Board determined that its purpose of improving the effectiveness of its examination and supervisory functions would be furthered.

As part of this organizational restructuring, the Board, upon consideration of a recommendation by ORPOS and the Office of General Counsel ("OGC"), has determined that delegation of routine casework presently performed by ORPOS and OGC can be more efficiently and effectively carried out by relying on the existing expertise at the FHLBanks, following prescribed guidelines and procedures.

This delegation does not diminish the statutory responsibility of the Board to oversee, control and where necessary improve the functions of examination and supervision. It will, however, expedite delivery of decisions.

Pursuant to 12 CFR 508.11 and 508.14, the Board finds that, because these amendments relate to rules of Board organization, procedure, and practice, notice and public procedure are unnecessary, as is the 30-day delay of the effective date.

List of Subjects in 12 CFR Part 563

Bank deposit insurance, Investments, Reporting and recordkeeping requirements, Savings and loan associations.

Accordingly, the Federal Home Loan Bank Board hereby amends Part 563, Subchapter D, Chapter V, Title 12, *Code of Federal Regulations*, as set forth below:

SUBCHAPTER D—FEDERAL SAVINGS AND LOAN INSURANCE CORPORATION

PART 563—OPERATIONS

1. The authority citation for Part 563 continues to read as follows:

Authority: Sec. 1, 47 Stat. 725, as amended (12 U.S.C. 1421 *et seq.*); sec. 5A, 47 Stat. 727, as added by sec. 1, 64 Stat. 256, as amended (12 U.S.C. 1425a); sec. 5B, 47 Stat. 727, as added by sec. 4, 80 Stat. 824, as amended (12 U.S.C. 1425b); sec. 17, 47 Stat. 736, as amended (12 U.S.C. 1437); sec. 2, 48 Stat. 128, as amended (12 U.S.C. 1462); sec. 5, 48 Stat. 132, as amended (12 U.S.C. 1464); secs. 401–407, 48 Stat. 1255–1260, as amended (12 U.S.C. 1724–1730); sec. 408, 82 Stat. 5, as amended (12 U.S.C. 1730a); Reorg. Plan No. 3 of 1947, 12 FR 4981, 3 CFR, 1943–1948 Comp., p. 1071.

2. Amend § 563.45 by revising paragraphs (c), (d); and by revising the introductory text of Form AR, General Instructions Item (6)(e), Instruction 9 to read as follows:

§ 563.45 Disclosure.

* * * * *

(c) *Filing requirements.* Three copies of each annual report, prepared pursuant to paragraph (a) of this section, and any notice of meeting transmitted to voting members pursuant thereto, shall be publicly filed with the Board concurrently with or prior to transmission of such report or notice pursuant to paragraph (a) of this section. All copies shall be mailed or delivered to the Principal Supervisory Agent ("PSA"). If the PSA determines that the material so filed fails to comply in any material respect with the requirements of Form AR, the PSA may require such material for a period of three years thereafter to be filed with the PSA and authorized for use prior to being transmitted to voting members.

(d) *Annual disclosure requirements for institutions under $15 million in assets.* An insured institution which is not exempt from paragraph (a) by paragraph (b)(2) of this section, and which has less than $15,000,000 in assets as of the end of any audit period (beginning with the audit period immediately preceding its 1978 annual meeting), shall prepare an annual report meeting the requirements of Form AR with respect to each such audit period as to which such institution does not conform with paragraph (b)(3) of this section. Three copies of each annual report required by the preceding sentence shall be publicly filed with the Board at least 20 days prior to the annual meeting following the audit period as to which such report was prepared. Copies shall be mailed or delivered to the PSA. If the PSA determines that an annual report prepared by an insured institution pursuant to this paragraph (d) reveals practices or events during the audit period covered by such report which, if

continued, the PSA believes should be disclosed to persons having voting rights in such institution, then the PSA may require such institution to comply with the requirements of paragraph (a) of this section in connection with the annual report for its next audit period if such a report is required by this paragraph (d). If an annaul report prepared pursuant to this paragraph (d) reveals information of the type described in the immediately preceding sentence, the PSA will notify the institution in writing within 60 days of the filing of such report that such institution must submit its annual report (if any) for its next audit period to the PSA for a determination as to whether such institution must comply with the requirements of paragraph (a) of this section in connection with such report.

* * * * *

Form AR (Annual Report Form)

General Instructions

* * * * *

Item 6 * * *

(e) * * *

Instructions. 1. * * *

9. An insured institution that has engaged in a transaction that must be disclosed pursuant to Item 6(e) of Form AR may be granted a waiver by the Principal Supervisory Agent upon affirmative showing that the institution—

* * * * *

By the Federal Home Loan Bank Board.

John F. Ghizzoni

Assistant Secretary.

[FR Doc. 88-732 Filed 1-14-88; 8:45 am]

BILLING CODE 6720-01-M

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Part 795

Community Development Revolving Loan Program for Credit Unions; Office of Management and Budget Approval of Collection Requirements

AGENCY: National Credit Union Administration (NCUA).

ACTION: Final rule.

SUMMARY: NCUA has received OMB approval of its collection requirements in its regulation governing the Community Development Revolving Loan Program for Credit Unions. An OMB control number has been assigned to the collection requirements.

ADDRESS: National Credit Union Administration, 1776 G Street NW., Washington, DC 20456.

FOR FURTHER INFORMATION CONTACT: Hattie Ulan, Staff Attorney, Office of General Counsel, at the above address, or telephone: (202) 357-1030.

SUPPLEMENTARY INFORMATION: On September 16, 1987, the final rule entitled "Community Development Revolving Loan Program for Credit Unions" was published in the **Federal Register** (52 FR 34891, 9/16/87). The final rule contained three collection requirements. Two of the requirements § 705.5—Application for Participation, and § 705.6(a)(2)—Community Needs Plan) had received prior OMB approval. The third requirement (§ 705.8—State-Chartered Credit Unions), for the written concurrence of state regulatory authority for state-chartered credit unions participating in the program, was not previously submitted to OMB. All three collection requirements were submitted to OMB on October 6, 1987. OMB approved of all three collection requirements on November 13, 1987. The approval is valid through September 30, 1990. The OMB control number assigned to the three collection requirements is 3133-0109.

List of Subjects in 12 CFR Part 795

Reporting and recordkeeping requirements.

By the National Credit Union Administration Board on January 11, 1988.

Becky Baker,

Secretary of the Board.

Accordingly, 12 CFR Part 795 is amended as follows:

PART 795—[AMENDED]

1. The authority citation for Part 795 continues to read as follows:

Authority: 12 U.S.C. 1766(a)(11), and 5 U.S.C. 3507(f).

§ 795.1 [Amended]

2. Section 795.1 of the NCUA Regulations lists current OMB control numbers. The following should be added to the Display in § 795.1(b).

12 CFR part or section where identified and described	Current OMB control No.
* * * * *	
705.5	3133-0109
705.6(a)(2)	3133-0109
705.8	3133-0109
* * * * *	

[FR Doc. 88-769 Filed 1-14-88; 8:45 am]

BILLING CODE 7535-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 95

[Docket No. 25507; Amdt. No. 341]

IFR Altitudes; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts miscellaneous amendments to the required IFR (instrument flight rule) altitude and changeover points for certain Federal airways, jet routes, or direct routes for which a minimum or maximum en route authorized IFR altitude is prescribed. These regulatory actions are needed because of changes occurring in the National Airspace System. These changes are designed to provide for the safe and efficient use of the navigable airspace under instrument conditions in the affected areas.

DATES: Effective: January 14, 1988.

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 95 of the Federal Aviation Regulations (14 CFR Part 95) prescribes new, amended, suspended, or revoked IFR altitudes governing the operation of all aircraft in IFR flight over a specified route or any portion of that route, as well as the changeover points (COPs) for Federal airways, jet routes, or direct routes as prescribed in Part 95. The specified IFR altitudes, when used in conjunction with the prescribed changeover points for those routes, ensure navigation aid coverage that is adequate for safe flight operations and free of frequency interference.

The reasons and circumstances which create the need for this amendment involve matters of flight safety, operational efficiency in the National Airspace System, and are related to published aeronautical charts that are essential to the user and provide for the safe and efficient use of the navigable airspace. In addition, those various reasons or circumstances require making this amendment effective before the next scheduled charting and publication date of the flight information to assure its timely availability to the user. The effective date of this

amendment reflects those considerations. In view of the close and immediate relationship between these regulatory changes and safety in air commerce, I find that notice and public procedure before adopting this amendment is unnecessary, impracticable, and contrary to the public interest and that good cause exists for making the amendment 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 95

Aircraft, Airspace.

Issued in Washington, DC, on December 16, 1987.

Robert L. Goodrich,

Director of Flight Standards.

Adoption of the Amendment

Accordingly and pursuant to the authority delegated to me by the Administrator, Part 95 of the Federal Aviation Regulations (14 CFR Part 95) is amended as follows effective at 0901 GMT:

PART 95—[AMENDED]

1. The authority citation for Part 95 continues to read as follows:

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

2. Part 95 is amended to read as follows:

BILLING CODE 4910-13-M

REVISIONS TO MINIMUM ENROUTE IFR ALTITUDES & CHANGEOVER POINTS

AMENDMENT 341 EFFECTIVE DATE, JANUARY 14, 1988

FROM	TO	MEA
§95.1001 DIRECT ROUTES-U.S.		
IS AMENDED TO READ IN PART		
CALBE, CA FIX	PALMDALE, CA VORTAC	
VIA PDZ VORTAC 306 & PMD VORTAC 142		10000
		MAA-17500
PARADISE, CA VORTAC	*CALBE, CA FIX	6000
*8500 - MCA CALBE FIX, NW BND		MAA-17500
IS AMENDED TO DELETE		
GRANTSBURG, WI VOR	EVELETH, MN VOR	3500
§95.1001 DIRECT ROUTES-U.S.		
PUERTO RICO ROUTES		
B520 **IS AMENDED TO READ IN PART**		
BORINQUEN, PR VORTAC	DORADO, PR NDB	2700
		MAA-45000
DORADO, PR NDB	CULEB, VI FIX	2000
		MAA-45000
ATLANTIC ROUTES		
AR 14 **IS AMENDED TO DELETE**		
DIXON, NC NDB/DME	EDDYS, NC FIX	18000
		MAA-45000
§95.6003 VOR FEDERAL AIRWAY 3		
IS AMENDED TO READ IN PART		
BROUN, GA FIX	*HARPS, GA FIX	2200
*3800 - MRA		
RALEIGH/DURHAM, NC VORTAC	HARVY, VA FIX	3000
LAYER, MA FIX	KITTY, MA FIX	*4500
*2300 - MOCA		
BOSTON, MA VORTAC	PEASE, NH VOR	2000
§95.6006 VOR FEDERAL AIRWAY 6		
IS AMENDED TO READ IN PART		
COLLI, CA FIX	*PITTS, CA FIX	5000
*3800 - MCA PITTS FIX, S BND		
PITTS, CA FIX	*REJOY, CA FIX	**4000
*2800 - MCA REJOY FIX, S BND		
**2300 - MOCA		
FOLLY, CA FIX	*COLOM, CA FIX	5000
*9500 - MCA COLOM FIX, NE BND		

FROM	TO	MEA
§95.6006 VOR FEDERAL AIRWAY 6—Continued		
LAKE TAHOE, CA VORTAC	*MUSTANG, NV VORTAC	13000
*12000 - MCA MUSTANG VORTAC, SW BND		
§95.6007 VOR FEDERAL AIRWAY 7		
IS AMENDED TO READ IN PART		
TALOR, WI FIX	*PETTY, WI FIX	**7000
*7000 - MCA PETTY FIX, N BND		
**1700 - MOCA		
PETTY, WI FIX	*PROOT, WI FIX	4000
*4000 - MCA PROOT FIX, S BND		
PROOT, WI FIX	FALLS, WI VOR	3000
FALLS, WI VOR	GREEN BAY, WI VORTAC	3000
§95.6008 VOR FEDERAL AIRWAY 8		
IS AMENDED TO READ IN PART		
KREMMLING, CO VORTAC	SURFS, CO FIX	15300
SURFS, CO FIX	*DENVER, CO VORTAC	9500
*12000 - MCA DENVER VORTAC, W BND		
§95.6009 VOR FEDERAL AIRWAY 9		
IS AMENDED TO READ IN PART		
LEEVILLE, LA VORTAC	SAFES, LA FIX	*2500
*1600 - MOCA		
NEW ORLEANS, LA VORTAC	MACAW, LA FIX	*1900
*1400 - MOCA		
ST LOUIS, MO VORTAC	CAPITAL, IL VORTAC	*2700
*2100 - MOCA		
§95.6013 VOR FEDERAL AIRWAY 13		
IS AMENDED TO READ IN PART		
FARMINGTON, MN VORTAC	CINCI, MN FIX	3400
CINCI, MN FIX	SIREN, WI VOR/DME	*3400
*2700 - MOCA		
SIREN, WI VOR/DME	DULUTH, MN VORTAC	3100
§95.6016 VOR FEDERAL AIRWAY 16		
IS AMENDED TO READ IN PART		
WOONS, RI FIX	MILIS, MA FIX	2000
MILIS, MA FIX	BOSTON, MA VORTAC	2000
§95.6031 VOR FEDERAL AIRWAY 31		
IS AMENDED TO READ IN PART		
GIBBE, NY FIX	BEEPS, NY FIX	3500
*3000 - MOCA		

FROM	TO	MEA
§95.6031 VOR FEDERAL AIRWAY 31—Continued		
BEEPS, NY FIX *3600 - MOCA	ROCHESTER, NY VORTAC	*6000
§95.6033 VOR FEDERAL AIRWAY. 33		
IS AMENDED TO READ IN PART		
HARRISBURG, PA VORTAC	PHILIPSBURG, PA VORTAC	4000
§95.6034 VOR FEDERAL AIRWAY 34		
IS AMENDED BY ADDING		
NANTUCKET, MA VORTAC	SANDY POINT, RI VOR/DME	2000
IS AMENDED TO READ IN PART		
HANCOCK, NY VORTAC *3600 - MOCA	ROCHESTER, NY VORTAC	*6000
§95.6035 VOR FEDERAL AIRWAY 35		
IS AMENDED TO READ IN PART		
GREENVILLE, FL VORTAC *3000 - MRA	*SALER, GA FIX	2500
§95.6037 VOR FEDERAL AIRWAY 37		
IS AMENDED TO READ IN PART		
JACKSONVILLE, FL VORTAC	CARVL, FL FIX	2100
CARVL, FL FIX	BRUNSWICK, GA VORTAC	2000
BROUN, GA FIX *3800 - MRA	*HARPS, GA FIX	2200
§95.6055 VOR FEDERAL AIRWAY 55		
IS AMENDED TO READ IN PART		
EAU CLAIRE, WI VORTAC *4900 - MRA	*ALEEN, WI FIX	3000
ALEEN, WI FIX	SIREN, WI VOR/DME	3000
SIREN, WI VOR/DME *5000 - MRA	*FELTY, MN FIX	3000 MAA-14000
FELTY, MN FIX	BRAINERD, MN VORTAC	3000 MAA-14000
§95.6071 VOR FEDERAL AIRWAY 71		
IS AMENDED TO READ IN PART		
BATON ROUGE, LA VORTAC *3000 - MRA	*RELAY, LA FIX	2200
RELAY, LA FIX *3000 - MRA **1700 - MOCA	*WRACK, LA FIX	**2200
WRACK, LA FIX *2500 - MRA **1700 - MOCA	*WILIN, MS FIX	**2200
WILIN, MS FIX EL DORADO, AR VORTAC *1800 - MOCA	NATCHEZ, MS VOR/DME SPARO, AR FIX SE BND NW BND	2200 *2500 *4000
SPARO, AR FIX *1700 - MOCA	CANEY, AR FIX	*4000
BUTLER, MO VORTAC *2600 - MOCA	TOPEKA, KS VORTAC	*3100
§95.6078 VOR FEDERAL AIRWAY 78		
IS AMENDED TO READ IN PART		
ZABLE, MI FIX *3000 - MRA **2500 - MOCA	*BANJO, MI FIX	**5000
§95.6084 VOR FEDERAL AIRWAY 84		
IS AMENDED TO READ IN PART		
BEEPS, NY FIX *2600 - MOCA	SYRACUSE, NY VORTAC	*3500
§95.6115 VOR FEDERAL AIRWAY 115		
IS AMENDED TO READ IN PART		
CHATTANOOGA, TN VORTAC	ETOWA, TN FIX	3000
ETOWA, TN FIX	GROSS, TN FIX	3100
GROSS, TN FIX	KNOXVILLE, TN VORTAC	3000
§95.6126 VOR FEDERAL AIRWAY 126		
IS AMENDED TO READ IN PART		
LAKE HENRY, PA VORTAC	SPARTA, NJ VORTAC	4000
§95.6134 VOR FEDERAL AIRWAY 134		
IS AMENDED TO READ IN PART		
FUNDS, CO FIX *12000 - MCA DENVER VORTAC, SW BND	*DENVER, CO VORTAC	16300
§95.6141 VOR FEDERAL AIRWAY 141		
IS AMENDED TO READ IN PART		
HYANNIS, MA VORTAC *1500 - MOCA	DRUNK, MA FIX	*2000
DRUNK, MA FIX *2500 - MRA **1500 - MOCA	*CELTS, MA FIX	**2000

FROM	TO	MEA

§95.6148 VOR FEDERAL AIRWAY 148

IS AMENDED TO READ IN PART

GOPHER, MN VORTAC *4900 - MRA **2700 - MOCA	*ALEEN, WI FIX	**5000
ALEEN, WI FIX *2700 - MOCA	HAYWARD, WI VOR/DME	*5000

§95.6157 VOR FEDERAL AIRWAY 157

IS AMENDED TO READ IN PART

COLTS NECK, NJ VOR/DME *2700 - MOCA	KINGSTON, NY VORTAC	*4000

§95.6159 VOR FEDERAL AIRWAY 159

IS AMENDED TO READ IN PART

GREENVILLE, FL VORTAC *3000 - MRA	*SALER, GA FIX	2500

§95.6193 VOR FEDERAL AIRWAY 193

IS AMENDED TO READ IN PART

WHITE CLOUD, MI VORTAC	TRAVERSE CITY, MI VORTAC	3200

§95.6205 VOR FEDERAL AIRWAY 205

IS AMENDED TO READ IN PART

SIMBY, CT FIX *2500 - MOCA	LAYER, MA FIX	*4500
LAYER, MA FIX *2300 - MOCA	KITTY, MA FIX	*4500
BOSTON, MA VORTAC *2100 - MOCA	SCUPP, MA FIX	*3000

§95.6215 VOR FEDERAL AIRWAY 215

IS AMENDED TO READ IN PART

*TADDS, MI FIX *3500 - MRA **1700 - MOCA	SALES, MI FIX	**3500

§95.6218 VOR FEDERAL AIRWAY 218

IS AMENDED TO READ IN PART

GRAND RAPIDS, MN VOR/DME *5000 - MRA **3000 - MOCA	*FELTY, MN FIX	**5500
FELTY, MN FIX *3000 - MOCA	GOPHER, MN VORTAC	*5500

FROM	TO	MEA

§95.6265 VOR FEDERAL AIRWAY 265

IS AMENDED TO READ IN PART

HARRISBURG, PA VORTAC	PHILIPSBURG, PA VORTAC	4000

§95.6267 VOR FEDERAL AIRWAY 267

IS AMENDED TO READ IN PART

WORMS, FL FIX *2100 - MOCA	JACKSONVILLE, FL VORTAC	*3000

§95.6274 VOR FEDERAL AIRWAY 274

IS AMENDED TO READ IN PART

PULLMAN, MI VORTAC	GRAND RAPIDS, MI VOR/DME	2500

§95.6289 VOR FEDERAL AIRWAY 289

IS AMENDED TO READ IN PART

HONEE, TX FIX *1600 - MOCA	LUFKIN, TX VORTAC	*3000
ABOTT, AR FIX *2000 - MOCA	FORT SMITH, AR VORTAC	*2500
MULBY, AR FIX *3500 - MOCA	HARRISON, AR VOR/DME	*4000
FORNEY, MO VOR *2500 - MOCA	VICHY, MO VORTAC	*3000

§95.6297 VOR FEDERAL AIRWAY 297

IS AMENDED TO READ IN PART

BANJO, MI FIX *2500 - MOCA	ZABLE, MI FIX	*5000

§95.6325 VOR FEDERAL AIRWAY 325

IS AMENDED TO READ IN PART

DALAS, GA FIX *3700 - MOCA	GADSDEN, AL VOR/DME	*5000

§95.6328 VOR FEDERAL AIRWAY 328

IS AMENDED TO READ IN PART

TROZE, CO FIX *9200 - MCA DENVER VORTAC, SW BND	*DENVER, CO VORTAC	7500

§95.6419 VOR FEDERAL AIRWAY 419

FROM	TO	MEA
§95.6419 VOR FEDERAL AIRWAY 419—Continued		
IS AMENDED TO READ IN PART		
NYACK, NY FIX	CARMEL, NY VORTAC	2500
§95.6431 VOR FEDERAL AIRWAY 431		
IS AMENDED TO READ IN PART		
HYANNIS, MA VORTAC *2100 - MOCA	BOSTON, MA VORTAC	*3000
§95.6465 VOR FEDERAL AIRWAY 465		
IS AMENDED TO READ IN PART		
BULLION, NV VORTAC *11800 - MCA WELLS VOR, SW BND	*WELLS, NV VOR	13000
§95.6469 VOR FEDERAL AIRWAY 469		
IS AMENDED TO READ IN PART		
BADDI, PA FIX *2900 - MOCA	HARRISBURG, PA VORTAC	*4000
§95.6475 VOR FEDERAL AIRWAY 475		
IS AMENDED TO READ IN PART		
MILIS MA FIX	BOSTON, MA VORTAC	2000

FROM	TO	MEA
§95.6483 VOR FEDERAL AIRWAY 483		
IS AMENDED TO READ IN PART		
ROCKDALE, NY VORTAC	STODA, NY FIX	4000
§95.6484 VOR FEDERAL AIRWAY 484		
IS AMENDED TO READ IN PART		
SALT LAKE CITY, UT VORTAC	PARLE, UT FIX	11500
PARLE, UT FIX	MYTON, UT VORTAC	13000
§95.6505 VOR FEDERAL AIRWAY 505		
IS AMENDED TO READ IN PART		
GOPHER, MN VORTAC *2600 - MOCA	SIREN, WI VOR/DME	*3000
SIREN, WI VOR/DME	DULUTH, MN VORTAC	3100
§95.6510 VOR FEDERAL AIRWAY 510		
IS AMENDED TO READ IN PART		
NODINE, MN VORTAC	DELLS, WI VORTAC	3000
DELLS, WI VORTAC	OSHKOSH, WI VORTAC	2900
OSHKOSH, WI VORTAC	FALLS, WI VOR	3000
FALLS, WI VOR	MUSKEGON, MI VORTAC	3500
§95.6569 VOR FEDERAL AIRWAY 569		
IS AMENDED TO READ IN PART		
SILBE, TX FIX *1800 - MOCA	LUFKIN, TX VORTAC	*2500

FROM	TO	MEA	MAA
§95.7006 JET ROUTE NO. 6			
	IS AMENDED BY ADDING		
SALINAS, CA VORTAC	AVENAL, CA VORTAC	18000	45000
AVENAL, CA VORTAC	PALMDALE, CA VORTAC	18000	45000
	IS AMENDED TO DELETE		
BIG SUR, CA VORTAC	*ZONAL, CA FIX	18000	45000
ZONAL, CA FIX	PALMDALE, CA VORTAC	26000	45000
§95.7010 JET ROUTE NO. 10			
	IS AMENDED BY ADDING		
DES MOINES, IA VORTAC	IOWA CITY, IA VORTAC	18000	45000
§95.7107 JET ROUTE NO. 107			
	IS AMENDED TO READ IN PART		
ROCK SPRINGS, WY VORTAC	CASPER, WY VORTAC	18000	45000
§95.7174 JET ROUTE NO. 174			
	IS AMENDED TO READ IN PART		
WILMINGTON, NC VORTAC	DIXON, NC NDB/DME	18000	45000
DIXON, NC NDB/DME	NORFOLK, VA VORTAC	18000	45000
§95.7192 JET ROUTE NO. 192			
	IS AMENDED BY ADDING		
PAWNEE CITY, NE VORTAC	IOWA CITY, IA VORTAC	18000	45000
§95.7207 JET ROUTE NO. 207			
	IS AMENDED BY ADDING		
RALEIGH/DURHAM, NC VORTAC	FRANKLIN, VA VORTAC	18000	45000
§95.7209 JET ROUTE NO. 209			
	IS AMENDED TO READ		
GREENWOOD, SC VORTAC	RALEIGH/DURHAM, NC VORTAC	18000	45000
RALEIGH/DURHAM, NC VORTAC	TAR RIVER, NC VORTAC	18000	45000

FROM	TO	MEA	MAA
§95.7209 JET ROUTE NO. 209—Continued			
TAR RIVER, NC VORTAC	NORFOLK, VA VORTAC	18000	45000
NORFOLK, VA VORTAC	SALISBURY, MD VORTAC	18000	45000
§95.7223 JET ROUTE NO. 223			
IS AMENDED TO READ IN PART			
LA GUARDIA, NY VOR/DME	ELMIRA, NY VORTAC	18000	38000
§95.7228 JET ROUTE NO. 228			
IS AMENDED TO DELETE			
PLATTSBURGH, NY VORTAC	U.S. CANADIAN BORDER	18000	45000

§95.8003 VOR FEDERAL AIRWAYS CHANGEOVER POINTS

AIRWAY SEGMENT		CHANGEOVER POINTS	
FROM	TO	DISTANCE	FROM
	V-6		
	IS AMENDED BY ADDING		
OAKLAND, CA VORTAC	SACRAMENTO, CA VORTAC	34	OAKLAND
	V-141		
	IS AMENDED TO DELETE		
HYANNIS, MA VORTAC	BOSTON, MA VORTAC	30	HYANNIS
	V-273		
	IS AMENDED TO DELETE		
HUGUENOT, NY VORTAC	HANCOCK, NY VORTAC	17	HUGUENOT
	V-299		
	IS AMENDED BY ADDING		
LOS ANGELES, CA VORTAC	VENTURA, CA VORTAC	18	LOS ANGELES
	V-510		
	IS AMENDED BY ADDING		
FALLS, WI VOR	MUSKEGON, MI VORTAC	41	FALLS

§95.8005 JET ROUTES CHANGEOVER POINTS

AIRWAY SEGMENT		CHANGEOVER POINTS	
FROM	TO	DISTANCE	FROM
J-95			
IS AMENDED TO DELETE			
DEER PARK, NY VORTAC	BINGHAMTON, NY VORTAC	60	DEER PARK
J-211			
IS AMENDED TO DELETE			
JOHNSTOWN, PA VORTAC	WESTMINSTER, MD VORTAC	47	JOHNSTOWN
J-522			
IS AMENDED BY ADDING			
HANCOCK, NY VORTAC	KINGSTON, NY VORTAC	41	HANCOCK

[FR Doc. 88-749 Filed 1-14-88; 8:45 am]
BILLING CODE 4910-13-C

DEPARTMENT OF COMMERCE

Bureau of Economic Analysis

15 CFR Part 806

[Docket No. 70872-7278]

BE-12, Benchmark Survey of Foreign Direct Investment in the United States, 1987

AGENCY: Bureau of Economic Analysis, Commerce.

ACTION: Final rule.

SUMMARY: Section 4(b) of the International Investment and Trade in Services Survey Act (Pub. L. 94-472, 90 Stat. 2059, 22 U.S.C. 3101-3108, as amended) requires that a benchmark survey of foreign direct investment in the United States be conducted covering 1987 and every fifth year thereafter. This final rule revises 15 CFR 806.17 to set forth the reporting requirements for the survey covering 1987 and to delete the requirements now in § 806.17, which were for the last benchmark survey covering 1980. It also amends 15 CFR 806.15 to change the year of coverage of this next benchmark survey from 1985, as was specified in the original legislation authorizing the survey, to 1987, as now specified by amendment to that legislation (see Pub. L. 97-33 and Pub. L. 97-70).

EFFECTIVE DATE: This rule will be effective February 16, 1988. Forms are scheduled to be mailed to respondents at the end of February 1988 and a completed Form BE-12(LF) or BE-12(SF) is due to be filed with BEA by May 31, 1988. Also, Form BE-12(X), Determination of Reporting Status, must be completed and filed within 30 days of the date it was received.

FOR FURTHER INFORMATION CONTACT: Betty L. Barker, Acting Chief, International Investment Division (BE-50), Bureau of Economic Analysis, U.S. Department of Commerce, Washington, DC 20230; phone (202) 523-0659.

SUPPLEMENTARY INFORMATION: In the November 5, 1987 Federal Register, Volume 52, No. 214, 52 FR 42447, BEA published a notice of proposed rulemaking setting forth the reporting requirements for the BE-12, Benchmark Survey of Foreign Direct Investment in the United States—1987. No comments on the proposed rule were received. Thus, this final rule is the same as the proposed rule.

The benchmark survey is to be conducted by the Bureau of Economic Analysis, U.S. Department of Commerce, under the International Investment and Trade in Services Survey Act, hereinafter, "the Act." Section 4(b) of the Act, as amended, requires that "With respect to foreign direct investment in the United States, the President shall conduct a benchmark survey covering year 1980, a benchmark survey covering year 1987, and benchmark surveys covering every fifth year thereafter * * *. In conducting surveys pursuant to this subsection, the President shall, among other things and to the extent he determines necessary and feasible—

(1) Identify the location, nature, and magnitude of, and changes in the total investment by any parent in each of its affiliates and the financial transactions between any parent and each of its affiliates;

(2) obtain (A) information on the balance sheet of parents and affiliates and related financial data, (B) income statements, including the gross sales by primary line of business (with as much product line detail as necessary and feasible) of parents and affiliates in each country in which they have significant operations, and (C) related information regarding trade, including trade in both goods and services, between a parent and each of its affiliates and between each parent or affiliate and any other person;

(3) collect employment data showing both the number of United States and foreign employees of each parent and affiliate and the level of compensation, by country, industry, and skill level;

(4) obtain information on tax payments by parents and affiliates by country; and

(5) determine, by industry and country, the total dollar amount of research and development expenditures by each parent and affiliate, payments or other compensation for the transfer of technology between parents and their affiliates, and payments or other compensation received by parents or affiliates from the transfer of technology to other persons."

The responsibility for conducting benchmark surveys of foreign direct investment in the United States has been delegated to the Secretary of Commerce, who has redelegated it to the Bureau of Economic Analysis (BEA).

The benchmark surveys are BEA's censuses, intended to cover the universe of foreign direct investment in the United States in value terms. Foreign direct investment in the United States is defined as the ownership or control, directly or indirectly, by one foreign person of 10 percent or more of the voting securities of an incorporated U.S. business enterprise or an equivalent interest in an unincorporated U.S. business enterprise, including a branch.

The purpose of the benchmark survey is to obtain data on the amount, types, and financial and operating characteristics of foreign direct investment in the United States. The data from the survey are used to measure the economic significance of such investment and to analyze its effects on the U.S. economy. They are also used in formulating, and assessing the impact of, U.S. policy on foreign direct investment. They provide benchmarks for deriving current universe estimates of direct investment from sample data collected in other BEA surveys in nonbenchmark years. In particular, they serve as benchmarks for the quarterly direct investment estimates included in the U.S. international transactions and gross national product accounts, and for annual estimates of the foreign direct investment position in the United States and of the operations of the U.S. affiliates of foreign companies.

The benchmark surveys are also the most comprehensive of BEA's surveys in terms of subject matter in order that they obtain the detailed information on foreign direct investment needed for policy purposes. As specified in the Act, policy areas of particular interest include, among other things, trade in both goods and services, employment and employee compensation, taxes, and technology.

The survey consists of an Instruction Booklet; a Form BE-12(X), which is to be used to determine the reporting status of those to whom the survey packet is sent; a Form BE-12(LF), a long form for reporting by nonbank U.S. affiliates with assets, sales, or net income of more than $20 million; and a Form BE-12(SF), a short form for reporting by U.S. affiliates with $20 million or less of assets, sales, or net income, and by U.S. affiliates that are banks. Although the survey is intended to cover the universe of foreign direct investment in the United States, in order to minimize the reporting burden, U.S. affiliates are exempt from reporting on Form BE-12(LF) and Form BE-12(SF) if their assets, sales, and net income are $1 million or less.

Primarily to minimize the reporting burden on respondents, BEA made a number of major changes in the reporting requirements between the 1980 and 1987 benchmark surveys. They are:

1. Introduction of the BE-12(SF), the short form for reporting by U.S. affiliates with $20 million or less of assets, sales, or net income, and by U.S. affiliates that are banks. In the 1980 benchmark

survey, in contrast, smaller nonbank affiliates had to report on the 1980 equivalent of the long form. Thus, the short form will significantly reduce the reporting burden for these smaller affiliates and for the survey as a whole. The short form will also be utilized by banks, whereas there was a separate form for banks in 1980.

2. Introduction of the BE–12(X), Determination of Reporting Status. This form replaces the exemption claim form used in the 1980 survey. It allows companies to determine if they must file the long form or the short form or if they are exempt from filing altogether. This form will be placed first in the survey packet and should give reporters a quick, easy way to determine their reporting status at the outset. This rule revises 15 CFR 806.17 to implement the above changes in reporting requirements for the survey.

In addition, this rule amends 15 CFR 806.15 to change the year of coverage of the benchmark survey from 1985 to 1987. The original legislation authorizing the survey required that a benchmark survey be conducted at least once every 5 years. Because a benchmark survey covering 1980 was conducted, the original legislation would have implied that the next survey cover 1985. However, amendments to the original legislation made in 1981 (see Pub. L. 97–33 and Pub. L. 97–70) now require the conduct of "a benchmark survey covering year 1980, a benchmark survey covering year 1987, and benchmark surveys covering every fifth year thereafter." The postponement of this survey from 1985 to 1987 was done in order to place it on the same 5-year cycle as the Census Bureau's economic censuses. As a consequence, it will be possible to link the enterprise data reported to BEA in its benchmark surveys, and the establishment data reported to the Census Bureau in its economic census, for those U.S. companies that are in the foreign direct investment universe.

Executive Order 12291

BEA has determined that this rule is not "major" as defined in E.O. 12291 because it is not likely to result in:

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

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

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

Paperwork Reduction Act

The collection of information requirement in this final rule has been approved by OMB (OMB No. 0608–0042).

Regulatory Flexibility Act

The provisions of the Regulatory Flexibility Act relating to preparation of an initial regulatory flexibility analysis are not applicable to this final rule because it will not have a significant economic impact on a substantial number of small entities. Most small businesses are not foreign owned, and most that are foreign owned are excluded from reporting on Form BE–12(LF) and Form BE–12(SF) by the $1 million exemption level below which reporting on these forms is not required. Also, under this rule, companies with assets, sales, or net income above $1 million, but not above $20 million, will report on the much more abbreviated BE–12(SF), rather than on the BE–12(LF). This provision will significantly reduce the burden on smaller businesses.

Accordingly, the General Counsel, Department of Commerce, has certified to the Chief Counsel for Advocacy, Small Business Administration, under provisions of the Regulatory Flexibility Act (5 U.S.C. 605(b)) that these rules will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 15 CFR Part 806

Balance of payments, Economic statistics, Foreign investment in the United States, Reporting requirements.

Dated: December 28, 1987.

Allan H. Young,

Director, Bureau of Economic Analysis.

For the reasons set forth in the preamble, 15 CFR Part 806 is amended as follows:

PART 806—DIRECT INVESTMENT SURVEYS

1. The authority citation for 15 CFR Part 806 continues to read as follows:

Authority: 5 U.S.C. 301, 22 U.S.C. 3101–3108, and E.O. 11961, as amended.

§ 806.15 [Amended]

2. Section 806.15(j)(1) is amended by deleting "at least once every five years" and inserting in its place "in 1980, 1987, and every fifth year thereafter."

3. Section 806.15(j)(2) is amended by deleting "at least once every five years" and inserting in its place "in 1980, 1987, and every fifth year thereafter."

4. Section 806.17 is revised to read as follows:

§ 806.17 Rules and regulations for BE–12, Benchmark Survey of Foreign Direct Investment in the United States—1987.

A BE–12, Benchmark Survey of Foreign Direct Investment in the United States will be conducted covering 1987. All legal authorities, provisions, definitions, and requirements contained in §§ 806.1 through 806.13 and §§ 806.15 (a) through (g) are applicable to this survey. Specific additional rules and regulations for the BE–12 survey are given below.

(a) *Response required.* A response is required from persons subject to the reporting requirements of the BE–12, Benchmark Survey of Foreign Direct Investment in the United States—1987, contained herein, whether or not they are contacted by BEA. Also, a person, or their agent, contacted by BEA concerning their being subject to reporting, either by sending them a report form or by written inquiry, must respond in writing pursuant to § 806.4. This may be accomplished by completing and returning Form BE–12(X) within 30 days of its receipt and, if applicable, by completing and returning Form BE–12(LF) or Form BE–12(SF) by May 31, 1988.

(b) *Who must report.* A BE–12 report is required for each U.S. affiliate, i.e., for each U.S. business enterprise in which a foreign person owned or controlled, directly or indirectly, 10 percent or more of the voting securities if an incorporated U.S. business enterprise, or an equivalent interest if an unincorporated U.S. business enterprise, at the end of the business enterprise's 1987 fiscal year. A report is required even though the foreign person's equity interest in the U.S. business enterprise may have been established or acquired during the reporting period. Beneficial, not record, ownership is the basis of the reporting criteria.

(c) *Forms to be filed.* (1) Form BE–12(X)—Benchmark Survey of Foreign Direct Investment in the United States—1987, Determination of Reporting Status, must be completed and filed within 30 days of its receipt by each U.S. business enterprise that was a U.S. affiliate of a foreign person at the end of its 1987 fiscal year and that is not fully consolidated, or in the case of real estate investments, aggregated on a Form BE–12(X) of another U.S. affiliate. Also, a person, or their agent, contacted by BEA concerning their being subject to reporting, either by sending them a report form or by written inquiry, must respond by completing and returning Form BE–12(X) within 30 days of its receipt, even if the person does not meet the requirements for reporting on Form

BE–12(LF) or BE–12(SF), as contained in § 806.17(c) (2) and (3) below.

(2) Form BE–12(LF)—Benchmark Survey of Foreign Direct Investment in the United States—1987 (Long Form) must be completed and filed by May 31, 1988, by each U.S. business enterprise that was a U.S. affiliate of a foreign person at the end of its 1987 fiscal year, if:

(i) It is *not* a bank or bank holding company, and

(ii) On a fully consolidated, or, in the case of real estate investment, an aggregated basis, one or more of the following three items for the U.S. affiliate (not the foreign parent's share) exceeded $20 million (positive or negative) at the end of, or for, its 1987 fiscal year:

(A) Total assets (do not net out liabilities),

(B) Sales or gross operating revenues, excluding sales taxes, or

(C) Net income after provision for U.S. income taxes.

(3) Form BE–12(SF)—Benchmark Survey of Foreign Direct Investment in the United States—1987 (Short Form) must be completed and filed by May 31, 1988, by each U.S. business enterprise that was a U.S. affiliate of a foreign person at the end of its 1987 fiscal year, if:

(i) On a fully consolidated, or, in the case of real estate investments, an aggregated basis, one or more of the following three items for the U.S. affiliate (not the foreign parent's share) exceeded $1 million (positive or negative), but no one item exceeded $20 million (positive or negative) at the end of, or for, its 1987 fiscal year:

(A) Total assets (do not net out liabilities),

(B) Sales or gross operating revenues, excluding sales taxes, or

(C) Net income after provision for U.S. income taxes, or if:

(ii) The U.S. affiliate *is* a bank or a bank holding company, and one or more of the following three items for the U.S. affiliate (not the foreign parent's share) exceeded $1 million (positive or negative) at the end of, or for, its 1987 fiscal year:

(A) Total assets (do not net out liabilities),

(B) Sales or gross operating revenues, excluding sales taxes, or

(C) Net income after provision for U.S. income taxes.

(d) *Aggregation of real estate investments.* All real estate investments of a foreign person must be aggregated for the purpose of applying the reporting criteria. A single report form must be filed to report the aggregate holdings, unless permission has been received from BEA to do otherwise. Those holdings not aggregated must be reported separately.

(e) *Exemption.* (1) A U.S. affiliate as consolidated, or aggregated in the case of real estate investments, is not required to file a Form BE–12(LF) or Form BE–12(SF) if each of the following three items for the U.S. affiliate (not the foreign parent's share) did not exceed $1 million (positive or negative) at the end of, or for, its 1987 fiscal year:

(i) Total assets (do not net out liabilities),

(ii) Sales or gross operating revenues, excluding sales taxes, and

(iii) Net income after provision for U.S. income taxes.

(2) If a U.S. business enterprise is a U.S. affiliate but is not required to file a completed Form BE–12(LF) or Form BE–12(SF) because it falls below the exemption level, then it must complete and file a Form BE–12(X) with item 3 marked and the information requested in item 3 filled in.

(d) *Due date.* A fully completed and certified Form BE–12(LF) or Form BE–12(SF) is due to be filed with BEA not later than May 31, 1988. In addition, Form BE–12(X) must be completed (including the certification) and filed within 30 days of the date it was received.

[FR Doc. 88–771 Filed 1–14–88; 8:45 am]

BILLING CODE 3510–06–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 558

New Animal Drugs for Use in Animal Feeds; Halofuginone, Hydrobromide, Bacitracin Methylene Disalicylate, and Roxarsone

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 Hoechst-Roussel Agri-Vet Co. The NADA provides for the use of halofuginone hydrobromide in combination with bacitracin methylene disalicylate and roxarsone in Type C medicated feeds for the prevention of coccidiosis, for increased rate of weight gain, and for improved feed efficiency in broilers.

EFFECTIVE DATE: January 15, 1988.

FOR FURTHER INFORMATION CONTACT: Lonnie W. Luther, Center for Veterinary Medicine (HFV–128), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–4317.

SUPPLEMENTARY INFORMATION: Hoechst-Roussel Agri-Vet Co., Route 202–206 North, Somerville, NJ 08876, has filed NADA 140–533 providing for the use of a combination of halofuginone hydrobromide, bacitracin methylene disalicylate, and roxarsone Type A medicated articles to make Type C medicated feeds containing 2.27 grams halofuginone hydrobromide per ton, 10 to 50 grams bacitracin methylene disalicylate per ton, and 22.7 to 45.4 grams roxarsone per ton for the prevention of coccidiosis caused by *Eimeria tenella, E. necatrix, E. acervulina, E. brunetti, E. mivati,* and *E. maxima,* for improved feed efficiency, and for increased rate of weight gain in broilers. The application is approved and the regulations in 21 CFR 558.76, 558.265, and 558.530 are amended by adding new paragraphs (d)(3)(xi), (c)(5), and (d)(4)(v), respectively, to reflect the approval. 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, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, from 9 a.m. to 4 p.m., Monday through Friday.

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

List of Subjects in 21 CFR Part 558

Animal drugs, Animal feeds.

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

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

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

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

2. Section 558.76 is amended by adding new paragraph (d)(3)(xi) to read as follows:

§ 558.76 Bacitracin methylene disalicylate.

* * * * *

(d) * * *

(3) * * *

(xi) Halofuginone hydrobromide and roxarsone in accordance with § 558.265.

3. Section 558.265 is amended by adding new paragraph (c)(5) to read as follows:

§ 558.265 Halofuginone hydrobromide.

* * * * *

(c) * * *

(5) *Amount per ton.* Halofuginone hydrobromide 2.72 grams (0.0003 percent) plus bacitracin methylene disalicylate 10 to 50 grams and roxarsone 22.7 to 45.4 grams.

(i) *Indications for use.* For the prevention of coccidiosis caused by *Eimeria tenella, E. necatrix, E. acervulina, E. brunetti, E. mivati,* and *E. maxima*; for increased rate of weight gain; and for improved feed efficiency.

(ii) *Limitations.* Feed continuously as sole ration; withdraw 5 days before slaughter; use as sole source of organic arsenic; do not feed to layers; avoid contact with skin, eyes, or clothing; keep out of lakes, ponds, or streams.

4. Section 558.530 is amended by adding new paragraph (d)(4)(v) to read as follows:

§ 558.530 Roxarsone.

* * * * *

(d) * * *

(4) * * *

(v) Roxarsone may be used in combination with halofuginone hydrobromide and bacitrain methylene disalicyclate as in § 558.265.

Dated: January 7, 1988.

Gerald B. Guest,

Director, Center for Veterinary Medicine.

[FR Doc. 88-733 Filed 1-14-88; 8:45 am]

BILLING CODE 4160-01-M

PENSION BENEFIT GUARANTY CORPORATION

29 CFR Part 2676

Valuation of Plan Benefits and Plan Assets Following Mass Withdrawal; Interest Rates

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Final rule.

SUMMARY: This is an amendment to the Pension Benefit Guaranty Corporation's regulation on Valuation of Plan Benefits and Plan Assets Following Mass Withdrawal (29 CFR Part 2676). The regulation prescribes rules for valuing benefits and certain assets of multiemployer plans under sections 4219(c)(1)(D) and 4281(b) of the Employee Retirement Income Security Act of 1974. Section 2676.15(c) of the regulation contains a table setting forth, for each calendar month, a series of interest rates to be used in any valuation performed as of a valuation date within that calendar month. On or about the fifteenth of each month, the PBGC publishes a new entry in the table for the following month, whether or not the rates are changing. This amendment adds to the table the rate series for the month of February 1988.

EFFECTIVE DATE: February 1, 1988.

FOR FURTHER INFORMATION CONTACT: Deborah C. Murphy, Attorney, Office of the General Counsel (22500), Pension Benefit Guaranty Corporation, 2020 K Street NW., Washington, DC 20006; 202-778-8820 (202-778-8859 for TTY and TDD). (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION: The PBGC finds that notice of and public comment on this amendment would be impracticable and contrary to the public interest, and that there is good cause for making this amendment effective immediately. These findings are based on the need to have the interest rates in this amendment reflect market conditions that are as nearly current as possible and the need to issue the interest rates promply so that they are available to the public before the beginning of the period to which they apply. (*See* 5 U.S.C. 533 (b) and (d).) Because no general notice of proposed rulemaking is required for this amendment, the Regulatory Flexibility Act of 1980 does not apply (5 U.S.C. 601(2)).

The PBGC has also determined that this amendment is not a "major rule" within the meaning of Executive Order 12291 because it will not have an annual effect on the economy of $100 million or more; or create a major increase in costs or prices for consumers, individual industries, or geographic regions; or have significant adverse effects on competition, employment, investment, or innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

List of Subjects in 29 CFR Part 2676

Employee benefit plans, Pensions.

In consideration of the foregoing, Part 2676 of Subchapter H of Chapter XXVI of Title 29, Code of Federal Regulations, is amended as follows:

PART 2676—VALUATION OF PLAN BENEFITS AND PLAN ASSETS FOLLOWING MASS WITHDRAWAL

1. The authority citation for Part 2676 continues to read as follows:

Authority: 29 U.S.C. 1302(b)(3), 1399(c)(1)(D), and 1441(b)(1).

2. In § 2676.15, paragraph (c) is amended by adding to the end of the table of interest rates therein the following new entry:

§ 2676.15 Interest.

* * * * *

(c) *Interest rates.*

For valuation dates occurring in the month—	The values of i_t are—															
	i_1	i_2	i_3	i_4	i_5	i_6	i_7	i_8	i_9	i_{10}	i_{11}	i_{12}	i_{13}	i_{14}	i_{15}	i_u
*		*			*		*		*			*			*	
February 1988....	.10125	.0975	.0925	.0875	.0825	.07625	.07625	.07625	.07625	.07625	.07	.07	.07	.07	.07	.06

Issued at Washington, DC, on this 12th day of January 1988.

Kathleen P. Utgoff,

Executive Director, Pension Benefit Guaranty Corporation.

[FR Doc. 88-797 Filed 1-14-88; 8:45 am]

BILLING CODE 7708-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[FRL-3310-3]

Approval and Promulgation of Implementation Plans: Oregon

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA today approves a new Oregon Department of Environmental Quality (DEQ) rule regulating the height of stacks and the use of dispersion techniques, submitted on May 30, 1986, which replaces the existing rules for stack heights and dispersion techniques, as a revision to the Oregon State Implementation Plan (SIP). This revision was submitted to satisfy the requirements of section 123 (Stack Heights) of the Clean Air Act (hereinafter the Act).

EFFECTIVE DATE: This action will be effective on March 15, 1988, unless notice is received before February 16, 1988, that someone wishes to submit adverse or critical comments. If such notice is received, EPA will open a formal 30-day comment period on this action.

ADDRESSES: Copies of the materials submitted to EPA may be examined during normal business hours at:

Public Information Reference Unit, Environmental Protection Agency, 401 M Street SW., Washington, DC 20460

Air Programs Branch (10A-86-7), Environmental Protection Agency, 1200 Sixth Avenue, Seattle, Washington 98101

State of Oregon, Department of Environmental Quality, Yeon Building, 522 SW Fifth Avenue, Portland, Oregon 97207

Comments should be addressed to: Laurie M. Kral, Air Programs Branch, AT-092, Environmental Protection Agency, 1200 Sixth Avenue, Seattle, Washington 98101.

FOR FURTHER INFORMATION CONTACT: David C. Bray, Air Programs Branch, AT-092, Environmental Protection Agency, 1200 Sixth Avenue, Seattle, Washington 98101, Telephone: (206) 442-4253, FTS: 399-4253.

SUPPLEMENTARY INFORMATION: On May 30, 1986, the Oregon Department of Environmental Quality (DEQ) submitted a new rule regulating the use of stack heights and dispersion techniques (OAR 340-20-037) as a revision to the Oregon State Implementation Plan (SIP). This new Section adopts the EPA stack height regulations from 40 CFR Part 51 by reference (specifically, 40 CFR 51.1 (ff) through (kk), 51.12 (j) and (k), and 51.18(l) [1]). The existing rules for stack heights and dispersion techniques (OAR 340-20-340 and 345) have been rescinded and are replaced by the new section. However, the DEQ inadvertently failed to adopt the EPA definition of the terms "emission limitation" and "emission standard" from 40 CFR 51.1(z) which is necessary for proper implementation of the other stack height provisions. In an October 23, 1987, letter from the Director of the DEQ to the EPA Regional Administrator, the DEQ committed to adding a definition of these terms to its administrative rules in the near future and, in the interim, implement their existing rules consistent with the EPA definition. EPA is therefore approving the new rule as a revision to the Oregon SIP, replacing the existing rules, with the understanding that a definition of the terms "emission limitation" and "emission standard" will be added when the rules are next revised.

The public should be advised that this action will be effective 60 days from the date of this **Federal Register** notice. However, if notice is received within 30 days that someone wishes to submit adverse or critical comments on the revision approved herein, the action on the revision will be withdrawn and two subsequent notices will be published before the effective date. One notice will withdraw the final action on the revision and another will begin a new rulemaking by announcing a proposal of the action on the revision and establish a comment period.

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

Under 5 U.S.C. 605(b), I certify that this revision will not have a significant economic impact on a substantial number of small entities (see 46 FR 8709).

Under section 307(b)(l) 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 March 15, 1988. 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, Ozone, Sulfur oxides, Nitrogen dioxide, Lead, Particulate matter, Carbon monoxide, Hydrocarbons, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: December 24, 1987.

Lee M. Thomas,

Administrator.

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

Title 40, Part 52 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

Subpart MM—Oregon

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

Authority: 42 U.S.C. 7401-7642.

2. Section 52.1970 is amended by adding paragraph (c)(78) to read as follows:

§ 52.1970 Identification of plan.

* * * * *

(c) * * *

(78) On May 30, 1986, the State of Oregon Department of Environmental Quality submitted a new rule, OAR 340-20-037 "Stack Heights and Dispersion Techniques" and requested the deletion of the existing rules, OAR 340-20-340 and 345 "Stack Heights and Dispersion Techniques". On October 23, 1987, the State of Oregon Department of Environmental Quality submitted a letter indicating how this new rule will be implemented until a definition of the terms "emission limitation" and "emission standard" is added

(i) Incorporation by reference.

(A) Letter of May 30, 1986, from the Oregon State Department of Environmental Quality to EPA Region 10. Revisions to the Oregon Administrative Rules, Chapter 340, Division 20, Section 037 "Stack Heights and Dispersion Techniques", adopted by the Environmental Quality Commission on April 25, 1986.

(B) Letter of October 23, 1987, from the Oregon State Department of Environmental Quality to EPA Region 10.

[1] EPA has recently recodified these sections as follows: § 51.1 (ff) through (kk) as § 51.100 (ff) through (kk); § 51.12(j) as § 51.118(a); § 51.12(k) as § 51.118(b); and § 51.18(l) as § 51.164. The DEQ has indicated that they will revise the codification in their regulations accordingly.

3. Section 52.1988 is amended by revising paragraph (a) to read as follows:

§ 52.1988 Air contaminant discharge permits.

(a) Emission limitations and other provisions contained in Air Contaminant Discharge Permits issued by the State in accordance with the provisions of the federally-approved Air Contaminant Discharge Permit Rules (OAR 340–20–140 through 185), New Source Review Rules (OAR 340–20–220 through 276), Stack Heights and Dispersion Techniques Rules (OAR 340–20–37), and Plant Site Emission Limit Rules (OAR 340–20–300 through 320), except Alternative Emission Limits (Bubble) for sulfur dioxide or total suspended particulates which involve trades were the sum of the increases in emissions exceeds 100 tons per year, shall be the applicable requirements of the federally-approved Oregon SIP (in lieu of any other provisions) for the purposes of section 113 of the Clean Air Act and shall be enforceable by EPA and by any person in the same manner as other requirements of the SIP.

* * * * *

[FR Doc. 88–822 Filed 1–14–88; 8:45 am]

BILLING CODE 6560–50–M

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40 CFR Part 52

[FRL–3306–2]

Approval and Promulgation of State Implementation Plan: Oregon

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rulemaking action approves the Oregon State Implementation Plan (SIP) revision pertaining to the carbon monoxide (CO) attainment plan for the Grants Pass area. The CO plan relies upon the construction of a third bridge over the Rogue River to relieve traffic congestion in the downtown nonattainment area, as well as the Federal Motor Vehicle Emission Control Program to demonstrate attainment of the CO standard by December, 1990. This SIP revision was submitted to EPA by the Oregon Department of Environmental Quality on November 24, 1986, and was supplemented on January 8, 1987.

EFFECTIVE DATE: March 15, 1988.

ADDRESSES: Copies of the materials submitted to EPA may be examined during normal business hours at:

Public Information, Reference Unit, Environmental Protection Agency, 401 M Street SW., Washington, DC 20460
Air Programs Branch (10A–87–1), Environmental Protection Agency, 1200 Sixth Avenue, Seattle, Washington 98101
State of Oregon, Department of Environmental Quality, Executive Building, 811 SW. 6th Avenue, Portland, Oregon 97204

FOR FURTHER INFORMATION CONTACT: David S. Kircher, Air Programs Branch, AT–092, Environmental Protection Agency, 1200 Sixth Avenue, Seattle, Washington 98101, Telephone: (206) 442–4198, FTS: 399–4198.

SUPPLEMENTARY INFORMATION:

I. Background

On December 16, 1985, Grants Pass, Oregon, was designated a newly discovered nonattainment area for CO (50 FR 51251). As a newly discovered area, the EPA policies contained in the EPA Policy Statement on post-1982 attainment areas, November 2, 1983 (48 FR 50686) and in the "Guidance Document for Correction of Part D SIP's for Nonattainment Areas," January 27, 1984, apply. In essence, newly designated nonattainment areas must meet requirements for 1979 SIP's as described in the Preamble for SIP Approval of Part D SIP's (April 4, 1979, 44 FR 2072). In accordance with the policies stated therein, the Grants Pass plan projects attainment by December, 1990, which is within the five-year time limit from the date of the nonattainment designation.

The plan calls for the construction of a third bridge over the Rogue River in conjunction with the Federal Motor Vehicle Emission Control Program to bring the area into attainment. For a detailed description of the plan, refer to the proposed rulemaking that was published on July 15, 1987 (52 FR 26534).

II. Response to Comments

On July 15, 1987 (52 FR 26534), EPA provided a 30 day public comment period on this proposed approval. No comments were received.

III. Final Rulemaking Action

Today, EPA is approving the Grants Pass, Oregon, carbon monoxide (CO) plan and the established attainment date of December, 1990, as a revision to the existing SIP.

IV. Administrative Review

Under 5 U.S.C. section 605(b), I certify that this revision will not have a significant economic impact on a substantial number of small entities. (See 46 FR 8709.)

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 March 15, 1988. This action may not be challenged later in proceedings to enforce its requirements (See 307(b)(2)).

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

List of Subjects in 40 CFR Part 52

Air pollution control, Ozone, Sulfur oxides, Nitrogen dioxide, Lead, Particulate matter, Carbon monoxide, Hydrocarbons, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: November 20, 1987.

Lee M. Thomas,

Administrator.

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

Title 40, Part 52 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

Subpart MM—Oregon

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

Authority: 42 U.S.C. 7401–7642.

2. Section 52.1970 is amended by adding paragraph (c)(82) to read as follows:

§ 52.1970 Identification of plan.

* * * * *

(c) * * *

(82) On November 24, 1986 and supplemented on January 8, 1987, the Director of the Department of Environmental Quality submitted the Grants Pass carbon monoxide control strategy as a revision to the Oregon State Implementation Plan.

(i) Incorporation by reference.

(A) Letter dated November 24, 1986 from the Director of the Department of Environmental Quality to EPA Region 10.

(B) State of Oregon Clean Air Act Implementation Plan Section 4.11 Grants Pass Carbon Monoxide Control Strategy as adopted by the Environmental Quality Commission on October 24, 1986.

(ii) Additional information.

(A) Letter dated January 8, 1987 from the Director of the Department of Environmental Quality to EPA Region X.

(B) Technical appendices for the Grant Pass Carbon Monoxide Control Strategy, Appendix 4.11.1 through 10.

3. Section 52.1973 is amended by revising the table to read as follows:

§ 52.1973 Attainment dates for national standards.

* * * * *

Air Quality Control Region and nonattainment area	Pollutant						
	TSP		SO_2		NO_2	CO	O_3
	1st [1]	2nd [2]	1st [1]	2nd [2]			
Portland Interstate AQCR							
Interstate AQCR (Washington portion):							
1. Portland-Vancouver (Oregon portion)	a	f	a	b	b	h	b
2. Salem	a	b	a	b	b	e	b
3. Eugene-Springfield AQMA	a	i	a	b	b	h	b
4. Remainder of AQCR	c	c	a	b	b	d	c
Southwest Oregon Intrastate AQCR:							
1. Medford-Ashland AQMA	i	k	a	b	b	i	b
2. Grants Pass	c	c	a	b	b	l	b
3. Remainder of AQCR	c	c	a	b	b	b	b
Northwest Oregon Intrastate AQCR	a	b	a	b	b	b	b
Central Oregon Intrastate AQCR	a	c	a	b	b	b	b
Eastern Oregon Intrastate AQCR	c	c	a	b	b	b	b

[1] 1st—Primary.
[2] 2nd—Secondary.
[a] Area designated as having air quality levels presently below the primary standards or area is unclassifiable.
[b] Area designated as having air quality levels presently below secondary standards or area is unclassifiable.
[c] May, 1975.
[d] May 31, 1976.
[e] Dec. 31, 1982.
[f] Dec. 31, 1986.
[g] [Reserved]
[h] Dec. 31, 1985.
[i] Dec. 31, 1987.
[j] [Reserved]
[k] Dec. 31, 2000.
[l] Dec. 31, 1990.

[FR Doc. 88-821 Filed 1-14-88; 8:45 am]
BILLING CODE 6560-50-M

40 CFR Part 763

[OPTS-62050A; FRL-3215-5]

Asbestos Abatement Projects; Worker Protection; Technical Amendment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; Technical amendment.

SUMMARY: This document makes corrections to the final rule for Asbestos Abatement Projects; Worker Protection (40 CFR Part 763) which appeared in the Federal Register of February 25, 1987 (52 FR 5618).

DATE: This technical amendment is effective January 15, 1988.

FOR FURTHER INFORMATION CONTACT: Edward A. Klein, Director, TSCA Assistance Office (TS-799), Environmental Protection Agency, Rm. E-543, 401 M Street SW., Washington, DC 20460. Telephone: (202) 554-1404.

SUPPLEMENTARY INFORMATION: On February 25, 1987 (52 FR 5618), the Environmental Protection Agency (EPA) issued a final rule titled "Asbestos Abatement Projects; Worker Protection." The EPA rule adopted many of the provisions of the Occupational Safety and Health Administration's (OSHA) rule titled "Occupational Exposure to Asbestos, Tremolite, Anthophyllite and Actinolite: Final Rules" published on June 20, 1986 (51 FR 22612). On May 12, 1987 (52 FR 17752), OSHA published technical amendments to their above cited rule. In reviewing the OSHA technical amendment notice, EPA found that some of the OSHA amendments are applicable to the EPA "Asbestos Abatement Projects; Worker Protection." Accordingly, EPA is issuing this notice to make technical amendments corresponding to OSHA's technical amendments and to correct minor typographical errors in the EPA "Asbestos Abatement Projects; Worker Protection" rule.

Accordingly, the preamble to FR Doc. 87-3645 published in 52 FR 5618-5650 February 25, 1987, is corrected as follows: Corrections to the preamble:

1. On page 5618, column 3, third full paragraph, two lines from the bottom, "Units V.C" is corrected to read "Units I.V.C.".

2. On page 5619:

a. Column 1, line 2, "V.C." is corrected to read "I.V.C.".

b. Column 2, first full paragraph, under "B. *Air Monitoring*", line 20, "Unit V.C" is corrected to read "Unit I.V.C.".

c. Column 3, second full paragraph, line 1, "Section 763.121(e)(6)(iv)" is corrected to read "Section 763.121(e)(6)(iii)(B)".

3. On page 5620, column 3, under "I. *Housekeeping*", line 1, "Section 763.121(1)" is corrected to read "Section 763.121".

4. On page 5621, column 2, second full paragraph, line 16, "Section 763.122(a)(1)" is corrected to read "Section 763.122(a)".

5. On page 5622, column 3, first full paragraph, line 15, "safe" is corrected to read "same".

6. On page 5623, column 2, first full paragraph, line 4, insert "million" after "$4.2".

List of Subjects in 40 CFR Part 763

Asbestos, Environmental protection, Hazardous substances, Health and safety, Recordkeeping and reporting requirements.

Dated: December 31, 1987.

Victor J. Kimm,

Acting Assistant Administrator, Office of Pesticides and Toxic Substances.

PART 763—[AMENDED]

Therefore, 40 CFR Part 763 is amended as follows:

1. The authority citation for Part 763 continues to read as follows:

Authority: 15 U.S.C. 2605 and 2607(c). Subpart E also issued under 15 U.S.C. 2641, 2643, 2646, and 2647.

§ 763.121 [Amended]

2. In § 763.121:

a. In paragraph (h)(2)(iv), in Table 1, line 2 under the "Required respirator" column, insert "other than a disposable respirator" before "equipped".

b. In paragraph (k)(3)(i), line 4, "asbestos in excess of the action level" is revised to read "asbestos at or above the action level".

c. Paragraph (k)(3)(ii) is revised to read as follows: "Training shall be provided prior to or at the time of initial assignment, [unless the employee has received equivalent training within the previous 12 months] and at least annually thereafter."

d. In paragraph (k)(3)(iii)(G), line 2 is revised to read "requirements; and".

e. In paragraph (k)(3)(iii)(H), line 1, "A review" is revised to read "The content".

f. In paragraph (m)(3)(i), line 2, "D, E, and I" is corrected to read "D and E".

Appendix A to § 763.121—EPA/OSHA Reference Method—Mandatory

3. Under *"Sampling and Analytical Procedure"*:

a. Item 2., line 3, "50–mm extension cowl" is revised to read "50–mm electrically conductive extension cowl."

b. Item 13.b., line 1, "Count all particles" is revised to read "In the absence of other information, count all particles".

Appendix B to § 763.121—Detailed Procedure for Asbestos Sampling and Analysis—Non-Mandatory

4. Under *"Detailed Procedure for Asbestos Sampling and Analysis—Non-Mandatory,"* in the "Flow rate" entry, "1/min" signifying liters per minute, is revised to read "L/min", the four times it appears.

5. Under *"Equipment,"* item 1., line 2, "50–mm extension cowl" is revised to read "50–mm electrically conductive extension cowl".

6. Under *"Sampling"*:

a. Item 4., in the equation on the left side, "'min" is revised to read "'minimum".

b. In the *note*, last line, "sampler" is revised to read "sample".

7. Under *"Calculations,"* item 21., the equation is revised to read:

$$E = \frac{(F/n_f) - (B/n_b)}{A_f} \text{ fibers/mm}^2$$

where:

n_f—number of fields in submission sample

n_b—number of fields in bulk sample

Appendix C to § 763.121—Qualitative and Quantitative Fit Testing Procedures—Mandatory

8. Under "I. *Isoamyl Acetate Protocol*":

a. In "C. *Fit test*," item 15., remove the last two sentences.

b. Item 20.(3), "prothesis" is corrected to read "prosthesis".

9. Under "II. *Saccharin Solution Aerosol Protocol*":

a. Item 14., line 2, "IAA" is revised to read "saccharin solution aerosol".

b. Item 20.(3), line 2, "prothesis" is corrected to read "prosthesis".

10. Under "III. *Irritant Fume Protocol*":

a. Paragraph (A), line 4, "combination of high-efficiency and acid gas cartridges" is revised to read "high-efficiency cartridge."

b. Item 8.v., line 3, "Reading it" is revised to read "Repeating it after the test conductor (keeping eyes closed)".

c. Item 12., line 2, "IAA" is revised to read "irritant fume".

d. Item C.3.c., line 3, "particular" is revised to read "particulate".

e. Item C.4.a., line 5, "Norton" is revised to read "North".

f. Item C.4.a.(2), line 2, "*negative pressure slight* is revised to read "*negative pressure of slight.*"

g. Item C.5.e., is revised to read "*Reading (R).* The test subject [keeping eyes closed] shall repeat after the test conductor the 'rainbow passage' at the end of this section. The subject shall talk slowly aloud so as to be heard clearly by the test conductor or monitor."

h. In item C.5.h., line 2, delete "perform".

i. In item C.6., delete "(see paragraph 4.h)".

Appendix E to § 763.121—Interpretation and Classification of Chest Roentgenograms—Mandatory

11. Paragraph (a) is revised to read as follows: "Chest roentgenograms shall be interpreted and classified in accordance with a professionally accepted classification system and recorded on an interpretation form following the format of the CDC/NIOSH (M) 2.8 form. As a minimum, the content within the boldlines of this form (items 1 through 4) shall be included. This form is not to be submitted to NIOSH."

[FR Doc. 88–631 Filed 1–14–88; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 0 and 90

[GEN Docket No. 87–112, FCC 87–359]

Public Safety Radio Services, Assignment of Frequencies

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission has adopted rules and technical standards for use of the 821–824/866–869 MHz bands by public safety licensees. These rules are included in the National Plan for Public Safety, which is contained in this Report and Order. In addition to the issuance of technical guidelines for the use of this spectrum, the National Plan also provides direction to local, state, and federal authorities in the development of regional public safety plans.

EFFECTIVE DATE: February 16, 1988.

FOR FURTHER INFORMATION CONTACT: Marty Liebman, Policy and Planning Branch, Land Mobile and Microwave Division, Private Radio Bureau, (202) 632–6497 or Fred Thomas, Frequency Allocation Branch, Spectrum Engineering Division, Office of Engineering and Technology (202) 653–8112.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Report and Order*, GEN Docket No. 87–112, adopted November 24, 1987, and released December 18, 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 20554. 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. This Report and Order establishes the policies and rules for a national plan for public safety services (The National Plan). In particular, it sets forth the service rules and technical standards for the 821–824/866–869 MHz bands which the Commission allocated for public safety use in 1986. In adopting this

Report and Order, the Commission is responding to a 1983 Congressional mandate directing the FCC to establish a plan to ensure that public safety needs are taken into account in making allocations of the electromagnetic spectrum.

2. The National Plan is intended to satisfy two broad objectives. First, it will facilitate interoperability between communications systems to permit local, state, and federal agencies to coordinate their activities; and second, the Plan will ensure efficient use of the spectrum allocated for public safety.

3. The Plan sets national policy guidelines and technical standards for use of the new spectrum while also allowing regional public safety planners to develop regional plans tailored to their areas' own particular communications needs. The regional plans will be prepared by regional planning committees in the forty-eight regions established in the *Order*, under the general oversight of the Commission. Those plans will address the spectrum utilization requirements of all of the public safety and special emergency entities of the regions.

4. The National Plan permits entities in both the Public Safety Radio Services and the Special Emergency Radio Service to obtain licenses in the new 821–824/866–869 MHz spectrum. In instances where the demand for frequencies exceeds the available spectrum, the Plan will allow the individual regional planning committees to recommend which entities should receive spectrum, based on the committees' determination as to which are most important to the protection of life and property. The regional plans will be submitted to the Commission. The Commission will solicit comment on each plan and review it for compliance with the National Plan. No licenses will be granted to operate in this spectrum in any region until the plan for that region is accepted by the Commission.

5. The Plan mandates that the new 800 MHz bands will consist of 25 kHz channels spaced 12.5 kHz apart ("12.5 kHz offset"). In making this determination, the Commission found that this channeling plan would be spectrum efficient, would enable interoperability with existing 800 MHz public safety systems, and would accommodate sophisticated digital encryption systems and digital data communications systems.

6. The Plan also establishes five Mutual Aid Channels in the 821–824/866–869 MHz bands. These frequencies will be used to enable local, state and federal public safety entities to communicate with one another in times of emergency.

7. Finally, in an effort to promote efficient use of the spectrum, the Plan will require that trunked systems be utilized by licenees having more than four channels, and that loading standards currently applicable to existing 800 MHz public safety services be applicable to the new 800 MHz allocation.

8. The National Plan also addresses a series of other issues, such as federal agency concerns and the use of cellular radio and mobile satellite systems, and provides guidance to the regions in the allocation of vacated (lower-band) frequencies and in the assignment of unused 800 MHz frequencies.

Regulatory Flexibility Act Final Analysis

9. Pursuant to the Regulatory Flexibility Act of 1980, 5 U.S.C. 604, a final regulatory flexibility analysis has been prepared. It is available for public viewing as part of the full text of this decision, which may be obtained from the Commission or its copy contractor.

10. The Secretary shall cause a copy of this *Report and Order*, including the Final Regulatory Flexibility Analsis, to be sent to the Chief Counsel for Advocacy of the Small Business Administration, in accordance with section 603(a) of the Regulatory Flexibility Act (Pub. L. 96–354, 94 Stat. 1164, 5 U.S.C. 601 *et seq*), (1981).

Paperwork Reduction Act Statement

11. The decisions contained herein have been analyzed with respect to the Paperwork Reduction Act of 1980 and found to impose a new information collection requirement on the public as a result of the creation of regional planning committees and the requirement that they prepare and submit a regional plan to the Commission. Implementation of new or modified requirements will be subject to approval by the Office of Management and Budget as prescribed by the Act.

Ordering Clauses

12. Accordingly, *it is ordered* that, pursuant to the authority of sections 4(i), 301 and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 4(i), 301, and 303(r) Parts 0 and 90 of the Commission's Rules, 47 CFR Parts 0 and 90 *are amended* as set forth below.

13. *It is further ordered* that this Order will become effective February 16, 1988.

14. *It is further ordered* that this proceeding *is terminated*.

List of Subjects

47 CFR Part 0

Organization and functions (Government agencies).

47 CFR Part 90

Radio.

Amendatory Text

A. 47 CFR Part 0 is amended as follows:

PART 0—[AMENDED]

15. The authority citation for Part 0 continues to read:

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

16. New § 0.335 is added to read as follows:

§ 0.335 Authority delegated jointly to the Chief of the Private Radio Bureau and the Chief Engineer.

Authority is delegated jointly to the Chief of the Private Radio Bureau and the Chief Engineer to review and accept regional plans submitted and modifications thereto as required under the public safety National Plan adopted in General Docket 87–112.

B. 47 CFR Part 90 is amended as follows:

PART 90—[AMENDED]

17. The authority citation for Part 90 continues to read:

Authority: Secs. 4, 303, 48 Stat., as amended, 1066, 1082; 47 U.S.C. 154, 303.

18. New § 90.16 is added to read as follows:

§ 90.16 Public Safety National Plan.

The Commission has established a National Plan which specifies special policies and procedures governing the Public Safety Radio Services and the Special Emergency Radio Service. The National Plan is contained in the *Report and Order* in General Docket No. 87–112. The principal spectrum resource for the National Plan is the 821–824 MHz and the 866–869 MHz bands. The National plan establishes planning regions covering all parts of the United States, Puerto Rico, and the U.S. Virgin Islands. No assignments will be made in the 821–824 MHz and 866–869 MHz bands until a regional plan for the area has been accepted by the Commission.

§ 90.17 [Amended]

19. The frequency table in paragraph (b) of § 90.17 is amended by revising frequency band "806–821" to read "806–

824" and revising frequency band "851–866" to read "851–869".

20. Paragraph (c)(15) of § 90.17 is revised to read:

* * * * *

(c) * * *

(15) Subparts M and S contain rules for assignment of frequencies in the 806–824 MHz and 851–869 MHz bands.

* * * * *

§ 90.19 [Amended]

21. The frequency table in paragraph (d) of § 90.19 is amended by revising frequency band "806–821" to read "806–824" and revising frequency band "851–866" to read "851–869".

22. Paragraph (e)(22) of § 90.19 is revised to read:

* * * * *

(e) * * *

(22) Subparts M and S contain rules for assignment of frequencies in the 806–824 MHz and 851–869 MHz bands.

* * * * *

§ 90.21 [Amended]

23. The frequency table in paragraph (b) of § 90.21 is amended by revising frequency band "806–821" to read "806–824" and revising frequency band "851–866" to read "851–869".

24. Paragraph (c)(10) of § 90.21 is revised to read:

* * * * *

(c) * * *

(10) Subparts M and S contain rules for assignment of frequencies in the 806–824 MHz and 851–869 MHz bands.

* * * * *

§ 90.23 [Amended]

25. The frequency table in paragraph (b) of § 90.23 is amended by revising frequency band "806–821" to read "806–824" and revising frequency band "851–866" to read "851–869".

26. Paragraph (c)(10) of § 90.23 is revised to read:

* * * * *

(c) * * *

(10) Subparts M and S contain rules for assignment of frequencies in the 806–824 MHz and 851–869 MHz bands.

§ 90.25 [Amended]

27. The frequency table in paragraph (b) of § 90.25 is amended by revising frequency band "806–821" to read "806–824" and revising frequency band "851–866" to read "851–869".

28. Paragraph (c)(16) of § 90.25 is revised to read:

* * * * *

(c) * * *

(16) Subparts M and S contain rules for assignment of frequencies in the 806–824 MHz and 851–869 MHz bands.

* * * * *

29. New § 90.34 is added to read as follows:

§ 90.34 Public Safety National Plan.

The Commission has established a National Plan which specifies special policies and procedures governing the Public Safety Radio Services and the Special Emergency Radio Service. The National Plan is contained in the *Report and Order* in General Docket No. 87–112. The principal spectrum resource for the National Plan is the 821–824 MHz and the 866–869 MHz bands. The National plan establishes planning regions covering all parts of the United States, Puerto Rico, and the U.S. Virgin Islands. No assignments will be made in the 821–824 MHz and 866–869 MHz bands until a regional plan for the area has been accepted by the Commission.

§ 90.53 [Amended]

30. The frequency table in paragraph (a) of § 90.53 is amended by revising frequency band "806–821" to read "806–824" and revising frequency band "851–866" to read "851–869".

31. Paragraph (b)(21) of § 90.53 is revised to read:

* * * * *

(b) * * *

(21) Subparts M and S contain rules for assignment of frequencies in the 806–824 MHz and 851–869 MHz bands.

* * * * *

32. Section 90.175 is amended by revising paragraph (b) to read as follows:

§ 90.175 Frequency coordination requirements.

* * * * *

(b) For frequencies between 470 and 512 MHz, 806–824/851–869 MHz, and 896–901/935–940 MHz: A statement from the applicable coordinator recommending specific frequencies that are available for assignment in accordance with the loading standards and mileage separations applicable to the specific radio service or category of user involved.

* * * * *

33. Section 90.203 is amended by adding a new paragraph (i) to read as follows:

§ 90.203 Type acceptance required.

* * * * *

(i) Equipment type accepted after February 16, 1988 and marketed for public safety operation in the 821–824/866–869 MHz bands must have the capability to be programmed for operation on the mutual aid channels as designated in § 90.617(a) of the Rules.

§ 90.205 [Amended]

34. The frequency table in paragraph (b) of § 90.205 is amended by revising frequency band "806 to 821" to read "806 to 824" and revising frequency band "851 to 866" to read "851 to 869".

35. Section 90.209 is amended by revising paragraph (b)(4), by redesignating existing paragraphs (i) and (j) as new paragraphs (j) and (k), respectively, and by adding a new paragraph (i) to read as follows:

§ 90.209 Bandwidth limitations.

* * * * *

(b) * * *

(4) For all F3E or G3E emissions on frequencies below 947 MHz, except for the frequency bands 896 to 901 MHz and 935 to 940 MHz, maximum authorized bandwidth shall be 20 kHz. Except for frequencies in the 821–824 and 866–869 MHz bands, the maximum authorized frequency deviation shall be 5 kHz. For frequencies in the 821–824 and 866–869 MHz bands the maximum authorized freuqency deviation shall be 4 kHz. Stations authorized for operation on or before December 1, 1961, in the frequency band 73.0–74.6 MHz may continue to operate with a bandwidth of 40 kHz and a deviation of 15 kHz. For stations operating on frequencies above 947 MHz, except as provided in paragraph (b)(5) of this section, the maximum authorized bandwidth and frequency deviation will be specified in the station authorization.

* * * * *

(i) For transmitters that operate in the frequency bands 821–824 and 866–869 MHz that are not equipped with an audio low-pass filter in accordance with the provisions of § 90.211(d)(1), the power of any emission shall be attenuated below the unmodulated carrier power (P) in accorance with the following schedule:

(1) On any frequency removed from the center of the authorized bandwidth by a displacement frequency (f_d in kHz) of 4 kHz or less: 0 dB.

(2) On any frequency removed from the center of the authorized bandwidth by a displacement frequency (f_d in kHz) of more than 4 kHz up to and including 8.5 kHz: At least 107 $\log_{10}(f_d/4)$.

(3) On any frequency removed from the center of the authorized bandwidth by a displacement frequency (f_d in kHz) of more than 8.5 kHz up to and including 15 kHz: At least 40.5 $\log_{10}(f_d/1.16)$.

(4) On any frequency removed from the center of the authorized bandwidth by a displacement frequency (f_d in kHz)

of more than 15 kHz up to and including 25 kHz: At least 116 $\log_{10}(f_d/6.1)$.

(5) On any frequency removed from the center of the authorized bandwidth by more than 25 kHz: At least 43 + $\log_{10}$ (output power in watts), or 80 dB, whichever is lesser attenuation.

36. Section 90.211(d) is amended by revising the introductory text and paragraph (d)(1)(ii), and by amending paragraph (d)(2) by changing the reference to "(i)" to read "(j)" in the two places in which it appears to read as follows:

§ 90.211 Modulation requirements.

* * * * *

(d) Each transmitter shall meet the requirements provided in paragraph (d) (1) or (2) of this section. The requirements of this paragraph do not apply to mobile stations that are authorized to operate with a maximum power output of 2 watts or less or to any radio-telecommunication system operating wholly within the limits of one or more of the territories or possessions of the United States, or Alaska, or Hawaii, except those systems operating in the frequency ranges 806 to 824 MHz, 851 to 869 MHz, 896 to 901 MHz, and 935 to 940 MHz.

(1) * * *

(i) * * *

(ii) For transmitters that operate in the frequency band of 450 to 470 MHz and that are authorized on or after November 1, 1967, and transmitters that operate in the frequency bands of 470 to 512 MHz, 806 to 824 MHz, 851 to 869 MHz, 929 to 930 MHz, and Traveler's Information Stations on 530 and 1610 kHz, the attenuation of the low-pass filter between the frequencies of 3 kHz and 20 kHz shall be greater than the attenuation at 1 kHz by at least: 60 Log_{10} (f/3) decibels where "f" is the frequency in kHz. At frequencies above 20 kHz, the attenuation shall be 50 decibels greater than the attenuation at 1 kHz.

* * * * *

37. Section 90.213 is amended by inserting two lines in numerical order in the Table following paragraph (a) as follows:

§ 90.213 Frequency tolerance.

(a) * * *

FREQUENCY TOLERANCE

Frequency range (MHz)	Fixed and base stations		Mobile stations	
	Over 200 W output power	200 W or less output power	Over 2 W output power	2 W or less output power
*	*	*	*	*
821 to 824	[11] .0001	[11] .0001	.00015	.00015

FREQUENCY TOLERANCE—Continued

Frequency range (MHz)	Fixed and base stations		Mobile stations	
	Over 200 W output power	200 W or less output power	Over 2 W output power	2 W or less output power
*	*	*	*	*
866 to 869	.0001	.0001	.00015	.00015
*	*	*	*	*

[11] Control stations may operate with the frequency tolerance specified for associated mobile stations.

* * * * *

38. Section 90.477 is amended by revising paragraph (b) to read as follows:

§ 90.477 Interconnected systems.

* * * * *

(b) In the frequency ranges 806–824 MHz, 851–869 MHz, 896–901 MHz, and 935–940 MHz, interconnection with the public switched telephone network is authorized under the following conditions:

* * * * *

39. Section 90.492 is revised to read as follows:

§ 90.492 One way paging operations in the 806–824 MHz, 866–869 MHz, 896–901 MHz and 935–940 MHz Bands.

Paging operations are permitted in the 806–824, 851–869, 896–901, and 935–940 MHz bands only in accordance with §§ 90.378 and 90.645 (e) and (h).

40. The heading for Part 90, Subpart S, of the Rules and Regulations is revised to read as follows:

Subpart S—Regulations Governing Licensing and Use of Frequencies in the 806–824, 851–869, 896–901, and 935–940 MHz Bands

41. Section 90.601 is revised to read as follows:

§ 90.601 Scope.

This subpart sets out the regulations governing the licensing and operations of all conventional systems operating in the 806–824/851–869 MHz and 896–901/935–940 MHz bands, and trunked systems operating in the 809.750–816/854.750–861 MHz, 821–824/866–869 MHz, and 896–901/935–940 MHz bands. Trunked systems operating in the 816–821/861–866 MHz bands are governed by the rules in Subpart M until action is taken by the Commission to merge Subpart M with Subpart S. This subpart also governs the use of frequencies in the 806–821/851–866 MHz bands along the Mexican and Canadian border areas in accordance with existing agreements. It includes eligibility requirements, applications procedures, operational and technical standards for stations licensed in these bands. The rules in this subpart are to be read in conjunction with the applicable requirements contained elsewhere in this part; however, in case of conflict, the provisions of this subpart shall govern with respect to licensing and operation in these frequency bands.

42. Section 90.603 is amended by revising the introductory text to read as follows:

§ 90.603 Eligibility.

The following persons are eligible for licensing in the 806–824 MHz, 851–869 MHz, 896–901 MHz, and 935–940 MHz Bands.

* * * * *

43. The heading immediately preceding § 90.611 is revised to read as follows:

Policies Governing the Processing of Applications and the Selection and Assignment of Frequencies for Use in the 806–824 MHz, 851–869 MHz, 896–901 MHz, and 935–940 MHz Bands

44. Section 90.613 is amended by revising the introductory text, and amending the "Table of 806–821/851–866 MHz Channel Designations" by revising the entry for channels 1 and 600 and by adding new channels 601 to 830 to read as follows:

§ 90.613 Frequencies available.

The following table indicates the channel designations of frequencies available for assignment to eligible applicants under this subpart. Frequencies shall be assigned in pairs, with mobile and control station frequencies taken from the 806–824 MHz band with corresponding base station frequencies being 45 MHz higher and taken from the 851–869 MHz band, or with mobile and control station frequencies taken from the 896–901 MHz band with corresponding base station frequencies being 39 MHz higher and taken from the 935–940 MHz band. Only the upper half of each frequency pair is listed in the table.

Table of 806–824/851–869 MHz Channel Designations:

Channel No.	Base Frequency (MHz)
1	851.0125
* * * * *	*
600	865.9875
601	866.0125
602	.0375
603	.0500
604	.0625
605	.0750
606	.0875
607	.1000

—Continued

Channel No.	Base Frequency (MHz)
608	1125
609	1250
610	1375
611	.1500
612	.1625
613	.1750
614	.1875
615	.2000
616	.2125
617	.2250
618	.2375
619	.2500
620	.2625
621	.2750
622	.2875
623	.3000
624	.3125
625	.3250
626	.3375
627	.3500
628	.3625
629	.3750
630	.3875
631	.4000
632	.4125
633	.4250
634	.4375
635	.4500
636	.4625
637	.4750
638	.4875
639	.5125
640	.5375
641	.5500
642	.5625
643	.5750
644	.5875
645	.6000
646	.6125
647	.6250
648	.6375
649	.6500
650	.6625
651	.6750
652	.6875
653	.7000
654	.7125
655	.7250
656	.7375
657	.7500
658	.7625
659	.7750
660	.7875
661	.8000
662	.8125
663	.8250
664	.8375
665	.8500
666	.8625
667	.8750
668	.8875
669	.9000
670	.9125
671	.9250
672	.9375
673	.9500
674	.9625
675	.9750
676	.9875
677	867.0125
678	.0375
679	.0500
680	.0625
681	.0750
682	.0875
683	.1000
684	.1125
685	.1250
686	.1375
687	.1500
688	.1625
689	.1750
690	.1875
691	.2000
692	.2125
693	.2250
694	.2375
695	.2500
696	.2625
697	.2750

—Continued

Channel No.	Base Frequency (MHz)
698	.2875
699	.3000
700	.3125
701	.3250
702	.3375
703	.3500
704	.3625
705	.3750
706	.3875
707	.4000
708	.4125
709	.4250
710	.4375
711	.4500
712	.4625
713	.4750
714	.4875
715	.5125
716	.5375
717	.5500
718	.5625
719	.5750
720	.5875
721	.6000
722	.6125
723	.6250
724	.6375
725	.6500
726	.6625
727	.6750
728	.6875
729	.7000
730	.7125
731	.7250
732	.7375
733	.7500
734	.7625
735	.7750
736	.7875
737	.8000
738	.8125
739	.8250
740	.8375
741	.8500
742	.8625
743	.8750
744	.8875
745	.9000
746	.9125
747	.9250
748	.9375
749	.9500
750	.9625
751	.9750
752	.9875
753	868.0125
754	.0375
755	.0500
756	.0625
757	.0750
758	.0875
759	.1000
760	.1125
761	.1250
762	.1375
763	.1500
764	.1625
765	.1750
766	.1875
767	.2000
768	.2125
769	.2250
770	.2375
771	.2500
772	.2625
773	.2750
774	.2875
775	.3000
776	.3125
777	.3250
778	.3375
779	.3500
780	.3625
781	.3750
782	.3875
783	.4000
784	.4125
785	.4250
786	.4375
787	.4500

—Continued

Channel No.	Base Frequency (MHz)
788	.4625
789	.4750
790	.4875
791	.5000
792	.5125
793	.5250
794	.5375
795	.5500
796	.5625
797	.5750
798	.5875
799	.6000
800	.6125
801	.6250
802	.6375
803	.6500
804	.6625
805	.6750
806	.6875
807	.7000
808	.7125
809	.7250
810	.7375
811	.7500
812	.7625
813	.7750
814	.7875
815	.8000
816	.8125
817	.8250
818	.8375
819	.8500
820	.8625
821	.8750
822	.8875
823	.9000
824	.9125
825	.9250
826	.9375
827	.9500
828	.9625
829	.9725
830	.9875

* * * * *

45. Section 90.617 is amended by revising the heading, paragraph (a), and the heading of Table 1 following paragraph (a); and by adding new paragraph (a)(1) immediately following Table 1 to read as follows:

§ 90.617 Frequencies in the 809.750–816/854.750–861 MHz, 821–824/866–869 MHz, and 896–901/935–940 MHz bands available for trunked or conventional system use in non-border areas.

(a) The channels listed in Table 1 and paragraph (a)(1) are available to eligible applicants in the Public Safety Category which consists of the Local Government, Police, Fire, Highway Maintenance, Forestry Conservation, and Special Emergency Radio Services. These frequencies are available in areas farther than 110 km (68.4 miles) from the U.S./Mexican border, and 140 km (87 miles) from the U.S./Canadian border. Specialized Mobile Radio Systems will not be authorized in this category. These channels are available for intercategory sharing as indicated in § 90.621(g).

Public Safety Category

Table 1: 806–821/851–866 MHz Band Channels (70 Channels)

* * * * *

(1) Channels numbers 601–830 are also available to eligible applicants in the Public Safety Category in areas farther than 110 km (68.4 miles) from the U.S./Mexican border, and 140 km (87 miles) from the U.S./Candian border. The assignment of these channels will be done in accordance with the policies defined in the *Report and Order* of Gen. Docket No. 87–112 (See §§ 90.16 and 90.34). The following channels are available only for mutual aid purposes as defined in Gen. Docket No. 87–112: channels 601, 639, 677, 715, 753.

* * * * *

46. Section 90.621 is amended by revising paragraphs (c), (d), and (e); and by adding new paragraph (i) to read as follows:

§ 90.621 Selection and assignment of frequencies.

* * * * *

(c) Trunked systems authorized on frequencies in the Public Safety (except for those systems that have participated in a formal regional planning process as described in § 90.16), Industrial/Land Transportation, and Business Categories will be protected solely on the basis of predicted contours. Coordinators will attempt to provide a 40 dBu contour and to limit co-channel interference levels to 30 dBu over an applicant's requested service area. This would result in a mileage separation of 70 miles for typical system parameters. Separations will be less than 70 miles where the requested service areas, terrain, or other factors warrant reduction. In the event that the separation is less than 70 miles, the coordinator must indicate that the protection criteria have been preserved or that the affected licensees have agreed in writing to the proposed system. Only co-channel interference between base station operations will be taken into consideration. Adjacent channel and other types of possible inteference will not be taken into account.

(d) Conventional systems authorized on frequencies in the Public Safety (except for those systems that have participated in a formal regional planning process as described in § 90.16), Industrial/Land Transportation, and Business Categories that have met the loading level necessary for channel exclusivity will be protected in the same fashion as described in paragraph (c) of this section.

(e) Conventional systems authorized on frequencies in the Public Safety (except for those systems that have participated in a formal regional planning process as described in § 90.16). Industrial/Land Transportation, and Business Categories that have not met the loading levels necessary for channel exclusivity will not be afforded co-channel protection.

* * * * *

(i) Applications for Public Safety systems (both trunked and conventional) in the 821–824/866–869 MHz bands will be assigned and protected based on the criteria established in the appropriate regional plan. See § 90.16 and the *Report and Order* in General Docket 87–112.

47. The heading immediately preceding § 90.635 is revised to read as follows:

Technical Regulations Regarding the Use of Frequencies in the 806–824 MHz, 851–869 MHz, 896–901 MHz, and 935–940 MHz Bands

48. Section 90.635 is amended by revising the titles of Tables 2, 3, and 4 to read as follows:

§ 90.635 Limitations on power and antenna height.

* * * * *

Table 2—Equivalent Power and Antenna Heights for Base Stations in the 851–869 MHz, and 935–940 MHz Bands Which Have a Requirement for a 32 km (20 mi.) Service Area Radius

* * * * *

Table 3—Equivalent Powers and Antenna Heights for Suburban-Conventional Base Stations in the 851–869 MHz, and 935–940 MHz Bands Which Have a Requirement for Less Than 20-mi. Service Area Radius—Maximum Effective Radiated Power (Watts).

* * * * *

Table 4—Equivalent Powers and Antenna Heights for Urban-Conventional and Trunked System Base Stations in the 851–869 MHz and 935–940 MHz Bands Which Have a Requirement for Less Than 20-mi. Service Area Radius—Maximum Effective Radiated Power (Watts).

49. Section 90.637 is amended by revising paragraph (a) to read as follows:

§ 90.637 Restrictions on operational-fixed stations.

(a) Except for control stations, operational-fixed operations will not be authorized in the 806–824 MHz, 851–869 MHz, 896–901 MHz, or 935–940 MHz bands. This does not preclude secondary fixed tone signalling and alarm operations authorized in § 90.235.

* * * * *

Federal Communications Commission.

Charles A. Brown, Jr.,

Acting Secretary.

[FR Doc. 88–743 Filed 1–14–88; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 65

[CC Docket 86–497; FCC 87–391]

Common Carrier Services; Amendment of Part 65 To Prescribe Components of the Rate Base and Net Income of Dominant Carriers

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission has adopted a Report and Order to amend various sections of Part 65 to revise the rate base components of the dominant carriers; to update the regulatory net income treatment of various items due to new regulated/nonregulated cost separation rules; and to make Part 65 applicable to the independent telephone companies for the first time.

EFFECTIVE DATE: January 1, 1988.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: John T. Curry, Chief, Accounting Systems Branch, Accounting and Audits Division, Common Carrier Bureau, (202) 634–1861.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Report and Order* adopted December 17, 1987 and released December 24, 1987. The full text of this Commission item 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 item may also be purchased from the Commission's copy contractor, International Transcription Services, (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC.

Summary of Report and Order

On January 16, 1987, the Commission proposed to amend Part 65 of its rules to prescribe rate base and net income determination principles for all dominant carriers. Based on an analysis of the comments received in this proceeding, the Commission has decided to modify its Part 65 proposal as follows with the changes being effective January 1, 1988.

In the NPRM the Commission proposed to include in the rate base the interstate portions of assets summarized in Accounts 2001, "Telecommunications Plant-in-Service", 2002, "Property Held for Future Use" and 2003, "Telecommunications Plant Under Construction-Short Term" and to exclude from the rate base the interstate portion of the assets summarized in Accounts 2004, "Telecommunications Plant Under Construction-Long Term", 2005, Telecommunications Plant Adjustment", 2006, "Nonoperating Plant" and 2007, "Goodwill". With respect to Accounts 2001, 2002 and 2003, the Commission has decided that these accounts should be included in the rate base and that Account 2001 should be expanded to include capital leases. Capital leases will be recorded as assets consistent with generally accepted accounting principles, except that embedded leases qualifying for capital lease status will be adjusted to a value representative of the present value the lease would have had on January 1, 1988, if the lease were capitalized at its inception. With respect to sale/leaseback arrangements the Commission has decided that the present value of the capital lease should be reduced by any gain on the proceeds of the sale. The Commission also decided not to revise its tentative conclusion to exclude from the rate base the interstate portion of assets included in Accounts 2004 through 2007. The Commission was not persuaded by those parties wishing to include Account 2004 in the rate base. The Commission instead reiterated its *Docket 19129 Phase II Decision* belief that public interest considerations required a distinction between current and future ratepayers and that long term projects are not used and useful for communications services.

The final rule continues the *Docket 19129 Phase II Decision* rate base treatment for materials and supplies and other noncurrent assets but excludes from the rate base any portion of investments in affiliated and nonaffiliated companies and nonregulated investments recorded in Accounts 1401, 1402 and 1406.

In the NPRM the Commission proposed to exclude prepayments from the rate base because they failed the used and useful test and were not considered to be capital items on which carriers should be allowed a rate of return. The final rule excludes prepayments from the rate base but permits prepayments to be taken into account in cash working capital allowances based on lead-lag studies.

The NPRM proposed to deduct deferred taxes and other deferred credits from the rate base. In the final rule the Commission clarified its proposal regarding deferred taxes. Carriers will not be required to deduct "nonoperating deferred taxes" from the rate base because these nonoperating deferred taxes are not related to any item included in the rate base.

In addition to deferred taxes and other deferred credits, the NPRM proposed to deduct accounts payable, advance billing and payments, drafts outstanding and accrued taxes from the rate base because these items provide capital to the carriers at "zero cost" to investors. The final rule does not require carriers to deduct the above items from the rate base. The Commission made this modification because it no longer planned to eliminate lead-lag studies to determine cash working capital which was a major reason for proposing the rate base changes for zero cost funds. These zero cost items, however, will still be taken into consideration in the lead-lag studies required of larger carriers.

In an effort to minimize or eliminate the need for lead-lag studies, the NPRM proposed permitting a cash working capital allowance using a historical base that reflected the individual characteristics of the carrier subject to the Commission's rate base determinations. The NPRM proposed that carriers be allowed an initial cash working capital allowance for 1988 based on their respective average interstate cash balances for the five calendar quarters ending June 30, 1986. After reviewing the comments and the alternatives presented by the parties, the Commission decided to continue to rely on lead-leg studies for all large carriers because it produces more accurate results and does not appear to be unduly burdensome for these carriers. Small carriers, however, will be permitted to use a formula approach contained in USTA's comments to determine cash working capital except that there must be an adjustment to the formula for lags in the payment of expenses.

The NPRM proposed to retain the treatment of expense accounts as stated in the *Docket 19129 Phase II Decision*. However, the NPRM singled out charitable contributions, advertising, nonoperating gains and losses, and gains and losses from the disposition of land and artworks, memberships and abandoned projects as areas which should be scrutinized before being included or excluded in the determination of regulated net income. After reviewing the comments, the Commission decided to follow the *Docket 19129 Phase II Decision* treatment for these items updated to reflect *Docket 86-111 Decision* rules for regulated and nonregulated operations.

Ordering Clauses

Accordingly, it is ordered, that pursuant to the provisions of Sections 1, 4(i), 4(j), 201–205, 218, 220, and 403 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 14(i)-(j), 201–205, 218, 220, 403 and Section 553 of the Administrative Procedure Act, 5 U.S.C. Section 553, Part 65 of the Commission's Rules 47 CFR Part 65 is amended by the policies, rules and requirements set forth herein, effective January 1, 1988.

List of Subjects in 47 CFR Part 65

Interstate rate of return prescription procedures and methodologies.

H. Walker Feaster III,

Acting Secretary.

Appendix B

PART 65—[AMENDED]

Part 65 Chapter I of the Title 47, Code of Federal Regulations, is amended as follows:

1. The authority citation for Part 65 would continue to read as follows:

Authority: Secs. 4, 201, 202, 203, 205, 218, 403, 48 Stat. 1066, 1072, 1077, 1094, as amended, 47 U.S.C. 154, 201, 202, 203, 205, 218, and 403.

2. The table of contents to Part 65 would be revised to add new § 65.450 to Subpart C, new § 65.510 to Subpart D and to add new Subpart G so that the table of contents would read in pertinent part as follows:

PART 65—INTERSTATE RATE OF RETURN PRESCRIPTION PROCEDURES AND METHODOLOGIES

* * * * *

Subpart C—Exchange Carriers

* * * * *

Sec.

65.400 Determination of sets of firms that have risk characteristics that are comparable to interstate exchange access services.

65.450 Net income.

Subpart D—Interchange Carriers

65.500 Determination of comparable firms for carriers other than exchange carriers.

65.510 Net income.

* * * * *

Subpart G—Rate Base

65.800 Rate base.

65.810 Definitions.

65.820 Included items.

65.830 Deducted items.

Authority: * * *

* * * * *

3. Subpart C would be amended by adding § 65.450 to read as follows:

Subpart C—Exchange Carriers

* * * * *

§ 65.450 Net income.

(a) Net income shall consist of all revenues derived from the provision of interstate telecommunications services regulated by this Commission less expenses recognized by the Commission as necessary to the provision of these services. The calculation of expenses entering into the determination of net income shall include the interstate portion of plant specific operations (Accounts 6110–6441), plant nonspecific operations (Accounts 6510–6565), customer operations (Accounts 6610–6623), corporate operations (Accounts 6710–6790), other operating income and expense accounts (Accounts 7100–7160), and operating taxes (Accounts 7200–7250), except to the extent this Commission specifically provides to the contrary.

(b) Gains and losses related to the disposition of plant in service items, shall be handled as follows:

(1) Gains related to property sold to others and leased back under capital leases for use in telecommunications services shall be recorded in Account 4360 (Other Deferred Credits) and credited to Account 6563 (Amortization Expense—Tangible) over the amortization period established for the capital lease;

(2) Gains or losses related to the disposition of land and other nondepreciable items recorded in Account 7150 (Gains and Losses Resulting from the Sale of Land and Artworks) shall be included in net income for ratemaking purposes, but adjusted to reflect the relative amount of time such property was used in regulated operations and included in the rate base; and

(3) Proceeds related to the disposition of property depreciated on a group basis and used jointly in regulated and nonregulated activities, including sale-leaseback arrangements for property depreciated on a group basis, shall be credited to the related reserves and attributed to regulated and nonregulated in proportion to the accumulated regulated and nonregulated depreciation for that group.

(c) Gains or losses related to the disposition of property that was never included in the rate base shall not be considered for ratemaking purposes.

(d) Except for reasonable charitable deductions and interest related to customer deposits, nonoperating income and expenses and taxes (Accounts 7300–7450) and interest and related items (Accounts 7500–7540) and extraordinary items (Accounts 7600–7640) shall not be included unless this Commission specifically determines that particular items recorded in those accounts shall be included.

4. Subpart D would be amended by adding § 65.510 to read as follows:

Subpart D—Interexchange Carriers

* * * * *

§ 65.510 Net income.

The net income methodology specified in § 65.450 shall be utilized by all interexchange carriers subject to § 65.500.

5. Subpart G, consisting of §§ 65.800 through 65.830, would be added to read as follows:

Subpart G—Rate Base

§ 65.800 Rate base.

The rate base shall consist of the interstate portion of the accounts listed in § 65.820 that has been invested in plant used and useful in the efficient provision of interstate telecommunications services regulated by this Commission, minus any deducted items computed in accordance with § 65.830.

§ 65.810 Definitions.

As used in this Subpart "account xxxx" means the account of that number kept in accordance with the Uniform System of Accounts for Class A and Class B Telecommunications Companies in 47 CFR Part 32.

§ 65.820 Included items.

(a) Telecommunications Plant. The interstate portion of all assets summarized in Account 2001 (Telecommunications Plant in Service), Account 2002 (Property Held for Future Use), and Account 2003 (Telecommunication Plant Under Construction-Short Term), and to the extent such inclusions are allowed by this Commission, Account 2005 (Telecommunications Plant Adjustment).

(b) Material and Supplies. The interstate portion of assets summarized in Account 1220.1 (Materials and Supplies) that are used for routine maintenance and repairs of telephone plant and equipment or associated with projects classified in Account 2003 (Telecommunications Plant Under Construction-Short Term) but not yet charged to that account.

(c) Noncurrent Assets. The interstate portion of assets summarized in Account 1410 (Other Noncurrent Assets), Account 1438 (Deferred Maintenance and Retirements), and Account 1439 (Deferred Charges) only to the extent they arise from the provision of interstate telecommunications services and have been specifically approved by this Commission for inclusion. Otherwise, the amounts in Accounts 1401–1500 shall not be included.

(d) Cash Working Capital. The interstate portion of investment required to meet current expenses. The calculation of this amount shall take into account interstate revenue and expense items which are received or paid before the service is rendered and interstate revenue and expense items received or spent after the service is rendered. Claims for a cash working capital allowance from Class A carriers, as defined in 47 CFR 32.11 shall be accompanied by a current lead-lag study. In lieu of a lead-lag study, claims for a cash working capital allowance from Class B Carriers may be calculated using the following formula:

(1) The sum of the percentage of interstate revenues billed in arrears shall be multiplied by the average revenue lag days for such revenues and be added to the sum of the percentage of interstate revenues billed in advance multiplied by the average lag days for such revenues.

(2) The resultant weighted revenue lag days from the calculation in paragraph (d)(1) of this section shall then be divided by 365 days.

(3) The sum of the percentage of interstate expenses paid in advance shall be multiplied by the average lag days from the payment to the midpoint of the benefit period and deducted from the sum of the percentage of interstate expenses paid after the provision of the service multiplied by the average lag days for such expense.

(4) The resultant weighted average expense lag days from the calculation in paragraph (d)(3) of this section shall then be divided by 365 days and deducted from the weighted revenue lag days to arrive at a weighted net lag days.

(5) The weighted net lag day factor derived in paragraph (d)(4) of this section should then be multiplied by annual interstate operating expenses exclusive of depreciation to arrive at the cash working capital allowance.

§ 65.830 Deducted items.

(a) The following items shall be deducted from the interstate rate base.

(1) The interstate portion of deferred taxes (Accounts 4100 and 4340).

(2) The interstate portion of customer deposits (Account 4040).

(3) The interstate portion of liabilities related to compensated absences (Account 4120) to the extent of the difference between the interstate portion of the deferred charge related to compensated absences (Account 1439) and the interstate portion of the corresponding liability.

(4) The interstate portion of unfunded accrued pension costs (Account 4310).

(5) The interstate portion of other deferred credits (Account 4360) to the extent they arise from the provision of regulated telecommunications services. This shall include deferred gains related to sale-leaseback arrangements.

(b) The interstate portion of deferred taxes, customer deposits compensated absences and other deferred credits shall be determined by multiplying the sum of such funds by the interstate plant factor. (The interstate plant factor shall be computed by dividing interstate plant in service by total plant in service); except that the interstate portion of customer deposits may be determined by special study when use of the interstate plant factor would yield distorted results.

(c) The interstate portion of unfunded accrued pension costs shall bear the same proportionate relationship as the interstate/intrastate expenses which give rise to the liability.

[FR Doc. 88-509 Filed 1-14-88; 8:45 am]
BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 87-131; FCC 87-356]

Radio Broadcasting Services; Unlimited-time Operation by Existing AM Daytime-Only Radio Broadcast Stations; Discontinuance of Authorization of Additional Daytime-only Stations; and Minimum Power of Class III Stations

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The FCC has amended its Rules to (1) permit unlimited-time operations for existing daytime-only AM radio broadcast stations on the AM regional channels, and on two clear channels: 940kHz and 1550 kHz; (2) discontinue the authorization of new daytime-only stations; and (3) reduce the generally applicable minimum power of Class III AM radio broadcast stations from 0.5 kW to 0.25 kW. This action is needed to relieve daytime-only stations and the listening public from the disadvantages of limitations on their hours of operation under present rules. The revised rules will make possible unlimited-time operation by qualifying daytime-only stations on the above-noted channels.

EFFECTIVE DATE: The rule amendments enter into effect December 1, 1987.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Vicki Assevero or Louis C. Stephens, Policy and Rules Division, Mass Media Bureau, (202) 632-7792, or (202) 632-7792, respectively.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Report and Order* in MM Docket No. 87-131, adopted November 18, 1987, and released December 1, 1987. This *Report and Order* may be consulted and will be available for coying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this *Report and Order* may also be purchased from the Commission's copy contractor, International Transcription Services, Inc., (202) 857-3800, 2100 M Street, NW, Washington, DC 20037.

Summary of Report and Order:

1. Having previously opened the way for unlimited-time operation for most daytime-only AM radio broadcast stations operating on the 14 foreign clear channels, the FCC took similar action for those assigned to the regional AM channels and to 940 kHz and 1550 kHz. Pursuant to the newly adopted rule amendments, the Commission has calculated and informed, each qualifying daytime-only station the power, within a range of .001 kW (1 watt) to 0.5 kW, that it may use for broadcasting during nighttime hours with the antenna systems they are licensed to start using at sunrise. The authorized power was set at levels calculated to provide required interference protection to foreign and comestic stations.

2. Daytime-only stations authorized to operate during nighttime hours with power sufficient to enable them to provide a field strength of at least 141 mV/m at 1 kilometer from their transmitters will be reclassified as Class II-B stations if on 940 kHz or 1550 kHz or as Class III if on any of the 41 regional channels.

3. None of the stations permitted to operate during nighttime hours are required to provide interference protection to each other. They are, however, required to protect: (1) Foreign stations, (2) existing unlimited-time stations, and (3) new and changed unlimited-time stations for which construction permits had been issued or applications tendered no later than December 1, 1987. The reclassified stations may apply, under regular procedures, for nighttime power increases, up to the maximum generally permitted for the class of channel occupied, consistent with requisite protection against interference to other stations.

4. Stations reclassified as Class II-S or III-S are not required to provide the generally required minimum signal to their principal cities nighttime, nor are they be required to meet the requirement generally applicable to stations that regularly operate during nighttime hours, that they broadcast at least 4 hours between 6 p.m. and midnight. Stations reclassified as Class II-B, II-C, or III are required to meet the latter requirement, but, so long as their nighttime powers are limited to those initially authorized by the Commission, they would be exempted from the minimum city signal requirement.

5. The minimum power of stations on regional channels was reduced from 0.5 kW to 0.25 kW. The few Class IV stations assigned to regional channels that already, exceptionally operate at 0.25 kW without interference protection, will be reclassified as Class III stations, entitled to protection.

6. Individual stations have been notified of the powers they may use during nighttime hours and the date when nighttime operations may start, in Orders to Show Cause why the station's license should not be modified to permit such operations.

7. Finally, the assignment of additional daytime-only AM stations on 940 kHz, 1550 kHz, and the 41 regional AM channels, has been discontinued.

8. With reference to the Regulatory Flexibility Act of 1980, 5 U.S.C. 603, the revised rules will have a beneficial impact on small daytime-only AM stations that are enabled, through more extended hours of operation, to provide enhanced services to the public, and thereby compete more effectively with existing unlimited-time AM and FM stations.

9. The Secretary of the Commission is directed to send a copy of the *Report and Order* in this proceeding to the Chief Counsel for Advocacy of the Small Business Administration in accordance with the Regulatory Flexibility Act.

10. *Paperwork Reduction Act Statement:* The rule changes have been analyzed with respect to the Paperwork Reduction Act of 1980 and found to contain no new or modified norm.

information, collection and/or record keeping, labeling, disclosure, or record retention requirements; and will not increase or decrease burden hours imposed on the public.

11. Authority for the rule changes is contained in sections 4(i), 303, and 307 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 303, and 307.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

H. Walker Feaster III,

Acting Secretary.

Part 73 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

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

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

2. Section 73.21 is amended by adding a new sentence at the end of paragraphs (a)(2)(ii) and (a)(2)(iv), revising paragraphs (a)(2)(v) and (b)(1), and adding a new paragraph (b)(3), to read as follows:

§ 73.21 Classes of AM broadcast channels and stations.

(a) * * *

(2) * * *

(ii) * * * A former Class II–D station operating on 940 or 1550 kHz that is authorized to operate during nighttime hours will be reclassified as Class II–B notwithstanding the fact that its authorized nighttime power is less than 0.25 kW, if it RMS field strength at 1 kilometer is 141 mV/m or higher.

* * * * *

(vi) *Class II–D Stations.* * * * No application will be accepted for new Class II–D (daytime-only) stations.

(v) *Class II–S Stations.* Class II–S stations are former Class II–D stations that have been authorized to operate nighttime on the 14 channels listed in § 73.25(c) or on 940 kHz or 1550 kHz, at powers that are less than 0.25 kW; provided that, if the nighttime power of such a station on 940 or 1550 kHz, although less than 0.25 is sufficient to enable its RMS field strength at 1 kilometer to attain the level of 141 mV/m or more, it shall be classified as a Class II–B station. Class II–S stations operate without protection from interference at night, but do receive protection from interference during the daytime.

(b) *Regional Channel.*

* * * * *

(1) *Class III stations.* A station designated as Class III operates unlimited-time on a regional channel, and is designed to render service B primarily to a principal center of population and in the rural area continguous thereto. Except as provided in paragraph (b)(2) of this section, a Class III station operates with a power not more than 5 kW and not less than 0.25 kW; provided that, an unlimited-time station that operates on a regional channel during nighttime hours with a power of less than 0.25 kW will nevertheless be classified as Class III station if its RMS field strength is 141 mV/m or more at 1 kilometer.

* * * * *

(3) *Class III–S Station.* A Class III–S station is a former daytime-only station that operates on a regional channel with a nighttime power that is both less than 0.25 kW and insufficient to enable the station to attain an RMS field strength of at least 141 mV/m or more at 1 kilometer.

* * * * *

3. Section 73.24 is amended by revising the second sentence of paragraph (j) of this section to read as follows:

§ 73.24 Broadcast facilities; showing required.

* * * * *

(j) * * * The following categories of stations need not demonstrate the ability to provide such coverage during nighttime operation: (1) Daytime-only AM stations; and (2) former daytime-only stations that were reclassified as Class II–B or II–S on 940 or 1550 kHz or as Class II–C of II–S on the 14 frequencies listed in § 74.25(c) or as unlimited-time Class III or III–S stations or regional channels, and have not since been authorized to increase nighttime power.

* * * * *

§ 73.25 [Amended]

4. Section 73.25 is amended by removing the second sentence from paragraph (c).

5. Section 73.26 is amended by revising the text of paragraph (a) up to the colon, and adding a new paragraph (c), to read as follows:

§ 73.26 Regional channels; Class III stations.

(a) The following frequencies are designated as regional channels and are assigned for use by Class III and Class III–S stations: * * *

* * * * *

(c) No application for new daytime-only stations will be accepted on the channels listed in paragraph (a) of this section.

6. Section 73.29 is revised to read as follows:

§ 73.29 Class IV stations on regional channels.

No license will be granted for the operation of a Class IV station on a regional channel.

7. Section 73.31 is amended by revising the table in paragraph (a) to read as follows:

§ 73.31 Rounding of nominal power specified on applications.

(a) * * *

Nominal power (kW)	Rounded down to nearest figure (kW)
Below 0.25	0.001
0.25 to 0.99	0.01
1 to 9.9	0.1
10 to 50	1

* * * * *

8. Section 73.99 is amended by adding a new paragraph (l), as follows:

§ 73.99 Presunrise service authorization (PSRA) and Postsunset service authorization (PSSA).

* * * * *

(l) The authorization of unlimited-time operation by daytime-only stations that are reclassified as Class II–S or Class III–S stations will not affect their right to operate during prescribed presunrise and postsunset hours in accordance with PSRA's and PSSA's issued pursuant to this section.

9. Section 73.182 is amended by revising the second sentence of paragraph (a)(3) up to the semicolon, to read as follows:

§ 73.182 Engineering standards of allocation.

(a) * * *

(3) * * * They operate with powers not less than 0.25 kW and not more 5 kW, and are normally protected to the 1500 uV/m groundwave contour nighttime and the 500 uV/m groundwave contour daytime; * * *

10. On the line in the table in § 73.182(s) which starts with the entry "III" in the first column, the entry in the third column that now reads "0.5 kW to 5 kW" is revised to read "0.25 kW to 5 kW."

11. Footnote [2] to the table in § 73.182(s) is revised to read as OB follows:

* * * * *

[2] For adjacent channel, see paragraph (t) of this section.

* * * * *

12. Immediately preceding the last line of the table in § 73.182(s) a new line is added as follows:

Class of station	Class of channel used	Permissible power	Signal strength contour of area protected from objectionable interference [1]		Permissible interfering signal on same channel [2]	
			Day [3]	Night	Day	Night [4]
*	*	*	*	*	*	*
III–S	do	0.25 kW to 5kW (daytime) less than 0.25 kW nighttime.	500 uV/m	not prescribed	do	Not prescribed.
*	*	*	*	*	*	*

[1] When a station is already limited by interference from other stations to a contour of higher values than that normally protected for its class, this contour shall be the established standard for such station with respect to interference from all other stations.
[2] For adjacent channel, see paragraph (t) of this section.
[3] Groundwave.
[4] Skywave field strength for 10 percent or more of the time.

* * * * *

13. Section 73.1740(a)(1)(i) is revised to read as follows:

§ 73.1740 Minimum operating schedule.

(a) * * *

(1) * * *

(i) Daytime-only AM stations and former daytime-only AM stations that have been reclassified as Class II-S or III-S need comply only with the minimum requirements for operation between 6 a.m. and 6 p.m., local time.

* * * * *

14. Section 73.3571 is amended by adding a new paragraph (d)(5), to read as follows:

§ 73.3571 Processing of AM broadcast station applications.

* * * * *

(d) * * *

(5) The following special procedures will be followed in authorizing Class II-D daytime-only stations on 940 and 1550 kHz, and Class III daytime-only stations on the 41 regional channels listed in § 73.26(a), to operate unlimited-time.

(i) Each eligible daytime-only station in the foregoing categories will receive an Order to Show Cause why its license should not be modified to specify operation during nighttime hours with the facilities it is licensed to start using at local sunrise, using the power stated in the Order to Show Cause, that the Commission finds is the highest nighttime level—not exceeding 0.5 kW—at which the station could operate without causing prohibited interference to other domestic or foreign stations.

(ii) Stations accepting such modifications shall be reclassified. Those authorized in such Show Cause Orders to operate during nighttime hours with a power of 0.25 kW or more, or with a power that, although less than 0.25 kW, is sufficient to enable them to attain RMS field strengths of 141mV/m or more at 1 kilometer, shall be redesignated as Class II-B stations if they are assigned to 940 or 1550 kHz, and as unlimited-time Class III stations if they are assigned to regional channels.

(iii) Stations accepting such modification that are authorized to operate during nighttime hours at powers less than 0.25 kW, and that cannot with such powers attain RMS field strengths of 141 mV/M or more at 1 kilometer, shall be redesignated as Class II-S stations if they are assigned to 940 or 1550 kHz, and as Class III-S stations if they are assigned to regional channels.

(iv) Applications for new stations may be filed at any time on 940 and 1550 kHz and on the regional channels. Also, stations assigned to 940 or 1550 kHz, or to the regional channels, may at any time, regardless of their classifications, apply for power increases up to the maximum generally permitted. Such applications for new or changed facilities will be granted without taking into account interference causes to Class II-S or Class III-S stations, but will be requred to show interference protection to other classes of stations, including stations that were previously classified as Class II-S or Class III-S, but were later reclassified as Class II-B or Class III unlimited-time stations as a result of subsequent facilities modifications that permitted power increases qualifying them to discontinue their "S" subclassification.

* * * * *

[FR Doc. 88–823 Filed 1–14–88; 8:45 am]
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DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 565

[Docket No. 88–02; Notice 2]

Vehicle Identification Number—Content Requirements

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Final rule.

SUMMARY: This notice amends 49 CFR Part 565, *Vehicle Identification Number—Content Requirements*, by simplifying vehicle identification information coding requirements for trailer manufacturers. Specifically, this rule amends Table I, § 565.4 by deleting the requirement that trailer manufacturers include in the VIN code a "series" designation for trailers, and by changing vehicle attributes for incomplete trailers. The amendment will bring VIN requirements for trailers in line with actual trailer manufacturing practices, thereby facilitating VIN information retrieval, and increasing the accuracy and efficiency of vehicle defect recall campaigns.

DATE: February 16, 1988.

FOR FURTHER INFORMATION CONTACT: Mr. Kenneth Rutland, Office of Vehicle Safety Standards, National Highway Traffic Safety Administration, 400 Seventh St., SW., Washington, DC 20590 (202–366–5267).

SUPPLEMENTARY INFORMATION:

Introduction. Under Standard 115, *Vehicle Identification Number—Basic Requirements*, a motor vehicle manufacturer must assign a 17-character vehicle identification number (VIN) to

each vehicle it makes. The purposes of the VIN system are to simplify vehicle identification information retrieval, and increase the accuracy and efficiency of vehicle defect recall campaigns. Title 49 CFR Part 565, *Vehicle Identification Number—Content Requirements*, sets forth format and content requirements for VINs. Section 565.4, *General Requirements*, tells what information a manufacturer must code into a VIN, and in what sequence.

Under § 565.4, the 17-character VIN is divided into four sections. The first section uniquely identifies the vehicle manufacturer, make, and type. The second encodes vehicle attributes which vary according to vehicle type. The third section consists of one character (the check digit) and serves to verify the accuracy of a VIN transcription. The final section encodes the vehicle model year, the plant of manufacture, and the number sequentially assigned by the manufacturer in the production process. This amendment affects only the second VIN sequence consisting of the five characters in positions four through eight (4–8).

In this section, a VIN number must disclose those unique motor vehicle attributes set out in Table I of section 565.4. In encoding these attributes, a manufacturer may determine what characters to use and the order in which to place them. The manufacturer must supply NHTSA with whatever information is necessary to decipher the meaning of its characters relative to Table I.

Currently, for a trailer or trailer kit, Table I requires a manufacturer to identify: (1) The type of trailer; (2) series; (3) body type; (4) length; (5) axle configuration.

On May 19, 1986, in response to a petition for rulemaking from the Truck Trailer Manufacturers Association (TTMA), this agency published a notice proposing to amend Table I. In support of its petition, TTMA stated that a survey of its membership revealed that trailer manufacturers do not divide their product lines by series as automobile manufacturers do. TTMA asserted that trailers are identified sufficiently by trailer type, body type, length, and axle configuration. Further, TTMA asserted that requiring a series designation in trailer VINs may not simplify vehicle identification information retrieval, or contribute to the accurate identification of a particular trailer. For these reasons, TTMA's first request was that NHTSA remove the "series" designation as an attribute that a trailer manufacturer must identify in a VIN.

TTMA's second request concerned incomplete trailers. Currently, Table I states five attributes which a manufacturer must encode in the VIN for any type of incomplete vehicle, including trailers. These attributes are model or line, series, cab type, engine type, and brake system. TTMA asked that NHTSA amend Table I to delete the "brake system" designation for incomplete trailers. However, upon further examination of this issue, the agency tentatively determined that most of the "incomplete vehicle" attributes may be inappropriate for trailers, and proposed that manufacturers encode the same attributes for incomplete and complete trailers. The VINs for all trailer categories would be required to include information respecting trailer type, body type, length, and axle configuration.

Comments. NHTSA received two comments on the proposed rule—one from the petitioner, and one from Theurer, Inc., a truck trailer manufacturer. TTMA made a summary statement in support of the proposal. Theurer agreed that the term "series" did not apply to its product line, that a trailer manufacturer should encode the same attributes for incomplete and complete trailers, and that the company believed the economic consequences of the revision would be minimal.

Adopting the Proposed Changes. After reviewing the comments, NHTSA has determined that the proposed changes to Table I should be adopted. The primary purpose of the VIN requirement is to facilitate identifying a motor vehicle that may be the subject of a vehicle recall campaign. If one can identify trailers through trailer type, body type, length, and axle configuration, there is no need to require the use of any designation that fails to serve Part 565's purpose, and that compels a manufacturer to include a superfluous designation or risk violating the regulation. Therefore, this rule deletes the requirements that trailers be identified by "series."

Therefore, NHTSA amends Table I of § 565.4 by doing the following: First, the agency is deleting "series" from the list of those attributes a trailer manufacturer must encode in the second VIN sequence. Second, the agency removes "incomplete trailers" from the "incomplete vehicle" category, and places "incomplete trailers," in the "trailer and trailer kits" category. This change means that a trailer manufacturer must encode the same attributes in that second VIN sequence irrespective of whether the trailer is complete or incomplete. Finally, the agency makes a technical correction by removing an erroneous reference to "Footnote 1" after "axle configuration" in the list of trailer attributes. These changes will affect the manufacturers of certain vehicles as follows:

Complete Trailers and Trailer Kits. With respect to complete trailers and trailer kits, the agency would like to emphasize two points. First, the agency notes that this amendment of Table I does not require a manufacturer to change the characters currently used in the second section. Instead, Part 565 permits each trailer manufacturer to decide whether to delete whatever character now occupies the "series" space. If a trailer manufacturer decides to change the VIN by deleting the "series" character or changing the code with respect to these four attributes, then the manufacturer must submit new material to this agency informing NHTSA how to read this sequence.

Second, as a result of this amendment, manufacturers of complete trailers and trailer kits now have five characters with which to describe the four Table I attributes. In this second VIN sequence, a manufacturer determines what characters to use and where to place them. A manufacturer may choose to use two characters to indicate any one of these attributes.

Incomplete Trailers. With respect to incomplete trailers, this amendment changes both the number and nature of the attributes an incomplete trailer manufacturer must encode in the second sequence. Because of this amendment, every manufacturer of incomplete trailers must change the attributes used in this section. Also, these manufacturers must submit material to the agency explaining how to decipher the sequence relative to the four new attributes these manufacturers now must encode in a VIN.

Paperwork Reduction

The VIN information requirements in this rule are considered to be information collection requirements, as that term is defined by the Office of Management and Budget (OMB) in 5 CFR Part 1320. Therefore, these proposed requirements are being submitted to the OMB for its approval, pursuant to the requirements of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). A notice will be published in the **Federal Register** when OMB makes its decision on this request.

Costs and Other Effects

Having evaluated the rule's economic and other effects, the agency determines that this rule is neither major as defined by Executive Order 12291, nor significant as defined by the Department's Regulatory Policies and Procedures. NHTSA concludes that the

rule's economic and other consequences are so minimal that preparing a full regulatory evaluation is not required. The agency notes that the only comment submitted on the question of economic consequences concurs with this position.

For complete trailers, a trailer manufacturer who decides to change the second VIN sequence must submit new information telling NHTSA how to read the sequence. This submission would be a one-time submission. With respect to incomplete trailer manufacturers, such persons must revise the second sequence in its entirety because NHTSA now requires different information for these vehicles than what the agency required previously. However, this rule imposes no greater burden on these manufacturers than the encoding responsibilities they now face, but only changes the vehicle attributes an incomplete trailer manufacturer must encode in the second VIN sequence. The only other burden is submitting information telling the agency how to read the manufacturer's code. Again, this submission is one-time only.

The agency estimates that all trailer manufacturers would incur slight administrative and other cost burdens in preparing new deciphering information for the agency, and that incomplete trailer manufacturers will experience no greater cost to include the new Table I attributes in the second sequence than they now incur. Similarly, the Government's cost to process and store this revised information would be minimal.

The agency also has considered the effects of this rule under the Regulatory Flexibility Act. This rule makes minor changes in those attributes a trailer manufacturer must encode in the second VIN sequence so that the VIN more accurately describes trailer characteristics. Under this rule, trailer manufacturers that are small businesses have the minor, one-time cost of preparing and submitting modified deciphering information for VINs on trailers manufactured after the rule's effective date. Thereafter, a manufacturer has to submit deciphering information only when manufacturing changes—such as the production of a new vehicle type—occur. The rule does not affect a manufacturer's basic administrative or cost burdens. Nor does it affect small organizations and small government jurisdictions because consumer prices will not change as a consequence of this rule. For these reasons, I certify that this rule will not have a significant economic impact on a substantial number of small entities.

Finally, the agency has analyzed this amendment for purposes of the National Environmental Policy Act, and determined that this rule has no significant effect on the human environment.

List of Subjects in 49 CFR Part 565

Imports, Motor vehicle safety, Motor vehicles.

The agency amends Part 565, *Vehicle Identification Number—Content Requirements*, in Title 49 of the Code of Federal Regulations, as follows:

PART 565—[AMENDED]

1. The authority citation for Part 565 is revised to read as follows:

Authority: 15 U.S.C. 1395, 1397, 1401, 1407, and 1412; delegation of authority at 49 CFR 1.50.

2. Table I in § 565.4(b) is revised to read as follows:

§ 565.4 [Amended]

* * * * *

(b) * * *

Table I—Type of Vehicle and Information Decipherable

Passenger car: Line, series, body type, engine type,[1] and restraint system type.

Multi-purpose passenger vehicle: Line, series, body type, engine type,[1] gross vehicle weight rating.

Truck: Model or line, series, chassis, cab type, engine type,[1] brake system and gross vehicle weight rating.

Bus: Model or line, series, body type, engine type,[1] and brake system.

Trailer, including trailer kit and incomplete trailer: Type of trailer, body type, length, and axle configuration.

Motorcycle: Type of motorcycle, line, engine type,[1] and net brake horsepower.[1]

Incomplete vehicle other than trailer: Model or line, series, cab type, engine type,[1] and brake system.

Issued January 11, 1988.

Diane K. Steed,

Administrator.

[FR Doc. 88-706 Filed 1-12-88; 3:01 p.m.]

BILLING CODE 4910-59-M

[1] Engine net brake horsepower when encoded in the VIN shall differ by no more than 10 percent from the actual net brake horsepower; shall, in the case of motorcycle with an actual net brake horsepower of 2 or less, be not more than 2; and shall, in the case of a motorcycle with an actual brake horsepower greater than 2, be greater than 2.

Proposed Rules

Federal Register
Vol. 53, No. 10
Friday, January 15, 1988

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

Agricultural Marketing Service

7 CFR Parts 1006, 1012 and 1013

[Docket Nos. AO-356-A26, AO-347-A29 and AO-286-A36]

Milk in the Upper Florida, Tampa Bay and Southeastern Florida Marketing Areas; Notice of Hearing on Proposed Amendments to Tentative Marketing Agreements and Orders

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice of public hearing on proposed rulemaking.

SUMMARY: This hearing is being held to consider proposals to amend the Upper Florida, Tampa Bay and Southeastern Florida milk orders. The principal proposals would modify the pool plant performance standards, producer milk diversion limits, shrinkage and charges on overdue accounts provisions of the orders. In most cases, the proposed amendments would provide for uniformity of language among the Florida orders with respect to these provisions. Proponents contend that the modifications are needed to reflect changed marketing conditions.

DATE: The hearing will convene at 9:30 a.m. on January 26, 1988.

ADDRESS: The hearing will be held at the Plaza Inn (formerly HJ Plaza), 603 Lee Road, Orlando, Florida 32810 (305) 644-6100.

FOR FURTHER INFORMATION CONTACT: Robert F. Groene, Marketing Specialist, USDA/AMS/Dairy Division, Order Formulation Branch, Room 2968, South Building, P.O. Box 96456, Washington, DC 20090-6456, (202) 447-2089.

SUPPLEMENTARY INFORMATION: This administrative action is governed by the provisions of sections 556 and 557 of Title 5 of the United States Code and, therefore, is excluded from the requirements of Executive Order 12291.

Notice is hereby given of a public hearing to be held at the Plaza Inn (formerly HJ Plaza), 603 Lee Road, Orlando, Florida 32810 (305) 644-6100 beginning at 9:30 a.m., on January 26, 1988, with respect to proposed amendments to the tentative marketing agreements and to the orders regulating the handling of milk in the Upper Florida, Tampa Bay and Southeastern Florida marketing areas.

The hearing is called pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR Part 900).

The purpose of the hearing is to receive evidence with respect to the economic and marketing conditions which relate to the proposed amendments, hereinafter set forth, and any appropriate modifications thereof, to the tentative marketing agreements and to the orders.

Actions under the Federal milk order program are subject to the "Regulatory Flexibility Act" (Pub. L. 96-354). This Act seeks to ensure that, within the statutory authority of a program, the regulatory and information requirements are tailored to the size and nature of small businesses. For the purpose of the Federal order program, a small business will be considered as one which is independently owned and operated and which is not dominant in its field of operation. Most parties subject to a milk order are considered as a small business. Accordingly, interested parties are invited to present evidence on the probable regulatory and informational impact of the hearing proposals on small businesses. Also, parties may suggest modifications of these proposals for the purpose of tailoring their applicability to small businesses.

List of Subjects in 7 CFR Parts 1006, 1012 and 1013

Milk marketing orders, Milk, Dairy products.

The authority citation for Parts 1006, 1012 and 1013 continues to read as follows:

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

The proposed amendments, as set forth below, have not received the approval of the Secretary of Agriculture.

Proposed by Florida Dairy Farmers' Association and Tampa Independent Dairy Farmers' Association

Proposed Amendments to Part 1013, Regulating the Handling of Milk in the Southeastern Florida Marketing Area:

Proposal No. 1

Revise § 1013.12 to read as follows:

§ 1013.12 Producer.

(a) Except as provided in paragraph (b) of this section, "producer" means any person who produces milk in compliance with the inspection requirements of a duly constituted health authority, which milk is received at a pool plant or diverted pursuant to § 1013.13 from a pool plant to a nonpool plant.

(b) The term "producer" shall not include:

(1) A producer-handler as defined in any order (including this part) issued pursuant to the Act; or

(2) Any person with respect to milk produced by such person that is reported as diverted to an other order plant if any portion of such person's milk so moved is assigned to Class I milk under the provisions of such other order.

Proposal No. 2

In § 1013.50, revise the introductory text and paragraph (c) as follows:

§ 1013.50 Class prices.

Subject to the provisions of § 1013.52, the Class prices for the month per hundredweight of milk containing 3.5 percent butterfat shall be as follows:

(a) * * *

(b) * * *

(c) The Class III price shall be computed as follows: Multiply the butterfat differential pursuant to § 1013.74 for the month by 3.5 and round the result to the nearest cent.

Proposal No. 3

§ 1013.73 [Amended]

Amend § 1013.73(a) (1) and (2) by removing the phrase "but not to exceed $6,".

Proposed Amendments to Part 1006, Regulating the Handling of Milk in the Upper Florida Marketing Area:

Proposal No. 4

Revise § 1006.7 to read as follows:

§ 1006.7 Pool Plant.

Except as provided in paragraph (d) of this section, "pool plant" means:

(a) A distributing plant that has route distribution, except filled milk, during the month of not less than 50 percent of the total Grade A fluid milk products, except filled milk, that are physically received at such plant or diverted as producer milk pursuant to § 1006.13, and that has route disposition, except as filled milk, in the marketing area during the month of not less than 10 percent of such receipts; or

(b) A supply plant from which not less than 50 percent of the total quantity of Grade A fluid milk products that are physically received from dairy farmers at such plant or diverted as producer milk to a nonpool plant pursuant to § 1006.13 during the month is shipped as fluid milk products, except filled milk, to pool plants meeting the requirements of § 1006.7(a).

(c) A plant, other than a distributing plant, that is located in the marketing area and is operated by a cooperative association if pool plant status under this paragraph is requested for such plant by the cooperative association and 50 percent or more of the producer milk of members of the cooperative association is received at pool distributing plants either directly from farms or by transfer from plants of the cooperative association for which pool plant status under this paragraph has been requested, subject to the following conditions:

(1) The plant is approved by a duly constituted health authority for the disposition of Grade A milk in the marketing area; and

(2) The plant does not qualify as a pool plant under paragraph (b) of this section or under the provisions of another Federal order applicable to a supply plant.

(d) The term "pool plant" shall not apply to the following plants:

(1) A producer-handler plant;

(2) An exempt distributing plant;

(3) A distributing plant qualified pursuant to paragraph (a) of this section which meets the requirements of a fully regulated plant pursuant to the provisions of another order issued pursuant to the Act and from which a greater quantity of fluid milk products, except filled milk, is disposed of during the month from such plant as route disposition in the marketing area regulated by the order than as route disposition in this marketing area: *Provided*, That such a distributing plant which was a pool plant under this order in the immediately preceding month shall continue to be subject to all of the provisions of this part until the third consecutive month in which a greater proportion of its route disposition is made in such other marketing area, unless the other order requires regulation of the plant without regard to its qualifying as a pool plant under this order; and

(4) Any building, premises, or facilities, the primary function of which is to hold or store bottled milk or milk products (including filled milk) in finished form, nor shall it include any part of a plant in which the operations are entirely separated (by wall or other partition) from the handling of producer milk.

Proposed Amendments to Parts 1012 and 1013, Regulating the Handling of Milk in the Tampa Bay and Southeastern Florida Marketing Area:

Proposal No. 5

Revise §§ 1012.7 and 1013.7 to read as follows:

§ ____.7 Pool Plant.

Except as provided in paragraph (c) of this section, "pool plant" means:

(a) A distributing plant that has route distribution, except filled milk, during the month of not less than 50 percent of the total Grade A fluid milk products, except filled milk, that are physically received at such plant or diverted as producer milk pursuant to § ____.13, and that has route disposition, except as filled milk, in the marketing area during the month of not less than 10 percent of such receipts; or

(b) A supply plant from which not less than 50 percent of the total quantity of Grade A fluid milk products that is physically received from dairy farmers at such plant or diverted as producer milk to a nonpool plant pursuant to § ____.13 during the month is shipped as fluid milk products, except filled milk, to pool plants meeting the requirements of § ____.7(a).

(c) The term "pool plant" shall not apply to the following plants:

(1) A producer-handler plant;

(2) A distributing plant qualified pursuant to paragraph (a) of this section which meets the requirements of a fully regulated plant pursuant to the provisions of another order issued pursuant to the Act and from which a greater quantity of fluid milk products, except filled milk, is disposed of during the month from such plant as route disposition in the marketing area regulated by the other order than as route disposition in this marketing area: Provided, That such a distributing plant which was a pool plant under this order in the immediately preceding month shall continue to be subject to all of the provisions of this part until the third consecutive month in which a greater proportion of its route disposition is made in such other marketing area, unless the other order requires regulation of the plant without regard to its qualifying as a pool plant under this order; and

(3) Any building, premises, or facilities, the primary function of which is to hold or store bottled milk or milk products (including filled milk) in finished form, nor shall it include any part of a plant in which the operations are entirely separated (by wall or other partition) from the handling of producer milk. Proposed Amendments to Parts 1006, 1012 and 1013, Regulating the Handling of Milk in the Upper Florida, Tampa Bay and Southeastern Florida Marketing Area:

Proposal No. 6

In §§ 1006.13, 1012.13 and 1013.13, paragraph (b) is revised to read as follows:

§ ____.13 Producer milk.

* * * * *

(b) Diverted from a pool plant to a nonpool plant that is not a producer-handler plant, subject to the following conditions:

(1) Such milk shall be deemed to have been received by the diverting handler at the plant to which diverted;

(2) Not less than 10 days' production of the producer whose milk is diverted is physically received at a pool plant;

(3) To the extent that it would result in nonpool plant status for the pool plant from which diverted, milk diverted for the account of a cooperative association from the pool plant of another handler shall not be producer milk;

(4) A cooperative association may divert for its account only the milk of member producers. The total quantity of such milk so diverted by a cooperative that exceeds the following specified applicable percentage of milk physically received from member producers at all pool plants during the month shall not be producer milk:

(i) 40 percent in April, May and June,

(ii) 30 percent in march, and

(iii) 20 percent in all other months;

(5) The operator of a pool plant other than a cooperative association may divert for its account only the milk of producers who are not members of a cooperative association. The total quantity of such milk so diverted by the operator of the pool plant that exceeds the following specified applicable percentage of milk physically received at such plant during the month from producers who are not members of the

cooperative association shall not be producer milk:

(i) 40 percent in April, May and June,

(ii) 30 percent in March, and

(iii) 20 percent in all other months;

(6) The diverting handler shall designate the dairy farmers whose milk is not producer milk pursuant to paragraph (b) (4) and (5) of this section. If the handler fails to make such designation, no milk diverted by such handler shall be producer milk.

Proposal No. 7

In §§ 1006.40, 1012.40, and 1013.40 paragraph (b)(6) is revised to read as follows and paragraph (b)(7) is removed:

§ ____.40 Classes of Utilization.

* * * * *

(b) * * *

(6) Skim milk and butterfat in shrinkage assigned pursuant to § ____.41(a) to the receipts specified in § ____.41(a)(2) and in shrinkage specified in § ____.41 (b) and (c).

* * * * *

Revise §§ 1006.41, 1012.41, and 1013.41 to read as follows:

§ ____.41 Shrinkage.

For purposes of classifying all skim milk and butterfat to be reported by a handler pursuant to § ____.30, the market administrator shall determine the following:

(a) The pro rata assignment of shrinkage of skim milk and butterfat, respectively, at each pool plant to the respective quantities of skim milk and butterfat:

(1) In the receipts specified in paragraphs (b) (1) through (6) of this section on which shrinkage is allowed pursuant to such paragraphs; and

(2) In other source milk not specified in paragraphs (b) (1) through (6) of this section which was received in the form of a fluid milk product or a bulk fluid cream product.

(b) the shrinkage of skim milk and butterfat, respectively, assigned pursuant to paragraph (a) of this section to the receipts specified in paragraph (a)(1) of this section that is not in excess of:

(1) Two percent of the skim milk and butterfat, respectively, in producer milk (excluding milk diverted by the plant operator to another plant and milk received from a handler described in § ____.9(c));

(2) Plus 1.5 percent of the skim milk and butterfat, respectively, in milk received from a handler described in § ____.9(c), except that if the operator of the plant to which the milk is delivered purchases such milk on basis of weights determined from its measurement at the farm, the applicable percentage under this paragraph shall be two percent;

(3) Plus 0.5 percent of the skim milk and butterfat, respectively, in producer milk diverted from such plant by the plant operator to another plant, except that if the operator of the plant to which the milk is diverted purchases such milk on the basis of weights determined from its measurement on the farm, the applicable percentage under this paragraph shall be zero;

(4) Plus 1.5 percent of the skim milk and butterfat, respectively, in fluid milk products received by transfer from other pool plants;

(5) Plus 1.5 percent of the skim milk and butterfat, respectively, in fluid milk products received by transfer from other order plants, excluding the quantity for which Class II classification is requested by the operator of both plants;

(6) Plus 1.5 percent of the skim milk and butterfat, respectively, in fluid milk products received from unregulated supply plants, excluding the quantity for which Class II classification is requested by the handler; and

(7) Less 1.5 percent of the skim milk and butterfat, respectively, in fluid milk products transferred to other plants that is not in excess of the respective quantities of skim milk and butterfat to which percentages are applied in paragraphs (b)(1), (2), (4), (5) and (6) of this section; and

(c) The quantity of skim milk and butterfat, respectively, in shrinkage of milk from producers for which a cooperative association is the handler pursuant to § ____.9 (b) and (c), but not in excess of 0.5 percent of the skim milk and butterfat, respectively, in such milk. If the operator of the plant to which the milk is delivered purchases such milk on the basis of weights determined from its measurement at the farm, the applicable percentage under this paragraph for the cooperative association shall be zero.

Proposal No. 8

§§ 1006.51, 1012.51 and 1013.51 [Amended]

Amend §§ 1006.51, 1012.51 and 1013.51 by removing the last sentence which reads "For the purpose of computing the Class I price, the resulting price shall not be less than $4.33."

Proposal No. 9

Amend §§ 1006.52, 1012.52, and 1013.52 by adding a new paragraph (c) to read as follows:

§ ____.52 Plant Location Adjustments for Handlers.

* * * * *

(c) The Class I price resulting from such adjustments specified in this section shall not result in a price less than the Class II price for the month and the Class I price applicable to other source milk shall be adjusted at the rates specified in paragraph (a) of this section, except that the adjusted Class I price shall not be less than the Class II price for the month.

Proposal No. 10:

In §§ 1006.75, 1012.75, and 1013.75 revise paragraph (b) to read as follows:

§ ____.75 Plant Location Adjustments for Producers and on Nonpool Milk.

(a) * * *

(b) For purposes of computations pursuant to §§ ____.71 and ____.72, the uniform price shall be adjusted at the rates set forth in § ____.52 applicable at the location of the nonpool plant from which the milk was received, except that the resulting adjusted price shall not be less than the Class II price for the month.

Proposal No. 11

Amend §§ 1006.78, 1012.78, and 1013.78 by increasing the rate to one percent per month and by providing for late payment charges on payments due producers and cooperative associations as well as on all funds due the market administrator.

Proposed by the Dairy Division, Agricultural Marketing Service

Proposal No. 12

Make such changes as may be necessary to make the entire marketing agreements and the orders conform with any amendments thereto that may result from this hearing.

Copies of this notice of hearing and the orders may be procured from the Market Administrator, Paul W. Halnon, P.O. Box 4790, Winter Park, Florida 32793, or from the Hearing Clerk, Room 1079, South Building, United States Department of Agriculture, Washington, DC 20250, or may be inspected there.

Copies of the transcript of testimony taken at the hearing will not be available for distribution through the Hearing Clerk's Office. If you wish to purchase a copy, arrangements may be made with the reporter at the hearing.

From the time that a hearing notice is issued and until the issuance of a final decision in a proceeding, Department

employees involved in the decisional process are prohibited from discussing the merits of the hearing issues on an ex parte basis with any person having an interest in the proceeding. For this particular proceeding, the prohibition applies to employees in the following organizational units:

Office of the Secretary of Agriculture
Office of the Administrator, Agricultural Marketing Service
Office of the General Counsel
Dairy Division, Agricultural Marketing Service (Washington office only)
Office of the Market Administrator, Upper Florida, Tampa Bay and Southeastern Florida Marketing Areas

Procedural matters are not subject to the above prohibition and may be discussed at any time.

Signed at Washington, DC, on January 12, 1988.

William T. Manley,
Acting Administrator.

[FR Doc. 88-824 Filed 1-14-88; 8:45 am]
BILLING CODE 3410-02-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Ch. I

[Summary Notice No. PR-88-1]

Petition for Rulemaking; Summary of Petitions Received

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for rulemaking received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for rulemaking (14 CFR Part 11), this notice contains a summary of certain petitions requesting the initiation of rulemaking procedures for the amendment of specified provisions of the Federal Aviation Regulations and of denials or withdrawals of certain petitions previously received. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATE: Comments on petitions received must identify the petition docket number involved and must be received on or before March 14, 1988.

ADDRESS: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket (AGC-204), Petition Docket No. _____, 800 Independent Avenue SW., Washington, DC 20591.

FOR FURTHER INFORMATION: The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC-204), Room 916, FAA Headquarters Building (FOB 10A), 800 Independence Avenue SW., Washington, DC 20591; telephone (202) 267-3132.

This notice is published pursuant to paragraphs (b) and (f) of § 11.27 of Part 11 of the Federal Aviation Regulations (14 CFR Part 11).

Issued in Washington, DC., on January 5, 1988.

Denise D. Hall,
Acting Manager, Program Management Staff.

PETITIONS FOR RULEMAKING

Docket No.	Petitioner	Description of the petition
25412	General Aviation Manufacturers Association (GAMA).	Description of Petition: Petitioner requests amendment of regulations to exclude small (under 75,000 lbs. MGTOW, less than 20 passenger seats) transport category airplanes from the fire blocking seat cushion requirements. Regulations Affected: 14 CFR 25.853(c). Petitioner's Reason for Rule: Safety benefits of fire blocking anticipated by § 25.853(c) will not be realized or needed in this class of small, Part 25 transport category airplanes.

[FR Doc. 88-751 Filed 1-14-88; 8:45 am]
BILLING CODE 4910-13-M

14 CFR Ch. I

[Summary Notice No. PR-88-2]

Petition for Rulemaking; Summary of Petitions Received

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for rulemaking received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for rulemaking (14 CFR Part 11), this notice contains a summary of certain petitions requesting the initiation of rulemaking procedures for the amendment of specified provisions of the Federal Aviation Regulations and of denials or withdrawals of certain petitions previously received. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATE: Comments on petitions received must identify the petition docket number involved and must be received on or before: March 14, 1988.

ADDRESS: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket (AGC-204), Petition Docket No. _____, 800 Independence Avenue SW., Washington, DC 20591.

FOR FURTHER INFORMATION: The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC-204), Room 916, FAA Headquarters Building (FOB 10A), 800 Independence Avenue SW., Washington, DC 20591; telephone (202) 267-3132.

This notice is published pursuant to paragraphs (b) and (f) of § 11.27 of Part 11 of the Federal Aviation Regulations (14 CFR Part 11).

Issued in Washington, DC, on January 6, 1988.

Denise D. Hall,
Acting Manager, Program Manager Staff.

PETITIONS FOR RULEMAKING

Docket No.	Petitioner	Regulations affected	Description of the petition
25323	Aviation Consumer Action Project	14 CFR Part 21	To require that air carriers provide every passenger with a protective breathing device in the event of an in-flight or post-crash fire in which toxic fumes and smoke are present. *Petitioner's Reason for Rule:* Many accidents involving passenger airlines have shown that occupants who survive an airplane crash are often incapacitated by the smoke and toxic fumes released when a post-crash fire breaks out, and that for this reason alone, they fail to evacuate the airplane in a timely manner.

[FR Doc. 88-752 Filed 1-14-88; 8:45 am]
BILLING CODE 4910-13-M

FEDERAL TRADE COMMISSION

16 CFR Part 13

[Docket No. C-2640]

Redman Industries, Inc.; Mobile Home Owners Warranty and Warranty Practices

AGENCY: Federal Trade Commission.

ACTION: Notice of period for public comment on petition to reopen and vacate the order.

SUMMARY: Redman Industries, Inc., a corporate respondent in the order in Docket No. C-2640, has requested the Federal Trade Commission to vacate a 1974 consent order issued against it concerning its mobile home owners warranty and warranty practices. This document announces the public comment period on the petition.

DATES: Deadline for filing comments in this matter is February 10, 1988.

ADDRESSES: Comments should be sent to the Office of the Secretary, Federal Trade Commission, 6th Street and Pennsylvania Avenue NW., Washington, DC 20580. The requests for copies of the request should be sent to the Public Reference Branch, Room 130.

FOR FURTHER INFORMATION CONTACT: Thomas D. Massie, Attorney, Division of Enforcement, Bureau of Consumer Protection, Federal Trade Commission, Washington, DC 20580, (202) 326-2982.

SUPPLEMENTARY INFORMATION: The order in Docket No. C-2640 was published at 40 FR 18989 on May 1, 1975. The petitioner, Redman Industries, Inc., manufactures mobile homes which are sold to the public through authorized dealers. Petitioner seeks to have the order vacated in its entirety. The order requires Redman to offer a warranty that describes the identity and address of the warrantor, the nature and extent of the warranty offered, the remedies available to the purchaser under the warranty, the manner in which Redman intends to provide for performance of warranty obligations, any requirements which must be fulfilled by purchasers in order to obtain warranty service, a uniform procedure to be followed by purchasers in order to request warranty performance, and a uniform procedure available to purchasers to resolve warranty disputes; that Redman enter into formal agreements with its dealers setting forth the dealers' warranty service obligations; that all mobile homes be inspected prior to delivery to purchasers for defects and reinspected 90 days after delivery; and that warranty repairs be completed within specified time frames.

List of Subjects in 16 CFR Part 13

Mobile homes.

Emily H. Rock,

Secretary.

[FR Doc. 88-772 Filed 1-14-88; 8:45 am]
BILLING CODE 6750-01-M

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Bureau of Land Management

30 CFR Parts 210 and 216

43 CFR Part 3160

Onshore Oil and Gas Production Accounting, Transfer of Responsibility

November 18, 1987.

AGENCY: Mineral Management Service (MMS), Interior.

ACTION: Proposed rule, request for comments.

SUMMARY: The Department of the Interior is transferring the responsibility for production accounting for onshore Federal and Indian oil and gas leases from the Bureau of Land Management (BLM) to the Mineral Management Service (MMS). Consequently, MMS is proposing to amend its regulations governing production accounting at 30 CFR Part 216 to add a requirement for lease operators to report onshore production data to MMS.

A phased conversion schedule is proposed to accomplish the transfer of production accounting from BLM to MMS. Due to the phased conversion, the existing BLM regulations at 43 CFR Part 3160 would remain in effect until the transfer is completed. However, 43 CFR Part 3160 is proposed to be amended to provide instructions to operators during the conversion.

The MMS is also proposing to amend 30 CFR Part 210 and to add a reference to an "Onshore Production Reporter Handbook" which would be distributed to all operators and would provide specific guidance on how to prepare and submit the required production data to MMS.

DATE: Comments must be received on or before February 16, 1988.

ADDRESS: Written comments, suggestions, or objections regarding the proposed rule should be mailed or delivered to the Minerals Management Service, Royalty Management Program, Rules and Procedures Branch, Denver Federal Center, Building 85, P.O. Box 25165, Mail Stop 662, Denver, Colorado 80225, Attention: Dennis C. Whitcomb.

FOR FURTHER INFORMATION CONTACT: Dennis C. Whitcomb, Chief, Rules and Procedures Branch, (303) 231-3432, (FTS) 326-3432.

SUPPLEMENTARY INFORMATION: The principal author of this rulemaking is Gregory Smith of the Production Accounting Division of the Royalty Management Program, MMS.

I. Background

At the Secretary of the Interior's request, a study was performed within the Department of the Interior (DOI) to determine the feasibility of extending the reporting requirements of the Production Accounting and Auditing System (PAAS) to onshore oil and gas leases. The Secretary also directed that the Royalty Management Advisory Committee (RMAC) propose recommendations on the issue.

The DOI study, called the "Minerals Lease Information Study" (MLIS), concluded in a September 1986 report that onshore implementation of PAAS

would be fiscally attractive to the Government and would offer several advantages to lease and royalty management programs. However, there would be a substantial increase in industry's costs of reporting. The RMAC panel recommended that DOI computerize the existing production report (Form BLM 3160–6) submitted to the BLM and use data from this form to effect systematic production/sales comparisons.

Because of the RMAC panel's recommendations, the Secretary directed, in March 1987, that an addendum to the MLIS report be completed to analyze various options of implementing the panel's recommendations. This addendum concluded that automation of a slightly modified version of the existing form should occur and that MMS should become responsible for the receipt, edit/error correction, and distribution of the data to BLM, the Bureau of Indian Affairs (BIA), States, and Indian Tribes.

Based on these studies, the Secretary decided in June 1987 that:

—Responsibilities for receipt and processing of production data should be transferred from BLM to MMS,
—Operators of Federal and Indian onshore oil and gas leases should continue to report production data on the existing production report, which will be slightly modified, and
—The MMS should distribute production data to all users.

II. Proposed Rule

This proposed rulemaking action would establish an onshore production reporting requirement under MMS regulations at 30 CFR 216.50 and provide for reporting by lease operators to MMS on a modified production report to be called the "Monthly Report of Operations" and designated as From MMS–3160.

Changes to the existing Form BLM 3160–6 would include consolidation of unit agreement and communitization agreement number identification into one field, standardization of the report month identifier, allowance of gas inventory reporting and the addition of data elements to reprot gas volumes transferred for processing, plant name, operator contact name, and phone number. Changes are also proposed in the method of reporting well numbers. Currently, wells are identified on the production report by the operator's well number. This reporting method does not uniquely identify all wells on a lease or agreement. The MMS plans to conduct automated editing of production reports to ensure, among other things, that all wells on a lease/agreement are reported. Such editing is impossible without unique identification of wells on the report. Therefore, MMS proposes to require reporting of wells on the new Form MMS–3160 by American Petroleum Institute (API) well number. The DOI will assign API well numbers to wells which have not previously been assigned such numbers. Several months before new requirements commence, each operator will be provided a list of all API well numbers to be used for production reporting purposes.

It is MMS's intent that all information obtained on the new Form MMS–3160 in regard to Federal leases, and Indian leases which are part of a unit containing non-Indian leases, be open for public inspection and copying. All information in regard to Indian leases, other than those which are part of a unit containing non-Indian leases will be considered to be proprietary or confidential. The MMS specifically requests comments on the proposed new reporting requirements and MMS's intended confidential treatment of the information.

The MMS proposes that the new Form MMS–3160 be added to the reports identified in 30 CFR 216.40(c). This would make each line of information required on the form subject to assessment for incorrect or late reports and failure to report. The reporter would also be subject to civil and criminal penalties under 30 CFR 241.51 and 241.52 for failure to comply with the Form MMS–3160 reporting requirements.

Specific and detailed guidance for preparation of the Form MMS–3160 would be forthcoming in an "Onshore Production Reporter Handbook" to be distributed to all operators. This proposed rulemaking includes the addition of a reference to the "Onshore Production Reporter Handbook" in §§ 210.53 and 216.15.

The MMS proposes a phased conversion schedule to accomplish the transfer of production accounting from BLM to MMS. Due to the phased conversion, the existing BLM regulations at 43 CFR Part 3160 would remain in effect until the conversion is completed. However, 43 CFR Part 3160 is proposed to be amended to provide instructions to operators during the conversion. The operators would be required to continue reporting production data to BLM on BLM Form 3160–6 until such time as they are notified to begin reporting to MMS. Notification will include start-up schedules, specific reporting guidelines, and facsimile (sample) reports to guide initial reporting.

In Phase 1a of the conversion schedule, only production reports (Form MMS–3160) related to production on leases/agreements under the jurisdiction of the Wyoming BLM State Office would be due for receipt by MMS in Lakewood, Colorado, and in Phase 1b of the schedule, only reports under the jurisdiction of the Colorado, Montana, and Utah BLM State Offices would be due for receipt by MMS. In Phase 2, production reports related to production on leases/agreements under the jurisdiction of the Eastern States, Nevada, California, and Alaska BLM State Offices would be due for receipt by MMS. In Phase 3, production reports related to production on leases/agreements under the jurisdiction of the BLM Tulsa District Office would be due for receipt by MMS. In Phase 4, production reports related to production on all other leases/agreements under the jurisdiction of the New Mexico BLM State Office would be due for receipt by MMS. The MMS will publish in the **Federal Register** a notice on the MMS receipt due date for each phase of the conversion schedule at least 60 days prior to the date. Each operator would be given written notice to begin reporting to MMS on the Form MMS–3160 at least 30 days before the beginning of the production month for which they are being converted.

This proposed conversion schedule will be delayed if BLM or MMS experiences significant difficult in preparatory work related to this transfer of responsibilities. Likewise, the conversion schedule will be delayed if the error rate for reports in any phase remains at a high level for 3 months after conversion.

Previous regulations have provided that operators would be given notification of changes to onshore production reporting requirements 1 year prior to implementation. The proposed rulemaking provides less than a 1-year notification because this would not be a major change to existing reporting requirements.

Operators participating in the onshore PAAS pilot program, an those who report both offshore and onshore production, are being requested to provide MMS their preference of reporting onshore operations on the standard PAAS forms or on the Form MMS–3160. After Phase 1 commences, all operators reporting production to MMS are subject to civil penalties and assessments if there is a violation of the reporting requirements.

Except for those operators reporting in the onshore PAAS pilot program, onshore operators would need to submit only the Form MMS–3160. However, a decision will be made in the future as to whether onshore lease operators

ultimately will be required to submit the PAAS Gas Analysis Report (Form MMS–4005) and whether onshore gas plant operators will be required to submit the PAAS Gas Plant Operations Report (Form MMS–4056) and Fractionation Plant Operations Report (Form MMS–4057). In accordance with 30 CFR 216.20, operators will be given a 1-year notice before reporting on these three forms is required if a decision is made to implement these requirements.

Operators submitting corrected/amended reports for reporting periods prior to the effective date of this rule would submit them to the appropriate BLM office. Those reports would be submitted on either the Form MMS–3160 or Form BLM 3160–6. However, all corrected/amended reports for prior periods must show the same well numbers as shown on the original submission.

III. Procedural Matters

Executive Order 12291 and Regulatory Flexibility Act

The Department of the Interior has determined that this document is not a major rule under E.O. 12291 and certifies that this document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The changes included in this proposed rulemaking are technical corrections only and not substantive changes. This proposed rulemaking would establish a reporting requirement in MMS regulations, that currently exists in BLM regulations, with a few additions to the information collection requirements.

Paperwork Reduction Act of 1980

The information collection requirements located at the proposed new § 216.50 have been submitted to the Office of Management and Budget (OMB) for approval as required by 44 U.S.C. 3501 *et seq.* The collection of this information will not be required until it has been approved by the Office of Management and Budget.

National Environmental Policy Act of 1969

The Department of the Interior has determined that this action does not constitute a major Federal action significantly affecting the quality of the human environment. Therefore, an environmental impact statement is not required under the National Environmental Policy Act of 1969 (42 U.S.C 4332(2)(C)).

List of Subjects

30 CFR Part 210

Continental shelf, Geothermal energy, Government contracts, Mineral royalties, Oil and gas exploration, Public lands—mineral resources, Reporting and recordkeeping requirements.

30 CFR Part 216

Mineral production, Mineral royalties, Reporting and recordkeeping requirements, Oil and gas, Solid minerals.

43 CFR Part 3160

Government contracts, Indian-lands, Land Management Bureau, Mineral royalties, Oil and gas exploration, Penalties, Public lands—mineral resources, Reporting and recordkeeping requirements.

Date: December 4, 1987.

J. Steven Griles,

Assistant Secretary, Land and Minerals Management.

For the reasons set out in the preamble, 30 CFR Parts 210 and 216 and 43 CFR Part 3160 are proposed to be amended as set forth below:

TITLE 30—MINERAL RESOURCES

CHAPTER II—MINERALS MANAGEMENT SERVICE, DEPARTMENT OF THE INTERIOR

SUBCHAPTER A—ROYALTY MANAGEMENT

PART 210—[FORMS AND REPORTS]

1. The authority citation for Part 210 continues to read as follows:

Authority: 25 U.S.C. 396 *et seq.*; 25 U.S.C. 396a *et seq.*; 25 U.S.C. 2101 *et seq.*; 30 U.S.C. 181 *et seq.*; 30 U.S.C. 351 *et seq.*; 30 U.S.C. 1001 *et seq.*; 30 U.S.C. 1701 *et seq.*; 43 U.S.C. 1301 *et seq.*; 43 U.S.C. 1331 *et seq.*; and 43 U.S.C. 1801 *et seq.*

2. Section 210.53 is revised to read as follows:

§ 210.53 Reporting instructions.

(a) Specific guidance on how to prepare and submit required information collection reports and forms to MMS is contained in an *Auditing and Financial System (AFS) Oil and Gas Payor Handbook, a Production Accounting and Auditing System (PAAS) Reporter Handbook, and an Onshore Production Reporter Handbook* which are available from: Minerals Management Service, Attention: Lessee (or Reporter) Contact Branch, P.O. Box 5760, T.A., Denver, Colorado 80217.

* * * * *

PART 216—PRODUCTION ACCOUNTING

1. The authority citation for Part 216 continues to read as follows:

Authority: 25 U.S.C. 396 *et seq.*; 25 U.S.C. 396a *et seq.*; 25 U.S.C. 2101 *et seq.*; 30 U.S.C. 181 *et seq.*; 30 U.S.C. 351 *et seq.*; 30 U.S.C. 1001 *et seq.*; 30 U.S.C. 1701 *et seq.*; 43 U.S.C. 1301 *et seq.*; 43 U.S.C. 1331 *et seq.*; and 43 U.S.C. 1801 *et seq.*

2. Section 216.10 is revised to read as follows:

§ 216.210 Information collection.

(a) The information collection requirements contained in Part 216 have been approved by the Office of Management and Budget (OMB) under 44 U.S.C. 3501 *et seq.* The forms and approved OMB clearance numbers are as follows:

Form No., name, and filing date	OMB No.
MMS–3160—Monthly Report of Operations—due by the 10th day of the second month following the production month.	1010–XXXX
MMS–4050—Mine Information Report—due at the request of MMS during the initial conversion of the mine/lease to the PAAS.	1010–0063
MMS–4051—Facility and Measurement Information Form and Supplement—due at the request of MMS during the initial conversion of the facility and measurement device operators to the PAAS.	1010–0040
MMS–4052—Well Information Form—due at the request of MMS during the initial conversion of the lease and agreement operators to the PAAS.	1010–0040
MMS–4053—First Purchaser Report—due at the request of MMS.	1010–0040
MMS–4054—Oil and Gas Operations Report—due by the 15th day of the second month following the production month.	1010–0040
MMS–4055—Gas Analysis Report—due by the 15th day of the second month following the production month.	1010–0040
MMS–4056—Gas Plant Operations Report—due by the 15th day of the second month following the production month.	1010–0040
MMS–4057—Fractionation Plant Operations Report—due by the 15th day of the second month following the production month.	1010–0040
MMS–4058—Production Allocation Schedule Report—due by the 15th day of the second month following the production month.	1010–0040
MMS–4059—Solid Minerals Operation Report—due by the 15th day of the second month following the production month.	1010–0063
MMS–4060—Solid Minerals Facility Report—due by the 15th day of the second month following the production month.	1010–0063
MMS–4061—API Well Number Change Report—due 10 days prior to submission of Form MMS–4054.	1010–0040

(b) The information collected will be used to permit accounting and auditing of production information submitted by the reporter for mineral production from Federal and Indian leases and federally approved agreements. Information reporting forms are available from MMS. Requests shall be addressed to: Minerals Management Service, Royalty Management Program, P.O. Box 17110, Denver Colorado 80217.

3. Section 216.15(a) is revised to read as follows:

§ 216.15 Reporting instructions.

(a) Specific guidance on how to prepare and submit required information collection reports and forms to MMS is contained in a *Production Accounting and Auditing System (PAAS) Reporter Handbook, and an Onshore Production Reporter Handbook*, which are available from: Minerals Management Service, Attention: Report Contact Branch, P.O. Box 17110, Denver, Colorado 80217.

* * * * *

4. Section 216.40(c) is revised to read as follows:

§ 216.40 Assessment for incorrect or late reports and failure to report.

* * * * *

(c) For purposes of oil and gas reporting under the PAAS, a report is defined as each line of production information required on the Monthly Report of Operations (Form MMS–3160), Oil and Gas Operations Report (Form MMS–4054), Gas Analysis Report (Form MMS–4055), Gas Plant Operations Report (Form MMS–4056), Fractionation Plant Operations Report (Form MMS–4057), and Production Allocation Schedule Report (Form MMS–4058).

* * * * *

5. Section 216.50 is added to read as follows:

§ 216.50 Monthly report of operations.

(a) Notwithstanding the provisions of §§ 216.6(e) and 216.20 of this part, an operator will be required to comply with the requirements of this section the beginning of the production month which is more than 30 days after MMS notifies the operator that it is subject to the requirements of this section. Until this section is applicable, operators shall continue to be subject to the reporting requirements of 43 CFR Part 3160.

(b) A Monthly Report of Operations (Form MMS–3160) must be filed by each operator of each onshore Federal or Indian lease or agreement containing at least one well not permanently plugged and abandoned unless production data is authorized to be reported on Form MMS–4054. A completed Form MMS–3160 must be filed for each calendar month, beginning with the month in which drilling operations are initiated, and must be filed on or before the 10th day of the second month following the month being reported until the lease or agreement is terminated, or the last well is approved as permanently plugged or abandoned by BLM, or until monthly omission of the report is authorized by the MMS. The MMS may grant time extensions for filing Form MMS–3160 on a case-by-case basis upon written request to the Chief, Production Accounting Division, Royalty Management Program, MMS.

(c) Specific and detailed guidance on how to prepare and submit the required production data on the Form MMS–3160 are contained in a MMS *Onshore Production Reporter Handbook*. See § 216.15 of this part.

(d)(1) Operators already reporting onshore lease production data to MMS in accordance with § 216.54 of this part on the effective date of this rule may request to change to the provisions of this section. Any request to change the requirements of this section must be made by advance written notice of MMS and have MMS approval.

(2) An operator who reports production data to MMS for offshore leases in accordance with § 216.54 of this part may request to report for its onshore leases in accordance with the requirements of that section. Any such request must be made by advance written notice to MMS and have MMS approval.

(e)(1) Information submitted on Form MMS–3160 in regard to Federal leases and Indian leases which are part of a unit containing non-Indian leases is not considered to be proprietary or confidential.

(2) All information submitted on Form MMS–3160 in regard to Indian leases, other than those included in paragraph (e)(1) of this section, will be considered to be proprietary or confidential.

TITLE 43—PUBLIC LANDS: INTERIOR

CHAPTER II—BUREAU OF LAND MANAGEMENT, DEPARTMENT OF THE INTERIOR

PART 3160—ONSHORE OIL AND GAS OPERATIONS—GENERAL

1. The authority citation for Part 3160 continues to read as follows:

Authority: The Mineral Lands Leasing Act of 1920, as amended and supplemented (30 U.S.C. 181 *et seq.*), the Mineral Leasing Act for Acquired Lands, as amended (30 U.S.C. 351–359), the Act of May 21, 1930 (30 U.S.C. 301–306), 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 28, 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. 298a–398e), the Act of June 30, 1919, as amended (25 U.S.C. 399), R.S. section 441 (43 U.S.C. 1457), see also Attorney General's Opinion of April 2, 1941 (40 Op. Atty. Gen. 41), the Federal Property and Administrative Services Act of 1949, as amended (40 U.S.C. 471 *et seq.*), the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 *et seq.*), the Act of December 12, 1980 (42 U.S.C. 6508), the Combined Hydrocarbon Leasing Act of 1981 (Pub. L. 97–78); the Federal Oil and Gas Royalty Management Act of 1982 (30 U.S.C. 1701 *et seq.*); and the Indian Mineral Development Act of 1982 (25 U.S.C. 2102).

2. Section 3162.4–3 of Subpart 3162—Requirements for Lessees and Operators, is amended by adding a sentence at the beginning of the introductory text to read as follows:

§ 3162.4–3 Monthly report of operations [Form 3160–6].

The operator shall report production data to BLM in accordance with the requirements of this section until required to begin reporting to MMS pursuant to 30 CFR 216.50. * * *

* * * * *

[FR Doc. 88–754 Filed 1–14–88; 8:45 am]
BILLING CODE 4310–MR–M

VETERANS ADMINISTRATION

38 CFR Part 21

Vocational Rehabilitation Panel

AGENCY: Veterans Administration.

ACTION: Proposed regulatory amendment.

SUMMARY: The Veterans Administration (VA) is proposing to change the procedure under which a special review is provided in cases in which discontinuance of the rehabilitation program of a veteran with a service-connected disability of 50 percent or more is being considered. These reviews are currently conducted by the Vocational Rehabilitation Panel (VRP). Under the proposed change this responsibility would be reassigned to the Vocational Rehabilitation and Counseling (VR&C) Officer. The change would provide greater flexibility in utilizing the VRP, improve program administration, and maintain the quality of service to seriously disabled veterans.

DATES: Comments must be received on or before February 12, 1988. Comments will be available for public inspection until February 26, 1988. We propose to make these amendments effective 30 days after publication of the final regulations.

ADDRESSES: Interested persons are invited to submit written comments, suggestions, or objections regarding these changes to the Administrator of Veterans Affairs (271A), Veterans Administration, 810 Vermont Avenue, NW, Washington, DC 20420. All written comments received will be available for public inspection only in the Veterans Services Unit, Room 132 at the above address, between the hours of 8 a.m. and 4:30 p.m., Monday through Friday

(except holidays), until February 26, 1988.

FOR FURTHER INFORMATION CONTACT: Morris Triestman, Rehabilitation Consultant, Policy and Program Development, Vocational Rehabilitation and Education Service, Department of Veterans Benefits, (202) 233–2886.

SUPPLEMENTARY INFORMATION: The VRP is a multidisciplinary group of professional staff of the VA. The VRP furnishes technical assistance in cases involving seriously disabled veterans and dependents. Under current provisions, the VRP reviews each case in which discontinuance of the rehabilitation program of a veteran with a service-connected disability evaluated at 50 percent or more disabling is being considered.

The VA is proposing to reassign the responsibility for conducting this special review to the VR&C Officer. Under this change, the VR&C Officer could continue to utilize the assistance of the VRP as necessary in the individual case. The change would provide greater flexibility in utilizing the VRP, improve program administration, and maintain the quality of service to seriously disabled veterans.

The regulations contained herein will better acquaint eligible veterans, vocational training and rehabilitation facilities, and the public at large with the way these provisions will be implemented.

These proposed amendments do not meet the criteria for major rules as contained in Executive Order 12291, Federal Regulation. The proposal will not have a $100 million annual effect on the economy, will not cause a major increase in costs or prices, and will not have any other significant adverse effects on the economy.

The Administrator certifies that these proposed regulatory amendments will not, if promulgated, have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (RFA), 5 U.S.C. 601–612. Pursuant to 5 U.S.C. 605(b), these proposed rules are therefore exempt from the initial and final regulatory flexibility analyses requirements of sections 603 and 604. The reason for this certification is that the proposed regulatory amendments concern only the internal agency procedures for reviewing the eligibility and participation of individual veterans under this program.

The Catalog of Federal Domestic Assistance Number is 64.116.

List of Subjects in 38 CFR Part 21

Civil rights, Claims, Education, Grant programs, Loan programs, Reporting requirements, Schools, Veterans, Vocational education, Vocational rehabilitation.

Approved: December 18, 1987.

Thomas K. Turnage,

Administrator.

38 CFR Part 21, VOCATIONAL REHABILITATION AND EDUCATION, is proposed to be amended as follows:

PART 21—VOCATIONAL REHABILITATION AND EDUCATION

§ 21.62 [Amended]

1. Section 21.62 is amended by removing paragraph (b)(4).

§ 21.198 [Amended]

2. Section 21.198 is amended by adding paragraph (b)(7) as set forth below:

§ 21.198 "Discontinued" status.

* * * * *

(b) * * *

(7) *Special review of proposed discontinuance action.* The Vocational Rehabilitation and Counseling (VR&C) Officer shall review each case in which discontinuance is being considered for a veteran with a service-connected disability rated 50 percent or more disabling. The VR&C Officer may utilize existing resources to assist in the review, including referral to the Vocational Rehabilitation Panel (VRP).

(Authority: 38 U.S.C. 1504(a)(1))

* * * * *

[FR Doc. 88–588 Filed 1–14–88; 8:45 am]

BILLING CODE 8320-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[FRL–3216–2]

Approval and Promulgation of State Implementation Plans; Proposed Revision of Alaska State Implementation Plan; Correction

AGENCY: Environmental Protection Agency (EPA).

ACTION: Correction to proposed rule.

SUMMARY: EPA is hereby correcting a notice contained in 52 FR 48837 dated December 28, 1987, concerning the proposed approval of the State of Alaska stack height rules. This notice, on page 48838, indicates the Office of Management and Budget reviewed this document as required by section 3 of Executive Order 12291. Furthermore, a statement is made in reference to a proposed disapproval of administrative procedures. These statements were made in error since EPA is proposing to approve the State's rule in their entirety and the solicitation of public comment on proposed approvals is exempt from this Executive Order.

FOR FURTHER INFORMATION CONTACT: David C. Bray, Air Programs Branch, Region 10, Environmental Protection Agency, 1200 Sixth Avenue AT–092, Seattle, Washington 98101, telephone: (206) 442–4253, FTS: 399–4253.

Dated: January 6, 1988.

Robie G. Russell,

Regional Administrator.

[FR Doc. 88–762 Filed 1–14–88; 8:45 am]

BILLING CODE 6560-50-M

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Part 192

[Docket No. PS–97; Notice 1]

Confirmation or Revision of Maximum Allowable Operating Pressure; Alternative Method

AGENCY: Office of Pipeline Safety (OPS), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to permit the use of an alternative method for determining the maximum allowable operating pressure (MAOP) of a gas pipeline when its class location (population density) increases. The alternative would permit reduction of MAOP in direct proportion to a previous test pressure. The current rule unnecessarily requires retesting even though the previous test provides an adequate margin of safety above the MAOP.

DATE: Interested persons are invited to submit written comments on this proposal by March 15, 1988. Late filed comments will be considered to the extent practicable.

ADDRESS: Send comments in duplicate to the Dockets Unit, Room 8417, Office of Pipeline Safety, Research and Special Programs Administration, U.S. Department of Transportation, 400 Seventh Street SW., Washington, DC 20590. Identify the docket and notice numbers stated in the heading of this notice. All comments and docketed material will be available for inspection

and copying in Room 8426 between 8:30 a.m. and 5:00 p.m. each business day.

FOR FURTHER INFORMATION CONTACT: Bernard L. Liebler, (202) 366–2392, regarding the subject matter of this notice, or the Dockets Unit, (202) 366–5046, for copies of this notice or other material in the docket.

SUPPLEMENTARY INFORMATION: In a letter dated January 22, 1985, the Gas Piping Technology Committee of the American Society of Mechanical Engineers (ASME) petitioned OPS to amend § 192.611 by adding an alternative method for confirming or revising the MAOP of a pipeline after it experiences a change in class location. (Pet. P–29). The alternative would apply to pipelines that have been pressure tested to less than 90 percent of specified minimum yield strength (SMYS) for at least 8 hours.

Currently, § 192.611(a) provides that if the class location increases for a pipeline segment that has been previously tested to at least 90 percent of its SMYS for at least 8 hours, the MAOP must be confirmed or reduced so that the hoop stress will not exceed 72 percent of SMYS in Class 2; 60 percent in Class 3; or 50 percent in Class 4.

Two alternatives apply when a pipeline segment that has not been so tested undergoes a class location change. First, under § 192.611(b), a pipeline segment's MAOP must be reduced so that the hoop stress does not exceed the level permitted for a similar new pipeline segment in the new class location. For example, if a pipeline originally tested to 88 percent of SMYS for 8 hours and operating at 59 percent of SMYS changes from Class 2 to Class 3, its MAOP must be reduced to not more than 50 percent SMYS, because this is the hoop stress limit that Part 192 prescribes for new pipelines in Class 3. The second alternative, found in § 192.611(c), permits the operator to retest the pipeline segment so that it meets the requirements of Subpart J and to establish the MAOP as a proportion of the test pressure. This proportion may not exceed the ratio of the appropriate hoop stress limit under § 192.611(a) to 90 percent of SMYS. For Class 2 the ratio is 0.8; for Class 3 it is 0.667; and for Class 4 it is 0.555. Thus, the pipeline in the example above could continue to operate in Class 3 at an MAOP of 59 percent of SMYS if it were retested to 88 percent SMYS (MAOP=0.667×test pressure).

As illustrated under § 192.611 (b) and (c) identical tests can result in significantly different MAOP's depending only on whether the test is performed before or after the class change. This discrepancy was raised in the ASME petition. ASME's proposed solution is to amend § 192.611 to permit a proportional reduction in MAOP by applying the ratios specified in § 192.611(c) without requiring retesting under Subpart J. The effect of the proposal is to reduce the significance of prior testing to at least 90 percent of SMYS in determining a safe MAOP on a proportional basis.

In evaluating the proposal, OPS examined the purpose of § 192.611 and the importance of retesting in achieving that purpose of pipelines previously tested to less than 90 percent of SMYS for a least 8 hours.

The goal of the initial pressure test is to raise the pressure to a sufficiently high level so that all of the reasonably detectable manufacturing flaws or construction defects in the pipeline can be identified and eliminated without damaging or deteriorating the intrinsic properties of pipe without such flaws or defects. After this task is accomplished the MAOP is set at a level below the test pressure to create a safety margin between the operating hoop stress and the stress used for flaw elimination (test pressure). This safety margin, which increases with class location, is intended to prevent failures due to the subsequent growth of latent flaws or defects or to accidental overloading.

The purpose of reevaluating a pipeline's MAOP under § 192.611 is to continue to provide a reduced risk of failure as population increases. Under § 192.611 (a), (b), and (c), this is accomplished by confirming or revising MAOP as a proportion of test pressure, thus resulting in an appropirate safety margin. Hence, retesting is needed only when the initial test fails to provide the required safety margin above the desired MAOP. Therefore, it appears reasonable that the safety margin rather than the act of retesting is the critical factor under § 192.611, regardless of the initial test level.

This philosophy is reflected in the hazardous liquid pipeline regulations (Part 195). Section 195.302 requires either hydrostatic testing of certain pipelines or reduction of operating pressure to provide at least a 20-percent safety margin between operating pressure and test pressure. If the pressure is reduced, the margin is between operating pressure and the highest documented operating pressure maintained for a least 4 hours.

Because the safety margin between MAOP and test pressure is the significant factor under § 192.611, when a pipeline undergoes a class location change and has been tested previously to a level less than 90 percent SMYS for at least 8 hours, the MAOP should be permitted without retesting to be confirmed or reduced according to the safety margins required by § 192.611(c)(1). Thus, OPS is proposing to include these changes in § 192.611(a).

For pipelines that have been pressure tested in place for at least 8 hours, the proposed § 192.611(a) would permit proportional confirmantion or reduction of MAOP utilizing factors specified currently in § 192.611(c)(1) (0.8 for Class 2, 0.667 for Class 3, 0.555 for Class 4). Pipelines tested to 90 percent or more of SMYS would not be permitted to operate above the stress levels that the current rule permits for the class location concerned. In effect, a change of one class location would necessitate testing under § 192.611(c) to maintain an MAOP only if the pipeline had not previously experienced an adequate pressure test. Also, specific reference to the 90-percent SMYS level would be unnecessary as MAOP would be proportional to whatever test pressure up to 90 percent SMYS were used. The more stringent safety margins required by § 192.611(b) would have effect if an initial test were held for less than 8 hours and an operator chooses not to retest under § 192.611(c).

OPS requests that commenters address the points rasied in this NPRM on whether a safety margin based on a prior pressure test rather than a retest is sufficient for the safety of pipelines initially tested to less than 90 percent of SMYS for a least 8 hours. Where possible, comments should be accompanied by appropriate supporting data or analyses.

Impact Assessment

The proposed alternative would reduce the number of pressure tests performed subsequent to class location changes. However, the alternative would be advantageous only in a small number of cases, namely when the initial test pressure was relatively near 90 percent SMYS. Thus, the proposal is expected to have a minimal economic impact, and a Draft Evaluation will not be prepared. Consequently, this proposal is considered nonmajor under Executive Order 12291 and not significant under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). Also, the agency certifies under Section 605 and of the Regulatory Flexibility Act that the proposal will not, if adopted as final, have a significant economic impact on a substantial number of small entities.

List of Subjects in 49 CFR Part 192

Pipeline safety, Class location, Testing.

In view of the foregoing, OPS proposes to amend 49 CFR Part 192 as follows:

PART 192—[AMENDED]

1. The authority citation for Part 192 is revised to read as follows:

Authority: 49 App. U.S.C. 1672 and 1804; 49 CFR 1.53.

2. Section § 192.611(a) would be revised to read as follows:

§ 192.611 Change in class location: Confirmation or revision of maximum allowable operating pressure.

* * * * *

(a) If the segment involved has been previously tested in place for a period of not less than 8 hours, the maximum allowable operating pressure must be confirmed or reduced to a level not to exceed 0.8 times the test pressure for Class 2 locations, 0.667 times the test pressue for Class 3 locations, and 0.555 times the test pressure for Class 4 locations. The corresponding hoop stress may not exceed 72 percent of SMYS of the pipe in Class 2 locations, 60 percent of SMYS in Class 3 locations, or 50 percent of SMYS in Class 4 locations.

* * * * *

Issued in Washington, DC, on January 12, 1988.

Richard L. Beam,

Director, Office of Pipeline Safety.

[FR Doc. 88–785 Filed 1–14–88; 8:45 am]

BILLING CODE 4910–60–M

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49 CFR Part 192

[Docket No. PS–98; Notice 1]

Exception From Pressure Testing Non-Welded Tie-in Joints

AGENCY: Office of Pipeline Safety (OPS), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to amend the gas pipeline safety regulations to except non-welded tie-in joints from the pressure test requirements. The regulations currently except welded tie-in joints; and the rationale for this exception applies equally to non-welded tie-in joints.

DATE: Interested persons are invited to submit written comments on this proposal by February 29, 1988. Late filed comments will be considered to the extent practicable.

ADDRESS: Send comments in duplicate to the Dockets Unit, Office of Hazardous Materials Transportation, Room 8426, Research and Special Programs Administration, U.S. Department of Transportation, 400 Seventh Street SW., Washington, DC 20590. Identify the docket and notice numbers stated in the heading of this notice. All comments and other docket material will be available in Room 8426 for inspection and copying between 8:30 a.m. and 5:00 p.m. each business day.

FOR FURTHER INFORMATION CONTACT: Bernard L. Liebler, (202) 366–2392, regarding the subject matter of this notice, or the Dockets Unit, (202) 366–5046, for copies of this notice or other material in the docket.

SUPPLEMENTARY INFORMATION: The New England Gas Association (NEGA) submitted in January 1983 a petition for rulemaking (P–20), supported by letters from Washington Gas Light, Northeast Utilities, and the Southern Connecticut Gas Company. Subsequently, in May 1984, NEGA modified its petition. The modified petition was also supported by a letter from the Southern Connecticut Gas Company.

The petition concerns Subpart J of Part 192, which prescribes pressure test requirements to detect potentially hazardous leaks and, in some cases, to substantiate the maximum allowable operating pressure (MAOP). Section 192.503(d) exempts tie-in joints made by welding from these pressure test requirements (Tie-in joints are the connection of separately constructed pipelines.) As modified, the petition requests amendment of § 192.503(d) to except from the pressure test requirements of Subpart J tie-in joints that are made by methods other than welding, such as by compression coupling.

OPS agrees with NEGA that, regardless of the joining method (welding, mechanical, or otherwise), a post-installation pressure test of tie-in joints cannot be effected practically. Either an additional segment must be tested, creating new tie-in joints to be tested, or other parts of the pipeline must be overpressured. In addition, while tie-in pipe or coupling devices can be pretested, the actual joint can only be tested in place.

In practice, testing has not been enforced through the recognition by field personnel of the near impossibility of compliance. The integrity of a non-welded tie-in joint is nevertheless assured because such joint is subject to the requirements of Subpart F governing the joining of materials in pipelines other than by welding.

OPS proposes to revise § 192.503(d) by substituting the word "joint" for the word "weld." The proposed revision would eliminate the unnecessary and impractical requirement.

The petitioners also requested that § 192.619(a)(2) be changed to state explicitly that the MAOP established for a test segment applies also to the tie-in joint. OPS does not believe that such revision is necessary, since exception of tie-in joints from the pressure test needed to establish the MAOP of a test segment under § 192.619(a)(2) would implicitly except each tie-in joint from the requirements of § 192.619(a)(2).

Impact Assessment

The proposal is considered to be nonmajor under Executive Order 12291 and not significant under the DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). Since this proposal would have a minimal effect on the economy by codifying existing compliance practices, the economic effect has been found not to require further evaluation. Based on the facts available concerning the impact of this rulemaking action, I certify pursuant to section 605 of the Regulatory Flexibility Act that the action will not, if adopted as final, have a significant economic impact on a substantial number of small entities.

List of Subjects in 49 CFR Part 192

Pipeline safety, Test, Tie-in, Joint.

Proposed Revisions

For the reasons set forth in the Supplementary Information, 49 CFR Part 192 is proposed to be amended as follows:

PART 192—[AMENDED]

1. The authority citation for Part 192 is revised to read as follows:

Authority: 49 App. U.S.C. 1672 and 1804, 49 CFR 1.53.

2. Section 192.503(d) would be revised to read as follows:

§ 192.503 General requirements.

* * * * *

(d) Each joint used to tie-in a test segment of pipeline is excepted from the test requirements of this subpart.

Issued in Washington, DC, on January 12, 1988.

Richard L. Beam,

Director, Office of Pipeline Safety.

[FR Doc. 88–786 Filed 1–14–88; 8:45 am]

BILLING CODE 4910–60–M

Notices

Federal Register
Vol. 53, No. 10
Friday, January 15, 1988

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket No. 31-87]

Foreign-Trade Zone 72; Indianapolis, IN; Application for Subzone Subaru/Isuzu Auto/Truck Plant, Tippecanoe County, IN

The comment period for the above case, involving a special-purpose subzone for the auto/truck manufacturing plant of Subaru/Isuzu Automotive, Inc., in Tippecanoe County, Indiana (52 FR 44620, 11/20/87), is extended to February 8, 1988, to allow interested parties additional time to comment on the proposal.

Comments in writing are invited during this period. Submissions shall include 5 copies. Material submitted will be available at: Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, Room 1529, 14th Street and Pennsylvania Avenue NW., Washington, DC 20230.

Dated: January 11, 1988.

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 88-799 Filed 1-14-88; 8:45 am]

BILLING CODE 3510-DS-M

[Docket No. 35-87]

Foreign-Trade Zone 26—Atlanta, GA; Application for Subzone Yamaha Golf Cart and Water Vehicle Plant, Coweta County, GA

The comment period for the above case, involving a special-purpose subzone for the golf cart and water vehicle plant of Yamaha Motor Manufacturing Corporation of America in Coweta County, Georgia (52 FR 45474, 11/30/87), is extended to March 11, 1988, to allow interested parties additional time to comment on the proposal.

Comments in writing are invited during this period. Submissions shall include 5 copies. Material submitted will be available at: Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, Room 1529, 14th and Pennsylvania Avenue NW., Washington, DC 20230.

Dated: January 11, 1988.

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 88-798 Filed 1-14-88; 8:45 am]

BILLING CODE 3510-DS-M

International Trade Administration

[A-588-705]

Preliminary Determination of Sales at Less Than Fair Value; Bimetallic Cylinders From Japan

ACTION: Notice.

SUMMARY: We have preliminarily determined that bimetallic cyclinders from Japan are being, or are likely to be, sold in the United States at less than fair value. We have notified the U.S. International Trade Commission (ITC) of our determination. We have also directed the U.S. Customs Service to suspend liquidation of all entries of bimetallic cylinders from Japan as described in the "Suspension of Liquidation" section of this notice. If this investigation proceeds normally, we will make a final determination by March 28, 1988.

EFFECTIVE DATE: January 15, 1988.

FOR FURTHER INFORMATION CONTACT: John Brinkmann (202) 377-3965 or Raymond Busen (202) 377-3464, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Preliminary Determination

We have preliminarily determined that bimetallic cylinders from Japan are being, or are likely to be, sold in the United States at less than fair value, as provided in section 733 of the Tariff Act of 1930, as amended (19 U.S.C. 1673b) (the Act). The estimated margin of sales at less than fair value is shown in the "Suspension of Liquidation" section of this notice.

Case History

On August 4, 1987, we received a petition in proper form filed by Xaloy, Incorporated and Bimex Corporation. In compliance with the filing requirements of § 353.36 of the Commerce Regulations (19 CFR 353.36), the petition alleged that imports of the subject merchandise from Japan are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Act and that these imports are causing material injury, or threaten material injury, to a U.S. industry.

After reviewing the petition, we determined that it contained sufficient grounds upon which to initiate an antidumping duty investigation. We initiated the investigation on August 24, 1987 (52 FR 32326, August 27, 1987), and notified the ITC of our action.

On September 18, 1987, the ITC determined that there is a reasonable indication that imports of bimetallic cylinders are materially injuring a U.S. industry (U.S. ITC Pub. No. 2017, September 1987).

On October 8, 1987, a questionnaire was sent to Hitachi Metals, Ltd. (HML), which accounted for a substantial portion of the exports to the United States during the period of investigation. HML's response to section A was due on October 22, 1987, while the response to the remainder of the questionnaire, was due on November 9, 1987.

On October 16, 1987, respondent requested an extension of the deadline to October 26, 1987 for the response to section A of the questionnarie. The extension was granted.

On October 23, 1987, respondent requested a two-week extension until November 23 to respond to the remainder of the questionnarie. An extension was granted until November 18, 1987. On October 26, 1987, we received the response to section A.

On November 18, 1987, the response to the remainder of the questionnarie was received. On November 20, 1987, we sent a deficiency letter to the respondent which stated that failure to provide the requested information by December 4, 1987 may result in our using best information available for this preliminary determination. Our letter stated that HML's response was deficient because it reported only those home market sales it claimed were identical to certain U.S. sales and did

not provide home market sales for comparison to the majority of United States sales. We requested that HML report all home market sales of such or similar merchandise.

On November 24, 1987, we sent a supplemental deficiency letter to the respondent asking for clarification of other data submitted in HML's October 26 and November 18, 1987, responses to our questionnaire. We reiterated our position with regard to the requirements for the submission of all home market sales of both identical and similar merchandise, as stated in our November 20 deficiency letter, and again advised HML that failure to respond by December 4 may result in our using the best information available for this preliminary determination.

On December 4, 1987, we received an incomplete response to the two deficiency letters.

On December 7, 1987, we presented a letter to the respondent stating that the response continued to be deficient and that, in accordance with section 776(b) of the Act, if the deficient response was not corrected by the the January 11 preliminary determination date, we might not be able to verify the information and might have to rely on best information available for our final determination. No further information was received from the respondent.

Scope of Investigation

The United States has developed a system of tariff classification based on the international harmonized system of Customs nomenclature. Congress is considering legislation to convert the United States to this Harmonized System ("HS"). In view of this, we will be providing both the appropriate *Tariff Schedule of the United States Annotated* (TSUSA) item numbers and the appropriate HS item numbers with our product descriptions on a test basis, pending Congressional approval. As with the TSUSA, the HS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

We are requesting petitioners to include the appropriate HS item number(s) as well as the TSUSA item number(s) in all new petitions filed with the Department. A reference copy of the proposed Harmonized System Schedule is available for consultation at the Central Records Unit, Room B-099, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230. Additionally, all Customs offices have reference copies, and petitioners may contact the Import Specialist at their local Customs office to consult the schedule.

The products covered by this investigation are bimetallic cylinders which are provided for in TSUSA items 678.3570, 678.3575, and 678.3580. The corresponding Harmonized System (HS) number is 8477.90.0000. The bimetallic cylinder is defined as a hollow metal cylinder which serves as part of a machine used to process various materials including plastic resins and various types of food either by injection molding, extrusion, or by blow molding. The product consists of an outer sheet of steel and an inner lining of an alloy which are metallurgically bonded, the inner lining being of a material which is resistant to a corrosive and abrasive environment. Nitrided cylinders, those cylinders whose inner surfaces have been hardened and tempered by a nitriding process, are not included in this investigation.

Fair Value Comparisons

To determine whether sales of bimetallic cylinders in the United States were made at less than fair value, we compared the United States price with the foreign market value, both of which were based on the best information available. We used the best information available as required by section 776(b) of the Act for the reasons in the "Case History" section of this notice.

The period of investigation for bimetallic cylinders from Japan was March 1, 1987 through August 31, 1987.

United States Price

As best information available for United States price, we used the U.S. price information provided in the petition. The petition provided prices for four sizes of bimetallic cylinders.

Foreign Market Value

As the best information available for foreign market value, we used home market prices provided in the petition. An adjustment was made to petitioners' home market prices to reflect exchange rates as certified by the Federal Reserve Bank.

Currency Conversion

We made currency conversions in accordance with § 353.56(a)(1) of our regulations. All currency conversions were made at the rates certified by the Federal Reserve Bank.

Verification

As provided in section 776(a) of the Act, if we have received a sufficient response to our deficiency letters by January 11, 1988, we will verify all information used in reaching the final determination in this investigation.

Suspension of Liquidation

In accordance with section 733(d) of the Act, we are directing the U.S. Customs Service to suspend liquidation of all entries of bimetallic cylinders from Japan that are entered, or withdrawn from warehouse, for consumption, on or after the date of publication of this notice in the **Federal Register**. The Customs Service shall require a cash deposit or the posting of a bond equal to the estimated amounts by which the foreign market value of the merchandise subject to this investigation exceeds the United States price as shown below. This suspension will remain in effect until further notice. The average dumping margin is as follows:

Manufacturer/producer/exporter	Margin percentage
Hitachi Metals, Ltd.	17.42
All Others	17.42

ITC Notification

In accordance with section 733(f) of the Act, we will notify the ITC of our determination. In addition, we are making available to the ITC all nonprivileged and nonproprietary information relating to this investigation. We will allow the ITC access to all privileged and business proprietary information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under administrative protective order, without the written consent of the Deputy Assistant Secretary for Import Administration.

If our final determination is affirmative, then the ITC will determine no later than 120 days after the date of this preliminary determination or 45 days after the final determination, whichever is later, whether these imports are materially injuring, or threaten material injury to, a U.S. industry.

Public Comment

In accordance with § 353.47 of our regulations (19 CFR 353.47), if requested, we will hold a public hearing to afford interested parties an opportinity to comment on this preliminary determination at 1:00 p.m. on February 17, 1988, at the U.S. Department of Commerce, Room 1851, 14th Street and Constitution Avenue NW., Washington, DC 20230. Individuals who wish to participate in the hearing must submit a request to the Deputy Assistant Secretary for Import Administration, Room B-099, at the above address within 10 days of the publication of this

notice. Requests should contain: (1) The party's name, address and telephone number; (2) the number of participants; (3) the reasons for attending; and (4) a list ot the issues to be discussed.

In addition, prehearing briefs in at least 10 copies must be submitted to the Deputy Assistant Secretary by February 10, 1988. Oral presentations will be limited to issues raised in the briefs. All written views should be filed in accordance with 19 CFR 353.36, not less than 30 days before the final determination, or, if a hearing is held, within 7 days after the hearing transcript is available, at the above address in at least 10 copies.

This determination is published pursuant to section 733(f) of the Act (19 U.S.C. 1673b(f)).

Gilbert B. Kaplan,

Deputy Assistant Secretary for Import Administration.

January 11, 1988.

[FR Doc. 88-800 Filed 1-14-88; 8:45 am]

BILLING CODE 3510-DS-M

[A-588-021]

Cell-Site Transceivers and Related Subassemblies From Japan; Final Results of Antidumping Duty Administrative Review

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

ACTION: Notice of final results of antidumping duty administrative review.

SUMMARY: On September 3, 1987, the Department of Commerce published the preliminary results of its administrative review of the antidumping duty order on cell-site transceivers and related subassemblies from Japan. The review covers one manufacturer/exporter of this merchandise to the U.S. and the period January 1, 1986 through December 31, 1986.

We gave interested parties an opportunity to comment on the preliminary results. We received a comment from Kokusai Electric Co., Ltd. ("Kokusai"). The final dumping margin is unchanged from that presented in the preliminary results of review.

EFFECTIVE DATE: January 15, 1988.

FOR FURTHER INFORMATION CONTACT: Michael J. Heaney or John Kugelman, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone (202) 377-4195/3601.

SUPPLEMENTARY INFORMATION:

Background

On September 3, 1987, the Department of Commerce ("the Department") published in the **Federal Register** (52 FR 33459) the preliminary results of its administrative review of the antidumping duty order on cell-site transceivers and related subassemblies from Japan. We have now completed that administrative review in accordance with section 751 of the Tariff Act of 1930 ("the Tariff Act").

Scope of the Review

Imports covered by the review are cell-site transceivers and related subassemblies which are part of the radio frequency (RF) equipment in the base station of a cellular radio communications system. This single-package RF equipment functions as a locating receiver and provides simultaneous two-way voice and data communications between the base station and the subscriber's mobile telephone by using different frequencies to transmit and receive. Subassemblies are an assemblage of parts dedicated for use in cell-site transceivers as defined above. These products are currently classifiable under items 685.2810 and 685.2820 of the Tariff Schedules of the United States Annotated and Harmonized System item numbers 8525.20.15 and 8525.20.30.

The review covers one known manufacturer/exporter, Kokusai, and the period January 1, 1986 through December 31, 1986.

Analysis of Comment Received

We gave interested parties an opportunity to comment on the preliminary results. We received a comment from Kokusai.

Comment: Kokusai argues that our reference to "no shipments" in our preliminary results notice should refer to no reviewable shipments, i.e., no shipments other than the shipments covered in our last administrative review.

Department's Position: We agree that there were shipments during the 1986 review period. Confusion arose since those shipments were made pursuant to contracts entered into during the 1985 review period and were inadvertently covered in our last administrative review.

Final Results of the Review

Based on our analysis of the comment received, the final results of review are the same as those presented in the preliminary results of review and we determine that the following margin exists for the period January 1, 1986 through December 31, 1986:

Manufacturer/exporter	Margin (percent)
Kokusai	0.06

Since the margin for Kokusai is less than 0.5 percent and, therefore, *de minimis* for cash deposit purposes, the Department shall not require a cash deposit of estimated antidumping duties for this firm. For any future entries of this merchandise from a new exporter, not covered in this or prior administrative reviews, whose first shipments occurred after December 31, 1986 and who is unrelated to Kokusai, no cash deposit shall be required.

These deposit requirements and waiver are effective for all shipments of Japanese cell-site transceivers and related subassemblies entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice and shall remain in effect until publication of the final results of the next administrative review.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and 19 CFR 353.53a.

Gilbert B. Kaplan,

Acting Assistant Secretary, Import Administration.

Date: January 7, 1988.

[FR Doc. 88-801 Filed 1-14-88; 8:45 am]

BILLING CODE 3510-DS-M

[A-122-047]

Elemental Sulphur From Canada; Final Results of Antidumping Duty Administrative Review and Revocation in Part

AGENCY: International Trade Administration/Import Administration Department of Commerce

ACTION: Notice of final results of antidumping duty administrative review and revocation inpart.

SUMMARY: On June 19, 1987, the Department of Commerce published the preliminary results of its administrative review, tentative determination to revoke in part, and intent to revoke in part the antidumping finding on elemental sulphur from Canada. The review covers ten producers and/or exporters of this merchandise to the United States and generally the period December 1, 1982 through March 31, 1986.

We gave interested parties an opportunity to comment on the preliminary results, tentative

determination to revoke in part, and intent to revoke in part. At the request of the petitioner the Department held a public hearing on September 23, 1987. Based on our analysis of the comments received, we are deferring the final results of our review of InterRedec pending receipt of additional information. Because Timshell, Inc. did not respond to our antidumping questionnaire and Burza Resources declined to release its proprietary data under an administrative protective order, we used the best information available for these two firms. The preliminary results for two firms were incorrect due to certain clerical errors and we have changed those results accordingly. The remaining final results of our review remain unchanged from those presented in our preliminary results.

EFFECTIVE DATE: January 15, 1988.

FOR FURTHER INFORMATION CONTACT: Joseph A. Fargo or John R. Kugelman, Office of Compliance, International Trade Administrator, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377-5255/3601.

SUPPLEMENTARY INFORMATION:

Background

On June 19, 1987, the Department of Commerce ("the Department") published in the **Federal Register** (52 FR 23327) the preliminary results of its administrative review, tentative determination to revoke in part, and intent to revoke in part the antidumping finding on elemental sulphur from Canada (38 FR 35655, December 17, 1973). The Department has now completed that administrative review in accordance with section 751 of the Tariff Act of 1930 ("the Tariff Act").

Scope of the Review

Imports covered by the review are shipments of elemental sulphur currently classifiable under item number 415.4500 of the Tariff Schedules of the United States Annotated and Harmonized System item numbers 2503.10.00, 2503.90.00, and 2802.00.00.

The review covers ten producers and/or exporters of Canadian elemental sulphur to the United States and generally the period December 1, 1982 through March 31, 1986.

Analysis of Comments Received

We gave interested parties the opportunity to comment on the preliminary results. We received comments from the petitioner and two respondents. At the request of the petitioner, Freeport McMoRan, Inc., we held a public hearing on September 23, 1987.

Comment: One Canadian respondent, Home Oil Co., Ltd., contends that the Department erred when it refused to provide Home Oil a requested disclosure. Home Oil states that the Department's regulations do not mention a deadline for disclosure requests, particularly where, as here, the request preceded publication of the final results of review. Home Oil also alleges that the Department made three errors in its calculation of U.S. price and foreign market value.

Department's Position: In the June 19 preliminary results notice we stated that "interested parties may submit written comments on these preliminary results, tentative determination to revoke in part, and intent to revoke in part, within 14 days of the date of publication of this notice and may request disclosure and/or a hearing within 5 days of the date of publication". Since Home Oil requested disclosure over three months after the date of publication, the request was untimely and we did not consider it. In addition, the allegations of three possible errors in computations, being made 3 to 4 months after the date of publication, were equally untimely; therefore, we did not consider them.

We are deferring our review of InterRedec pending the receipt of additional information; therefore, we have not addressed the petitioner's comments on InterRedec.

Final Results of the Review and Revocation in Part

Based on our analysis of the comments received, we are deferring the final results of our review of InterRedec, pending the receipt of additional information and, for the reasons discussed above, we have changed the rate for Timshel (U.S.) and Burza Resources. The preliminary results for two firms were incorrect due to certain clerical errors and we have changed those results accordingly. The remaining final results of our review remain unchanged from the preliminary results, and we determine that the following margins exist:

Producer/ Exporter	Period of review	Margin (percent)
Burza Resources	12/01/82-11/30/84	28.90
Petrogas Processing	12/01/82-11/30/84	[1] 0
Canadian Superior Oil	04/01/84-03/31/86	0
Chevron Standard	04/01/84-03/31/86	0
Gulf Oil Canada	04/01/84-03/31/86	0
Home Oil	12/01/82-11/30/83	0.59
	12/01/83-11/30/84	0
Hudson's Bay Oil & Gas	04/01/84-03/31/86	0
Petro-Canada Resources	12/01/82-11/30/83	2.11
	12/01/83-11/30/84	5.83
Shell Canada Resources	04/01/84-03/31/86	0
Timshell (U.S.)	12/01/82-11/30/84	28.90

[1] No shipments during the period; margin from the last review in which there were shipments.

The Department will instruct the Customs Service to assess antidumping duties on all appropriate entries. Individual differences between the United States price and foreign market value may vary from the percentages stated above. The Department will issue appraisement instructions on each producer/exporter directly to the Customs Service.

For the reasons set forth in the preliminary results of review, tentative revocation in part, and intent to revoke in part, we are satisfied that there is no likelihood of resumption of sales at less than fair value by Canadian Superior, Chevron Standard, Gulf Oil Canada, Hudson's Bay Oil and Gas, and Shell Canada Resources. Accordingly, we revoke in part the antidumping finding on elemental sulphur from Canada. This partial revocation applies to all unliquidated entries of this merchandise exported by Canadian Superior, Chevron Standard, Gulf Oil Canada, Hudson's Bay Oil and Gas, and Shell Canada Resources, entered, or withdrawn from warehouse, for consumption on or after May 30, 1986. The May 30th effective date was selected because the finding on these five companies had previously been revoked and was reinstated pursuant to court order on May 30, 1986.

As provided for in section 751(a)(1) of the Tariff Act, a cash deposit of estimated antidumping duties based upon the above margins shall be required for these firms.

For any shipment from the remaining known producers and/or exporters not covered by this review, the cash deposit will continue to be at the rates published in the final results of the last administrative reviews for each of those firms (50 FR 37889, September 18, 1985, 51 FR 43954, December 5, 1986, and 51 FR 45153, December 17, 1986). For any future entries of this merchandise from a

new exporter not covered in this or prior administrative reviews, whose first shipments of Canadian elemental sulphur occurred after March 31, 1986, and who is unrelated to any reviewed firm or any previously reviewed firm, no cash deposit shall be required. These deposit requirements are effective for all shipments of Canadian elemental sulphur entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice and shall remain in effect until publication of the final results of the next administrative review.

This administrative review and notice are in accordance with sections 751 (a)(1) and (c) of the Tariff Act (19 U.S.C. 1675(a)(1), (c)) and §§ 353.53a and 353.54 of the Commerce Regulations (19 CFR 353.53a, 353.54).

Gilbert B. Kaplan,

Acting Assistant Secretary for Import Administration.

Date: January 11, 1988.

[FR Doc. 88-802 Filed 1-14-88; 8:45 am]

BILLING CODE 3510-DS-M

[A-475-701, A-469-701]

Postponement of Preliminary Antidumping Duty Determinations; Certain Granite Products From Italy and Spain

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

ACTION: Notice.

SUMMARY: This notice informs the public that we have received a request from the petitioners in these investigations to postpone the preliminary determinations as permitted by section 733(c)(1)(A) of the Tariff Act of 1930, as amended (the Act). Based on this request, we are postponing our preliminary determinations of whether sales of certain granite products from Italy and Spain have occurred at less than fair value until not later than February 23, 1988.

EFFECTIVE DATE: January 15, 1988.

FOR FURTHER INFORMATION CONTACT: Charles E. Wilson, Office of Investigations, Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230, telephone: (202) 377-5288.

SUPPLEMENTARY INFORMATION: On December 15, 1987 (52 FR 47618), we published the notice of postponement of the antidumping duty investigations to determine whether certain granite products from Italy and Spain are being, or are likely to be, sold in the United States at less than fair value. The notice stated that we would issue our preliminary determinations by February 3, 1988.

On December 30, 1987, petitioners requested that the Department postpone the preliminary determinations by an additional 20 days, *i.e.*, until not later than 210 days after the date of receipt of the petitions, in accordance with section 733(c)(1)(A) of the Act. Accordingly, the period for the preliminary determinations in these investigations is hereby extended. We intend to issue preliminary determinations not later than February 23, 1988.

This notice is published pursuant to section 733(c)(2) of the Act.

January 11, 1988.

Gilbert B. Kaplan,

Acting Assistant Secretary for Import Administration.

[FR Doc. 88-803 Filed 1-14-88; 8:45 am]

BILLING CODE 3510-DS-M

[A-583-507]

Malleable Cast Iron Pipe Fittings, Other Than Grooved, From Taiwan; Preliminary Results of Antidumping Duty Administrative Review

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

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

SUMMARY: In response to requests by two respondents, the Department of Commerce has conducted an administrative review of the antidumping duty order on malleable cast iron pipe fittings, other than grooved, from Taiwan. The review covers two manufacturers and/or exporters of this merchandise to the United States and the period January 14, 1986 through April 30, 1987. The review indicates the existence of dumping margins for these firms during the period.

Since the two firms did not respond to the Department's antidumping questionnaire, we used the best information available, which was the margins from the original fair value investigation.

Interested parties are invited to comment on these preliminary results.

EFFECTIVE DATE: January 15, 1988.

FOR FURTHER INFORMATION CONTACT: Dennis U. Askey of John R. Kugelman, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377-2923/3601.

SUPPLEMENTARY INFORMATION:

Background

On May 23, 1986, the Department of Commerce ("the Department") published in the **Federal Register** (51 FR 18918) the antidumping duty order on malleable cast iron pipe fittings, other than grooved, from Taiwan. Two manufacturers, San Yang and Tai Yang, requested in accordance with § 353.53a(a) of the Commerce Regulations that we conduct an administrative review. We published a notice of initiation of the review on June 19, 1987 (52 FR 23330). The Department has now conducted that administrative review in accordance with section 751 of the Tariff Act of 1930 ("the Tariff Act").

Scope of the Review

The United States has developed a system of tariff classification based on the international harmonized system of Customs nomenclature. Congress is considering legislation to convert the United States to this Harmonized System ("HS"). In view of this, we will be providing both the appropriate Tariff Schedules of the United States Annotated ("TSUSA") item numbers and the appropriate HS item numbers with our product descriptions on a test basis, pending Congressional approval. As with the TSUSA, the HS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

We are requesting petitioners to include the appropriate HS item numbers in all new petitions filed with the Department. A reference copy of the proposed Harmonized System schedule is available for consultations in the Centeral Records Unit, Room B-099, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230. Additionally, all Customs offices have reference copies, and petitioners may contact the Import Specialist at their local Customs office to consult the schedule.

Imports covered by the review are shipments of malleable cast iron pipe fittings, other than grooved, and are currently classifiable under TSUSA items 610.7000 and 610.7400 and HS item number 7307.19.10.

The review covers two manufacturers and/or exporters of Taiwanese malleable cast iron pipe fittings, other than grooved, to the U.S. and the period January 14, 1986 through April 30, 1987. Since both firms failed to respond to the Department's antidumping questionnarie, we used the best information available for appraisement and cash deposit purposes for these

firms, which is the margins from the fair value investigation.

Preliminary Results of the Review

As a result of our review, we preliminarily determine that the following margins exist for the period January 14, 1986 through April 30, 1987:

Manufacturer	Margin (percent)
San Yang	27.90
Tai Yang	37.09

Interested parties may submit written comments on these preliminary results within 30 days of the date of publication of this notice, and may request disclosure and/or a hearing within 10 days of the date of publication.

Any hearing, if requested, will be held 45 days after the date of publication or the first workday thereafter. Any request for an administrative protective order must be made within 5 days of the date of publication. The Department will publish the final results of the administrative review including the results of its analysis of any such comments or hearing.

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. The Department will issue appraisement instructions directly to the Customs Service.

Further, as provided for by section 751(a)(1) of the Tariff Act, a cash deposit of estimated antidumping duties based on the above margins shall be required for all shipments of Taiwanese malleable cast iron pipe fittings, other than grooved, by these firms. For any shipments of this merchandise from the remaining known manufacturers and/or exporters not covered in this review, the cash deposit will continue to be at the rate from the final determination of sales at less than fair value for each of those firms (51 FR 10901, March 31, 1986).

For any future entries of this merchandise from a new exporter, not covered in this or prior administrative reviews, whose first shipments occurred after April 30, 1987 and who is unrelated to either reviewed firm, a cash deposit of 37.09 percent shall be required.

These cash deposit requirements are effective for all shipments of Taiwanese malleable cast iron pipe fittings, other than grooved, entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this administrative review.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)), and 19 CFR 353.53a.

Gilbert B. Kaplan,

Acting Assistant Secretary for Import Administration.

Dated: January 11, 1988.

[FR Doc. 88-804 Filed 1-14-88; 8:45 am]

BILLING CODE 3510-DS-M

[A-469-007]

Potassium Permanganate From Spain; Preliminary Results of Antidumping Duty Administrative Review

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

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

In response to a request by the petitioner, the Department of Commerce has conducted an administrative review of the antidumping duty order on potassium permanganate from Spain. The review covers Asturquimica, S.A., and the period January 1, 1986 through December 31, 1986. The review indicates the existence of a dumping margin during the period.

As a result of the review, the Department has preliminarily determined to assess antidumping duties equal to the calculated differences between United States price and foreign market value.

Interested parties are invited to comment on these preliminary results.

EFFECTIVE DATE: January 15, 1988.

FOR FURTHER INFORMATION CONTACT: Barbara Victor or David Mueller, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377-5222-2923.

SUPPLEMENTARY INFORMATION:

Background

On January 19, 1984 the Department of Commerce ("the Department") published in the **Federal Register** (49 FR 2277) the antidumping duty order on potassium permanganate from Spain. The petitioner requested in accordance with § 353.53a(a) of the Commerce Regulations that we conduct an administrative review and we published a notice of initiation on February 23, 1987 (52 FR 5479). The Department has now conducted the administrative review in accordance with section 751 of the Tariff Act of 1930 ("the Tariff Act").

Scope of the Review

The United States has developed a system of tariff classification based on the international harmonized system of Customs nomenclature. Congress is considering legislation to convert the United States to this Harmonized System ("HS"). In view of this, we will be providing both the appropriate *Tariff Schedules of the United States Annotated* ("TSUSA") item numbers and the appropriate HS item numbers with our product descriptions on a test basis, pending Congressional approval. As with the TSUSA, the HS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

We are requesting petitioners to include the appropriate HS item number(s) as well as the TSUSA item number(s) in all new petitions filed with the Department. A reference copy of the proposed Harmonized System schedule is available for consultation in the Central Records Units, Room B-099, U.S. Department of Commerce, 14th Street & Constitution Avenue NW., Washington, DC 20230. Additionally, all Customs offices have reference copies, and petitioners may contact the Import Specialist at their local Customs office to consult the schedule.

Imports covered by the review are shipments of potassium permanganate currently classifiable under TSUSA item 420.2800. This product is currently classifiable under HS item 2841.60.00. Potassium permanaganate is an inorganic chemical produced in free flowing, technical and pharmaceutical grades.

The review covers Asturquimica, S.A. and the period January 1, 1986 through December 31, 1986.

United States Price

In calculating United States price the Department used purchase price as defined in section 772 of the Tariff Act of 1930 ("the Tariff Act"). Purchase price was based on the f.o.b. packed price to an unrelated purchaser in the United States. Where applicable, we made deductions for foreign inland freight and port charges. We added the amount of indirect taxes on exported merchandise which was rebated at the time of export under the provisions of the Regimen Transitorio del IVA program. No other adjustments were claimed or allowed.

Foreign Market Value

In calculating foreign market value the Department used home market price, as defined in section 773 of the Tariff Act, since there were sufficient sales of such or similar merchandise in the home market. Home market price was based on the packed f.o.b. plant price to unrelated purchasers. We made adjustments for differences in

merchandise, differences in credit costs and packing costs.

We did not make a level of trade adjustment requested by Asturquimica in calculating foreign market value because we used only home market sales to customers which we determined to be at the same level of trade as those in the United States.

We denied Asturquimica's claims for adjustment for technical services, invoice processing and handling because these expenses were not directly related to the sales under consideration as required in § 353.15(a) of the Commerce Regulations. The advertising expense claimed was denied as it was not attributable to a later sale of the merchandise by the purchaser, as required in § 353.15(b) of the regulations. No other adjustments were claimed or allowed.

Preliminary Results of the Review

As a result of our comparison of United States price to foreign market value, we preliminarily detemine that a margin of 20.75 exists for Asturquimica, S.A. for the period January 1, 1986 through December 31, 1986.

Interested parties may request disclosure and/or an administrative protective order within 5 days of the date of publication of this notice and may request a hearing within 8 days of publication. Any hearing, if requested, will be held 35 days after the date of publication, or the first workday thereafter. Pre-hearing briefs and/or written comments from interested parties may be submitted not later than 25 days after the date of publication. Rebuttal briefs and rebuttals to written comments, limited to issues raised in those comments, may be filed not later than 32 days after the date of publication. The Department will publish the final results of the administrative review including the results of its analysis of any such comments or hearing.

The Department shall determine, and the Customs Service shall assess antidumping duties on all appropriate entries. Individual differences between United States price and foreign market value may vary from the percentage stated above. The Department will issue appraisement instructions directly to the Customs Service.

Further, as provided in section 751(a)(1) of the Tariff Act, a cash deposit of estimated antidumping duties of 20.75 percent based on the above margin shall be required. These deposit requirements are effective for all shipments of Spanish potassium permanganate entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this administrative review.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and § 353.53a of the Commerce Regulations (19 CFR 353.53a).

Gilbert B. Kaplan,

Acting Assistant Secretary for Import Administration.

Date: January 11, 1988.

[FR Doc. 88-805 Filed 1-14-88; 8:45 am]

BILLING CODE 3510-DS-M

Baylor College of Medicine et al.; Consolidated Decision on Applications for Duty-Free Entry of Electron Microscopes

This is a decision consolidated pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897; 15 CFR Part 301). Related records can be viewed 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 No.: 87-273. Applicant: Baylor College of Medicine, Houston, TX 77030. Instrument: Electron Microscope, Model H-7000. Manufacturer: Hitachi, Japan. Intended Use: See notice at 52 FR 42027, November 2, 1987. Instrument Ordered: December 16, 1986.

Docket No.: 87-275. Applicant: Florida State University, Tallahassee, FL 32306-3050. Instrument: Electron Microscope, Model JEM-1200 EX/DP/DP. Manufacturer: JEOL Ltd., Japan. Intended Use: See notice at 52 FR 32825, August 31, 1987. Instrument Ordered: June 16, 1987.

Docket No.: 87-280. Applicant: The Regents of the University of California, Riverside, CA 92521. Instrument: Electron Microscope, Model EM 10CA/CR/C. Manuafacturer: Carl Zeiss, West Germany. Intended Use: See notice at 52 FR 37356, October 6, 1987. Instrument Ordered: May 6, 1987.

Docket No.: 87-284. Applicant: Naval Hospital, San Diego, San Diego, CA 92134-5000. Instrument: Electron Microscope with Integrated Imaging Spectrometer CEM 902. Manufacturer: Carl Zeiss, West Germany. Intended Use: See notice at 52 FR 37356, October 6, 1987. Instrument Ordered: August 15, 1987.

Docket No.: 87-285. Applicant: St. Joseph's Hospital, Tampa, FL 33607. Instrument: Electron Microscope, H-300. Manufacturer: Hitachi Scientific Instruments, Japan. Intended Use: See notice at 52 FR 37357, October 6, 1987. Instrument Ordered: June 5, 1987.

Docket No.: 87-287. Applicant: Massachusetts Eye and Ear Infirmary, Boston, MA 02114. Instrument: Electron Microscope, Model CM10/PC. Manufacturer: N.V. Philips, The Netherlands. Intended Use: See notice at 52 FR 42027, November 2, 1987. Instrument Ordered: August 21, 1987.

Docket No.: 87-291. Applicant: Emory University, Atlanta, GA 30322. Instrument: Electron Microscope, Model EM 10CA/CR/C. Manufacturer: Carl Zeiss, West Germany. Intended Use: See notice at 52 FR 42027, November 2, 1987. Instrument Ordered: July 31, 1987.

Docket No.: 87-292. Applicant: University of California, San Francisco, CA 94143. Instrument: Electron Microscope, Model JEM-1200EX. Manufacturer: JEOL, Ltd., Japan. Intended Use: See notice at 52 FR 42028, November 2, 1987. Instrument Ordered: Febraury 18, 1987.

Docket No.: 87-296. Applicant: New York Medical College, Valhalla, NY 10595. Instrument: Electron Microscope, Model H-7000. Manufacturer: Hitachi Scientific Instruments, Japan. Intended Use: See notice at 52 FR 42028, November 2, 1987. Instrument Ordered: May 19, 1987.

Docket No.: 87-300. Applicant: University of Oaklahoma, Norman, OK 73019. Instrument: Electron Microscope with Accessories, Model JEM-2000FX/SIP/DP. Manufacturer: JEOL. Ltd., Japan. Intended Use: See notice at 52 FR 42028, November 2, 1987. Instrument Ordered: April 13, 1987.

Docket No.: 87-301. Applicant: Father Flanagan's Boys Town, Boys Town National Institute, Omaha, NE 68131. Instrument: Electron Microscope, Model CM 10/PC. Manufacturer: N.V. Philips, The Netherlands. Intended Use: See notice at 52 FR 42028, November 2, 1987. Instrument Ordered: June 18, 1987

Docket No.: 87-306. Applicant: Harvard University School of Public Health, Boston, MA 02115. Instrument: Electron Microscope, with Integrated Imaging Spectrometer, Model CEM 902. Manufacturer: Carl Zeiss, West Germany. Intended Use: See notice at 52 FR 42029, November 2, 1987. Instrument Ordered: June 16, 1987.

Docket No.: 87-309. Applicant: University of Texas Medical Branch at Galveston, Galveston, TX 77550. Instrument: Electron Microscope Model H-7000-3D, with Accessories. Manufacturer: Hitachi Scientific Instruments, Japan. Intended Use: See notice at 52 FR 43218, November 10, 1987. Instrument Ordered: May 20, 1987.

Comments: None Received.

Decision: Approved. No instrument of equivalent scientific value to the foreign

instrument, for such purposes as these instruments are intended to be used, was being manufactured in the United States at the time the instruments were ordered.

Reasons: Each foreign instrument is a conventional transmission electron microscope (CTEM) and is intended for research or scientific enducational uses requiring a CTEM. We know of no CTEM, or any other instrument suited to these purposes, which was being manufactured in the United States either at the time of order of each instrument or at the time of receipt of application by the U.S. Customs Service.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 88-807 Filed 1-14-88; 8:45 am]

BILLING CODE 3510-DS-M

Michigan State University; Decision on Application for Duty-Free Entry of Scientific Instrument

This decision is made pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897; 15 CFR Part 301). Related records can be viewed between 8:30 am and 5:00 pm in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue NW., Washington, DC.

Docket No.: 87-282. Applicant: Michigan State University, East Lansing, MI 48824-1325. Instrument: CN Analyzer-Isotope Ratio Mass Spectrometer, TRACERMASS. Manufacturer: Europa Scientific Ltd., United Kingdom. Intended Use: See notice at 52 FR 37356, October 6, 1987. Reasons For This Decision: The foreign article provides Dumas combustion linked to an on-line gas isotope ratio mass spectrometer capable of analyzing small samples (5-150 milligrams nitrogen content) with high precision (0.001 atom% ^{15}N at natural abundance).

Comments: None received.

Decision: Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as it is intended to be used, is being manufactured in the United States. The National Bureau of Standards advises in its memorandum dated November 25, 1987, that (1) this capability is pertinent to the applicant's intended purposes and (2) it knows of no domestic instrument or apparatus of equivalent scientific value to the foreign instrument for the applicant's intended use.

We know of no other instrument or apparatus being manufactured in the United States which is of equivalent scientific value to the foreign instrument.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 88-808 Filed 1-14-88; 8:45 am]

BILLING CODE 3510-DS-M

University of California, Santa Barbara; Decision on Application for Duty-Free Entry of Scientific Instrument

This decision is made pursuant to section 6(c) of the Educational Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897; 15 CFR Part 301). Related records can be viewed between 8:30 am and 5:00 pm in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue NW., Washington, DC.

Docket No. 88-001. Applicant: University of California, Santa Barbara, CA 92106. Instrument: Mass Spectrometer System, Model Delta E. Manufacturer: Finnigan Corporation, West Germany. Intended Use: See notice at 52 FR 43219, November 10, 1987.

Comments: None received.

Decision: Approved. No domestic manufacturer was both "able and willing" to manufacture an instrument or apparatus of equivalent scientific value to the foreign instrument for such purposes as the instrument was intended to be used, and have it available to the applicant without unreasonable delay in accordance with § 301.5(d)(2) of the regulations, at the time the foreign instrument was ordered (July 28, 1987). Reasons: The foreign insturment provides an automated acid bath carbonate preparation system and also provides high precision measurement of C^{13} and O^{16}. The capability of the foreign instrument described above is pertinent to the applicant's intended purposes. We know of no domestic manufacturer both able and willing to provide an instrument with the required features at the time the foreign instrument was ordered.

As to the domestic availability of instruments, § 301.5(d)(2) of the regulations provides that, in determining whether a U.S. manufacturer is able and willing to produce an instrument, and have it available without unreasonale delay, "the normal commercial practices applicable to the production and delivery of instruments of the same general category shall be taken into account, as well as other factors which in the Director's judgment are reasonable to take into account under the circumstances of a particular case." This subsection also provides that, if "a domestic manufacturer was formally requested to bid an instrument, without reference to cost limitations and within a leadtime considered reasonable for the category of instrument involved, and the domestic manufacturer failed formally to respond to the request, for the purposes of this section the domestic manufacturer would not be considered willing to have supplied the instrument."

The regulations require that domestic manufacturers be both "able and willing" to produce an instrument for the purposes of comparison with the foreign instrument. Where an applicant, as in this case, received no timely response to a formal request for quotation sent to the only known domestic manufacturer of comparable instruments, it is apparent that the domestic manufacturer was either not able or not willing to produce an instrument of equivalent scientific value to the foreign instrument for such purposes as the foreign instrument was intended to be used at the time it was ordered.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 88-809 Filed 1-14-88; 8:45 am]

BILLING CODE 3510-DS-M

[C-357-404]

Certain Apparel From Argentina; Final Results of Countervailing Duty Administrative Review

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

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

SUMMARY: On July 10, 1987, the Department published the preliminary results of its administrative review of the countervailing duty order on certain apparel from Argentina. We determine the bounty or grant to be 0.83 percent *ad valorem* for the period December 21, 1984 through December 31, 1984, and 0.46 percent *ad valorem* for 1985. The Department considers any rate less than 0.50 percent *ad valorem* to be *de minimis*.

EFFECTIVE DATE: January 15, 1988.

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

SUPPLEMENTARY INFORMATION:

Background

On July 10, 1987, the Department of Commerce ("the Department") published in the **Federal Register** (52 FR

26053) the preliminary results of its administrative review of the countervailing duty order on certain apparel from Argentina (48 FR 9846; March 12, 1985). The Department has now completed that administrative review in accordance with section 751 of the Tariff Act of 1930 ("the Tariff Act").

Scope of Review

Imports covered by the review are shipments of Argentine apparel, currently classifiable under the following items of the Tariff Schedules of the United States Annotated:

372.7540, 374.2500, 374.3530, 374.6500, 376.2830, 381.0540, 381.0542, 381.0546, 381.4130, 381.4160, 381.4770, 381.5650, 381.6240, 381.6930, 381.9035, 381.9540, 381.9545, 381.9585, 384.0207, 384.0208, 384.0212, 384.0236, 384.0320, 384.0330, 384.0340, 384.0350, 384.0360, 384.0370, 384.0406, 384.0432, 384.0433, 384.0436, 384.0437, 384.0438, 384.0439, 384.0441, 384.0442, 384.0444, 384.0451, 384.0497, 384.0606, 384.0805, 384.0810, 384.0815, 384.0820, 384.0825, 384.0905, 384.0944, 384.1000, 384.1319, 384.1321, 384.1611, 384.1612, 384.1613, 384.1680, 384.1920, 384.2105, 384.2115, 384.2120, 384.2125, 384.2205, 384.2216, 384.2816, 384.2881, 384.2821, 384.2850, 384.2910, 384.2920, 384.2930, 384.2940, 384.2950, 384.3758, 384.3767, 384.3777, 384.4609, 384.4647, 384.4765, 384.4925, 384.5234, 384.5275, 384.5276, 384.5277, 384.5278, 384.5279, 384.5299, 384.5526, 384.5930, 384.6310, 384.6330, 384.6340, 384.6350, 384.6360, 384.6371, 384.6372, 384.6385, 384.7010, 384.7020, 384.7215, 384.7220, 384.7510, 384.7522, 384.7528, 384.7532, 384.7534, 384.7536, 384.7538, 384.7542, 384.7544, 384.7546, 384.7548, 384.7552, 384.7554, 384.7556, 384.7558, 384.7562, 384.7595, 384.8024, 384.8026, 384.8073, 384.8225, 384.8300, 384.9115, 384.9445, and 704.6500.

The review covers the period December 21, 1984 through December 31, 1985 and ten programs: (1) The reembolso; (2) post-export financing; (3) pre-export financing; (4) incentives for exports from southern ports; (5) tax reductions for investors; (6) regional tax incentives; (7) tax reductions for locating in industrial parks; (8) discounts of foreign currency accounts receivable; (9) low-cost loans for projects outside Buenos Aires; and (10) BANADE loan guarantees.

Analysis of Comments Received

We gave interested parties an opportunity to comment on the preliminary results. At the request of an exporter, Pulloverfin, S.A.I.C., and an importer, Che Amigo, U.S.A. ("the respondents"), we held a public hearing on August 6, 1987.

Comment 1: The respondents contend that the Department incorrectly disallowed indirect taxes claimed under the reembolso as prior-stage taxes. The reembolso study submitted in this review is based upon the apparel industry's 1985 fiscal incidence and cost structure. It is an update of the 1978 apparel reembolso study, which the Treasury Department previously verified and accepted in its final determination on certain textiles and textile products from Argentina (43 FR 53421, November 16, 1978). In that case, the Commerce Department allowed a tax incidence of 19.33 percent in three successive administrative reviews of that order, covering calendar years 1981, 1982, and 1983.

The respondents argue that to apply a stricter linkage test in this case and deny prior-stage taxes because of slight variances from previous studies is to demand unrealistic precision in the administration of the countervailing duty law. The Department cannot demand such precision when its only reason for disallowing prior-stage taxes is that it was not able to establish from the records of the verified companies the level of prior-stage tax incidence. Apparel producers cannot be expected to maintain the records of taxes billed or paid by prior-stage producers.

In the alternative, the respondents claim that the Department must allow the prior-stage taxes, verified and accepted in the textile portion of the original investigation in this case, for yarn and woven fabric because yarn and woven fabric are earlier stages in the production of apparel.

Department's position: In deciding whether a tax rebate program provides a countervailable benefit, the Department asks two questions: (1) Does the requisite linkage between the payment and the indirect tax incidence exist? and (2) Is the payment less than, equal to, or greater than, the indirect tax on the exported product? (*See* Senate Finance Committee Report on the 1979 Trade Agreements Act, S. Rep. No. 249, 96th Cong., 1st Sess. 85 (1979); *Industrial Fasteners Group, American Importers Association v. United States*, 710 F.2d 1576 (Fed. Cir. 1983); and *Certain Fasteners from India, Final Countervailing Duty Determination and Countervailing Duty Order* (45 FR 48607; July 21, 1980).)

If we find the linkage requirements are not met, the full value of the export payment is countervailable. If linkage is found, the payments are countervailable only to the extent that they exceed the indirect tax incidence during the period of review.

Contrary to the respondents' belief, we have found linkage in this review. (*See* preliminary results of review, at page 26053.) However, the determination as to whether the reembolso payments are less than the indirect tax burden on apparel during a particular review period requires a separate inquiry. For this purpose, we cannot accept the respondents' suggestion that we use outdated information from a separate proceeding (materials relied on in the 1978 textile final determination), or even the 1981 information relied on in the 1984/85 textile proceeding. Rather, we must rely on evidence which reasonably demonstrates the level of indirect taxes on apparel during the period of review.

We attempted to obtain and verify prior-sage tax information both at the Argentine government and at the Argentine apparel trade association, and were unable to do so. As a last resort, we attempted to obtain and verify that information at the company level, again without success. Consequently, while we were able to find linkage, we were unable to determine whether the reembolso payments during this review period were less than, equal to, or greater than the indirect tax incidence on apparel during the same period.

Comment 2: The respondents contend that the Department erroneously calculated the benefit from the reembolso program by using the absolute difference between the reembolso rate and the allowable amount of tax incidence. The Department should allocate the countervailable amount of reembolso payments on exports to the United States actually received during the review period over total exports to the United States. If the Department uses this method, it should also calculate company-specific rates for firms such as Pulloverfin, whose total reembolso receipts lead to *de minimis* benefits.

Department's position: Even if we accepted the respondents' method of calculation, we do not have enough information to calculate the benefit on the basis of actual rebates received. The Argentine government did not provide the total amount of reembolso payments made to all apparel exporters during the during the period of review. We have that informaiton for only four out of 45 companies.

Since we calculated the benefits for all companies based on the full reembolso rate, no company's rate was "significantly different" from the weighted-average country-wide rate, and there was therefore no basis for setting company-specific rates in 1984.

In 1985, this is not an issue because the subsidy rates for all firms were *de minimis*.

Final Results of Review

After considering all of the comments received, we determine the total bounty or grant to be 0.83 percent *ad valorem* for the period December 21, 1984 through December 31, 1984, and 0.46 percent *ad valorem* for the period January 1, 1985 through December 31, 1985. We consider any rate less than 0.50 percent to be *de minimis*.

The Department will instruct the Customs Service to assess countervailing duties of 0.83 percent of the f.o.b. invoice price on any shipments of this merchandise entered, or withdrawn from warehouse, for consumption on or after December 21, 1984 and exported on or before December 31, 1984, and to liquidate, without regard to countervailing duties, any shipments of this merchandise exported on or after January 1, 1985 and on or before December 31, 1985.

The Department also intends to instruct the Customs Service to waive cash deposits of estimated countervailing duties, as provided by section 751(a)(1) of the Tariff Act, on all shipments of this merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice. This deposit waiver shall remain in effect until publication of the final results of the next administrative review.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1) and 19 CFR 355.10.)

Gilbert B. Kaplan,

Acting Assistant Secretary Import Administration.

Dated: January 11, 1988.

[FR Doc. 88-806 Filed 1-14-88; 8:45 am]

BILLING CODE 3510-DS-M

Patent and Trademark Office

Public Advisory Committee for Trademark Affairs; Open Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), announcement is made of the following Committee meeting:

The Public Advisory Committee for Trademark Affairs will meet from 10:00 a.m. until 5:00 p.m. on February 23, 1988, at the U.S. Patent and Trademark Office in Room 912 of Building 2, Crystal Park, located at 2121 Crystal Drive, Arlington, Virginia.

The agenda for the meeting is as follows:

(1) Automation Activities
(2) Financial Reporting
(3) Quality of the Registration Process
(4) Intent to Use Legislation

The meeting will be open to public observation; approximately twelve (12) seats will be available for the public on a first-come first-served basis.

If time permits, oral comments by the public of three (3) minutes on each topic within the above agenda will be allowed. Written comments and suggestions will be accepted before or after the meeting on any of the matters discussed.

Copies of the minutes will be available upon request.

For further information, contact Carlisle E. Walters, Office of the Assistant Commissioner for Trademarks, Room CPK2-910, Patent and Trademark Office, Washington, DC 20231 Telephone: 703-557-7464.

Approved:

Donald J. Quigg,

Assistant Secretary and Commissioner of Patents and Trademarks.

Dated: January 11, 1988.

[FR Doc. 88-768 Filed 1-14-88; 8:45 am]

BILLING CODE 3510-16-M

COMMITTEE FOR PURCHASE FROM THE BLIND AND OTHER SEVERELY HANDICAPPED

Procurement List 1988; Additions

AGENCY: Committee for Purchase From the Blind and Other Severely Handicapped.

ACTION: Additions to Procurement List.

SUMMARY: This action adds to Procurement List 1988 commodities to be produced by workshops for the blind and other severely handicapped.

EFFECTIVE DATE: February 15, 1988.

ADDRESS: Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square 5, Suite 1107, 1755 Jefferson Davis Highway, Arlington, Virginia 22202-3509.

FOR FURTHER INFORMATION CONTACT: C.W. Fletcher, (703) 557-1145.

SUPPLEMENTARY INFORMATION: On November 10, 1987 the Committee for Purchase from the Blind and Other Severely Handicapped published notice (52 FR 43785) of additions to Procurement List 1988, December 10, 1987 (52 FR 46926).

Additions

After consideration of the relevant matter presented, the Committee has determined that the commodities listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46-48c, 85 Stat. 77 and 41 CFR 51-2.6.

I certify that the following actions will not have a significant impact on a substantial number of small entities. The major factors considered were:

a. The action will not result in any additional reporting, recordkeeping or other compliance requirements.

b. The action will not have a serious economic impact on any contractors for the commodities listed.

c. The action will result in authorizing small entities to provide the commodities procured by the Government.

Accordingly, the following commodities are hereby added to Procurement List 1988.

Commodities

Detergent, General-Purpose
7930-00-531-9715
7930-00-531-9716

Detergent, Laundry
7930-01-045-3515
7930-01-045-3517

C.W. Fletcher,

Executive Director.

[FR Doc. 88-777 Filed 1-14-88; 8:45 am]

BILLING CODE 6820-33-M

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Advisory Committee on Military Personnel Testing; Meeting

Pursuant to Pub. L. 92-463, notice is hereby given that a meeting of the Defense Advisory Committee on Military Personnel Testing is scheduled to be held from 8:30 a.m. to 5:00 p.m. on Janaury 21-22, 1988. The meeting will he held at the Ramada Inn Old Town, 2435 Jefferson Street, in San Diego, California 92110. The purpose of the meeting is to review the Department of Defense's computer adaptive testing efforts, and composition of the Armed Forces Qualification Test. Persons desiring to make oral presentations or submit written statements for consideration at the Committee meeting must contact Dr. A.R. Lancaster, Executive Secretary, Defense Advisory Committee on Military Personnel Testing, Office of the Assistant Secretary of Defense (Force Management and Personnel), Room 2B271, the Pentagon, Washington, DC

20301–4000, telephone (202) 697–9271, no later than January 13, 1988.

Linda Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

January 11, 1988.

[FR Doc. 88–753 Filed 1–14–88; 8:45 am]

BILLING CODE 3810–01–M

Department of the Army

Open Meeting of Army Science Board

In accordance with section 10a(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following Committee Meeting:

Name of the Committee: Army Science Board (ASB).

Date of Meeting: 2 February 1988.

Time of Meeting: 0800–1700 hours.

Place: The Pentagon, Washington, DC.

Agenda: The C3I Functional Subgroup of the Army Science Board will meet to provide independent evaluation of a broad range of topics including, but not limited to, Parallel Processing, Robotics, Fiber Optics, management of technologies and systems insertion/transfer. This meeting is open to the public. Any interested person may attend, appear before, or file statements with the committee at the time and in the manner permitted by the committee. The ASB Administrative Officer, Sally Warner, may be contacted for further information at (202) 695–3039/7046.

Sally A. Warner,

Administrative Officer, Army Science Board.

[FR Doc. 88–813 Filed 1–14–88; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF EDUCATION

Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice of proposed information collection requests.

SUMMARY: The Director, Information Technology Services, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1980.

DATES: Interested persons are invited to submit comments on or before February 16, 1988.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Jim Houser, Desk Officer, Department of Education, Office of Management and Budget, 726 Jackson Place NW., Room 3208, New Executive Office Building, Washington, DC 20503. Requests for copies of the proposed information collection requests should be addressed to Margaret B. Webster, Department of Education, 400 Maryland Avenue SW., Room 5624, Regional Office Building 3, Washington, DC 20202.

FOR FURTHER INFORMATION CONTACT: Margaret B. Webster (202) 732–3915.

SUPPLEMENTARY INFORMATION: Section 3517 of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purposes of the information collection, violated State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations.

The Director, Information Technology Services, publishes this notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Agency form number (if any); (4) Frequency of collection; (5) The affected public; (6) Reporting burden; and/or (7) Recordkeeping burden; and (8) Abstract. OMB invites public comment at the address specified above. Copies of the requests are available from Margaret Webster at the address specified above.

Dated: January 11, 1988.

Carlos U. Rice,

Director for Information Technology Services.

Office of Elementary and Secondary Education

Type of Review: New
Title: Continuation Application for College Assistance Migrant Program
Agency Form Number: 483
Frequency: Quarterly
Affected Public: Non-profit institutions.
Reporting Burden—
Responses: 4
Burden Hours: 80
Recordkeeping—
Recordkeepers: 4
Burden Hours: 20

Abstract: This form will be used by private nonprofit institutions and institutions of higher education to apply for non-competing grants under Title IV, section 418A of the Higher Education Act, as amended. The Department uses the information to make grant awards and determine the project's accomplishments to date.

Office of Elementary and Secondary Education

Type of Review: New
Title: Continuation Application for High School Equivalency Program
Agency Form Number: 484
Frequency: Annually
Affected Public: Non-profit institutions
Reporting Burden—
Responses: 19
Burden Hours: 380
Recordkeeping—
Recordkeepers: 19
Burden Hours: 95

Abstract: This form will be used by private nonprofit institutions and institutions of higher education to apply for non-competing grants under Title IV, section 418A of the Higher Education Act, as amended. The Department uses the information to make grant awards and determine the project's accomplishments to date.

Office of Special Education and Rehabilitative Services

Type of Review: Extension
Title: Quarterly Cumulative Caseload Report
Agency Form Number: RSA–113
Frequency: Quarterly
Affected Public: State or local governments
Reporting Burden—
Responses: 336
Burden Hours: 336
Recordkeeping—
Recordkeepers: 84
Burden Hours: 84

Abstract: This report is used by State Vocational Rehabilitation (VR) agencies to provide caseload data. The Department uses the information collected to assess the accomplishments or program goals and objectives and to aid in effective program management.

Office of Special Education and Rehabilitative Services

Type of Review: New
Title: Survey on the Validity of Rehabilitation Services Administration Data Reports
Agency Form Number: 480
Frequency: One time only
Affected Public: State and local governments
Reporting Burden—
Responses: 83
Burden Hours: 498
Recordkeeping—
Recordkeepers: 0
Burden Hours: 0

Abstract: This survey will collect statistical and financial data from State Vocational Rehabilitation agencies. The Department uses the information to determine the validity of these data.

Office of Educational Research and Improvement

Type of Review: Revision
Title: Questionnaires on the 1987–88 National Survey of Postsecondary Faculty
Agency Form Number: G476
Frequency: Triennially
Affected Public: Individuals or households
Reporting Burden—
Responses: 15,200
Burden Hours: 15,200
Recordkeeping.—
Recordkeepers: 0
Burden Hours: 0

Abstract: This survey will collect data on the administrative policies and procedures of postsecondary institutions, and the characteristics, qualifications, workloads, allocation of time, income, attitudes, etc., of postsecondary faculty. The Department uses the information to assess the supply of, and demand for instructional faculty and factors that affect the quality of instruction.

[FR Doc. 88-773 Filed 1-14-88; 8:45 am]
BILLING CODE 4000-01-M

[CFDA No. 84.184C]

Availability of Funds for Grants Under Drug-Free Schools and Communities Program

Purpose: To provide assistance to State educational agencies, local educational agencies, institutions of higher education and other nonprofit agencies, organizations, and institutions to support drug and alcohol abuse education and prevention activities.

Deadline for Transmittal of Applications: Ongoing (Applications under this competition will be reviewed in accordance with § 764.20)

Applications Available: Immediately.

Available Funds: $2,000,000.

Estimated Range of Awards: $50,000–$100,000.

Estimated Average Size of Awards: $75,000.

Estimated Number of Awards: 27.

Project Period: 12 months.

Applicable Regulations: (a) The final regulations governing the Drug-Free Schools and Communities Program, 34 CFR Parts 764 and 766, published in the **Federal Register** on July 30, 1987 (52 FR 28526), and (b) the Education Department General Administrative Regulations, 34 CFR Parts 74, 75, 77, and 78.

Invitational Priority: In accordance with 34 CFR 75.105(c)(1), the Secretary encourages applicants to propose projects that provide technical assistance, including consultants, to schools facing a serious immediate threat from illegal drug use and that also involve law enforcement officials, parents, school personnel and community organizations

The following are some examples of the types of projects the Secretary is particularly interested in supporting:

- Prevent drug use by providing technical assistance, to help improve security in the schools or on school premises;
- Provide technical assistance to schools to secure areas around schools and to see that the sale and use of drugs are stopped;
- Help schools obtain information and adopt practices from other school districts with sound policies for preventing serious drug-related incidents; or
- Implement collaborative arrangements with local educators, parents, students and communities to remove drugs from their schools and the lives of their students, including imposition of strong penalties for drug use and selling.

The above example are only suggestions. Applicants are encouraged to propose activities other than these examples.

For Applications or Information Contact: Secretary's Discretionary Fund, U.S. Department of Education, 400 Maryland Avenue, SW., Room 4132, Washington, DC 20202. Telephone (202) 732–3566.

Program Authority: 20 U.S.C. 4642.

Dated: January 11, 1988.

Chester E. Finn, Jr.,

Assistant Secretary and Counselor to the Secretary.

[FR Doc. 88-774 Filed 1-14-88; 8:45 am]
BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER86-721-005 et al.]

Central Power & Light Co. et al.; Electric Rate and Corporate Regulation Filings

January 11, 1988.

Take notice that the following filings have been made with the Commission:

1. Central Power & Light Company

[Docket No. ER86-721-005]

Take notice that on December 31, 1987, Central Power and Light Company (CPL) tendered for filing a refund report pursuant to the Commission's letter order, dated November 24, 1987, in this proceeding.

CPL's refund report included tabulations for each wholesale customer showing the monthly billing determinants, revenue receipt dates and revenues under prior, present and settlement rates; the monthly revenue refunds, the monthly interest and a summary of all refunds; and workpapers underlying the interest calculations.

Comment date: January 25, 1988, in accordance with Standard Paragraph E at the end of this notice.

2. AEP Generating Company

[Docket No. ER84-579-013 and ER84-707-004]

Take notice that on December 14, 1987, AEP Generating Company tendered for filing pursuant to Commission Order dated October 30, 1987, a compliance and refund report. AEP Generating Company states that on November 25, 1987 it refunded by check $732,283.95 ($721,799.00 principal and $10,484.95 interest) to Virginia Electric and Power Company and $313,701.33 ($309,344.00 principal and $4,357.33 interest) to Kentucky Power Company.

Copies of this filing have been sent to the Indiana Utility Regulatory Commission, the Michigan Public Service Commission, the Public Service Commission of the Commonwealth of Kentucky and the Virginia State Corporation Commission.

Comment date: January 25, 1988, in accordance with Standard Paragraph E at the end of this notice.

3. Arkansas Power & Light Company

[Docket No. ER88-174-000]

Take notice that on December 31, 1987, Arkansas Power & Light Company (AP&L) tendered for filing an amendment dated November 20, 1987 to the Letter Agreement of December 9, 1983 (filed in Docket No. ER84-193-000) between AP&L and the Louisiana Energy & Power Authority. The amendment provides for an extension of the term of the Letter Agreement through December 31, 1988 and has no impact on rate, contract capacity or revenue.

AP&L requests that the Commission waiver any requirements with which AP&L has not already complied.

Comment date: January 25, 1988, in accordance with Standard Paragraph E at the end of this notice.

4. Central Power & Light Company and West Texas Utilities Company

[Docket No. ER88-176-000]

Take notice that on December 31, 1987, Central Power and Light Company (CPL) and West Texas Utilities Company (WTU) each tendered for filing an Electric Reliability Council of Texas (ERCOT) Qualitying Facility Transmission Service Tariff and a revised Master ERCOT Transmission Service Facility Charge Rate Schedule. CPL and WTU filed the tariffs in order that they may provide transmission service in connection with sales by Qualifying Facilities to other Electric Utilities in ERCOT on a basis which is consistent with the terms on which other ERCOT utilities provide such services in connection with the same transactions. The Master Rate Schedules are intended as a mechanism to be used to file with the Commission the basic data used to determine transmission service facility charges under various CPL and WTU transmission service tariffs. CPL and WTU request an effective date of January 1, 1988 for the tariffs and have therefore requested that the Commission's notice requirements be waived.

Copies of the filing have been sent to the Public Utilities Commission of Texas.

Comment date: January 25, 1988, in accordance with Standard Paragraph E at the end of this notice.

5. Iowa Power & Light Company

[Docket No. ER88-178-000]

Take notice that on January 4, 1988, Iowa Power and Light Company (Iowa Power) tendered for filing an application for authorization under 15 U.S.C. 824b. In its application, Iowa Power requests approval of an amendment to the Transmission Facilities Agreement (TFA) among Iowa Power, Iowa-Illinois Gas and Electric Company, Iowa Public Service Company, and Iowa Southern Utilities Company, relating to the ownership and operation of the transmission facilities associated with the Neal 3 generating station. The amendment changes the form of ownership of the facilities; prior to the amendment, each utility was sole owner of a specified portion of the facilities. after the amendment, the utilities will own the facilities as tenants-in-common. In addition, the amendment reduces the fixed rate applicable to transactions under the agreement (to reflect changed federal tax rates) and reflects the exchange of certain properties among the parties to the agreement.

Waiver of the Commission's notice requirements has been requested by Iowa Power.

Iowa Power states a complete copy of the filing has been mailed to Iowa-Illinois Gas and Electric Company, Iowa Public Service Company, Iowa Southern Utilities Company, and the Iowa State Utilities Board.

Comment date: January 25, 1988, in accordance with Standard Paragraph E at the end of this notice.

6. Minnesota Power & Light Company

[Docket No. ER82-769-010]

Take notice that on December 18, 1987, Minnesota Power & Light Company (MP&L) tendered for filing pursuant to Commission Order dated December 3, 1987, a revised compliance report containing revised support schedules which detail calculation of Cooperative Power Association's (CPA) Investment Obligation and Accumulated Fixed Cost and Interest thereunder, that reflect removal of incremental power flow over 903 Line from the numerator only of FERC Staff's allocator for determining interim rates, and incorporate the July 8, 1987 effective date of interim rates. MP&L states that it has also filed the revised Outlet Facilities Agreement No. 3 (OFA 3R) between MP&L and CPA, containing attachments which have been modified to reflect the December 3, 1987 FERC Order and the July 8, 1987 effective date of interim rates.

Comment date: January 25, 1988, in accordance with Standard Paragraph E at the end of this document.

7. Mississippi Power & Light Company

[Docket No. ER88-175-000]

Take notice that on December 31, 1987, Mississippi Power & Light Company (MP&L) tendered for filing a letter agreement for sale of transmission service to Cajun Electric Power Cooperative, Inc.

MP&L requests an effective date of January 1, 1988 for the letter agreement. MP&L requests waiver of the Commission's notice requirements under § 35.11 of the Commission's Regulations.

Comment date: January 25, 1988, in accordance with Standard Paragraph E at the end of this notice.

8. Southwestern Electric Power Company

[Docket No. ER88-177-000]

Take notice that on December 31, 1987, Southwestern Electric Power Company (SWEPCO) tendered for filing an Electric System Interconnection Agreement, dated January 1, 1988, between SWEPCO and Cajun Electric Power Cooperative, Inc. (Cajun). Under the Interconnection Agreement SWEPCO will supply Cajun with firm transmission service to two of Cajun's member cooperatives and with as-available transmission service for up to 89 megawatts of power from the Southwestern Power Administration. The Interconnection Agreement further provides for various interchange transactions between SWEPCO and Cajun.

SWEPCO requests an effective date of January 1, 1988, and therefore requests waiver of the Commission's notice requirements. Copies of the filing were served upon Cajun and the Louisiana Public Service Commission.

Comment date: January 25, 1988, 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.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-788 Filed 1-14-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. QF88-178-000 et al.]

AES Riverside, Inc., et al.; Small Power Production and Cogeneration Facilities; Qualifying Status; Certificate Applications, etc.

Comment date: Thirty days from publication in the **Federal Register**, in accordance with Standard Paragraph E at the end of this notice.

January 11, 1988.

Take notice that the following filings have been made with the Commission.

1. AES Riverside, Inc.

[Docket No. QF88-178-000]

On December 22, 1987, AES Riverside, Inc. (Applicant) of 1925 North Lynn Street, Suite 2000, Arlington, Virginia

22209, submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle cogeneration facility will be located in Woonsocket, Rhode Island. The facility will consist of coal-fired fluidized bed combustion boilers and an extraction/condensing steam turbine generator. Extraction steam from the steam turbine will be used in the production of carbon dioxide. The maximum net electric power production capacity of the facility will be 180 MW. Construction of the facility is expected to begin on or about July 1989.

2. Hoechst Celanese Corporation

[Docket No. QF88-176-000]

On December 28, 1987, Hoechst Celanese Corporation (Applicant), of P.O. Box 428, Bishop, Texas 78343 submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The proposed topping-cycle cogeneration facility will be located on U.S. Highway 77 South in Bishop, Texas. The facility will consist of a combustion turbine generator and a heat recovery steam generator. The thermal energy recovered from the facility will be used for process heating. The average electric power production capacity of the facility will be 35 MW. The primary energy source will be natural gas. The installation of the facility will commence in January, 1988.

3. Multitrade Group, Inc.—Pittsylvania County, Virginia

[Docket No. QF88-165-000]

On December 18, 1987, Multitrade Group, Inc. (Applicant) of Post Office Box 717, Ridgeway, Virginia 24148 submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The small power production facility will be located near the Town of Hurt, in Pittsylvania County, Virginia. The facility will consist of three stoker boilers, a condensing steam turbine generator, and related auxiliary equipment. The primary energy source of the facility will be biomass in the form of wood waste. The net electric power production capacity of the facility will be 76 megawatts.

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.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-790 Filed 1-14-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. QF88-158-000]

Petrolia Power Co., Raymond Graf No. 1 Well, Clay County, Texas; Application for Commission Certification of Qualifying Status of a Small Power Production Facility Utilizing "Waste" Natural Gas

January 11, 1988.

On December 11, 1987, Petrolia Power Company (Applicant) of 5511 Parkcrest Drive, Suite 107, Austin, Texas 78731 submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The small power production facility will be located approximately five miles southeast of Petrolia, in Clay County, Texas. The facility will consist of one to several spark ignition engine-generator units. Applicant states that the primary energy source of the facility will be "waste" natural gas. The electric power production capacity of the facility will be up to 10 megawatts.

Supplemental "Waste" Natural Gas Information

The "waste" natural gas that will be utilized as the primary energy source of the facility will be produced from the Raymond Graf No. 1 well drilled into the Lower Cisco (Sand) Formation in the Petrolia field. The well is located in Clay County, Texas in Block 64 of the Parker County School Land Survey. The gas at the well head has a heat content of 681 Btu/SCF (dry basis, 14.65 psia, 60° F) and is composed of carbon dioxide—0.06%, nitrogen—39.06%, methane—56.57%, ethane—1.83%, propane—1.12%, iso-butane—0.28%, n-butane—0.58%, iso-pentane—0.17%, n-pentane—0.15%, and hexanes plus—0.18%. The well is capable of producing 1500 Mcf/day of natural gas. Applicant proposes to dehydrate the gas stream and also to separate 0.026 gallons/Mcf of natural gas liquids through expansion cooling from the gas stream before utilization in the facility. Any person interested in purchasing the raw or processed gas is encouraged to file a response with the Commission expressing such desire.

Any person desiring to be heard of objecting to the granting of qualifying status should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such petitions or protests must be filed within 30 days after the date of publication of this notice and must be served on the applicant. 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 petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-791 Filed 1-14-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP88-46-000]

Arkla Energy Resources a Division of Arkla, Inc.; Restatement of Base Tariff Rates

January 11, 1988.

Take notice that on December 31, 1988 Arkla Energy Resources ("AER"), a division of Arkla Inc. filed new tariff sheets, along with supporting statements and schedules in accordance with § 154.38(d)(vi)(a) of the Commission's regulations under the Natural Gas Act for the purpose of restating AER's base tariff rates. The new tariff sheets, listed in Appendix A hereto, have a proposed effective date of February 1, 1988.

AER states that the cost and revenue study accompanying its tariff sheets,

which is based on AER's cost and revenue experience for the twelve months ended September 30, 1987, demonstrates that AER's base tariff rates are insufficient to recover AER's jurisdictional cost of service and to earn AER's previously-allowed rate of return. Nonetheless, AER states that it does not propose in this docket any increase in rates.

Any person desiring to be heard or to protest AER's 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, 385.214 (1987). All such motions or protests should be filed on or before January 19, 1988. 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 AER's filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

Appendix A

First Revised Volume No. 1

Forty-Sixth Revised Sheet No. 4
Pro-Forma Sheet No. 7-A

Original Volume No. 1-A

Fourth Revised Sheet Nos. 5 and 6

Original Volume No. 3

Forty-Fifth Revised Sheet No. 185

[FR Doc. 88-792 Filed 1-14-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. RP86-116-017]

Panhandle Eastern Pipe Line Co.; Compliance Filing

January 11, 1988.

Take notice that on December 23, 1987 Panhandle Eastern Pipe Line Company (Panhandle) tendered for filing the revised tariff sheets as listed on the attached Appendix No. 1 pursuant to Ordering Paragraph (B) of the Commission's November 17, 1987 Order in the subject dockets. The proposed effective date of these revised tariff sheets is July 1, 1986, July 1, 1987, July 6, 1987 and October 1, 1987.

Panhandle states that on July 6, 1987 and August 10, 1987 it filed in Docket No. CP86-232-011 revised tariff sheets to be effective July 6, 1987 in accordance with the Commission's Opinion No. 275 and Order of June 4, 1987 and Ordering Paragraph (B) of the Commission's Order of August 5, 1987. Accordingly, Panhandle also submits herewith revised tariff sheets listed in Appendix No. 1 to be effective July 6, 1987 to reflect these Commission changes to Rate Schedule PT.

Further, Panhandle states that on August 28, 1987, it filed in Docket No. RP87-95-000 revised tariff sheets to be effective October 1, 1987 to reflect an Annual Charge Adjustment (ACA) provision in its FERC Gas Tariff pursuant to Order No. 472. Therefore, Panhandle also submits herewith revised tariff sheets listed in Appendix No. 1 to be effective October 1, 1987 to reflect the ACA provision in Rate Schedule PT as approved by the Commission's Orders of September 30, 1987 and November 16, 1987.

Additionaly, Panhandle states that Ordering Paragraph (F) of the Commission's Order in the above-referenced dockets dated November 17, 1987 required it to conform section 7(c) certificate rates to the rates approved in the subject docket. The remaining section 7(c) certificate rates that were not accepted herein and subject to Ordering Paragraph (F) have been revised in each individual certificate proceeding. Therefore, Panhandle states that it is in conformance with Ordering Paragraph (F).

Panhandle further states that it respectively requests waiver of any provisions or regulations, in order that this compliance filing and the accompanying tariff sheets may be accepted.

Copies of this Notice are being served on all intervenors, jurisdictional customer and interested state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211). All such motions or protests should be filed on or before January 19, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to 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.

Lois D. Cashell,

Acting Secretary.

Appendix No. 1—Panhandle Eastern Pipe Line Company

Proposed Tariff Sheets

FERC Gas Tariff, Original Volume No. 1

To Be Effective July 1, 1986

Second Substitute Original Sheet No. 32-Y
First Substitute Original Sheet No. 32-AA
First Substitute Original Sheet No. 32-AB
Original Sheet No. 32-AB.1
First Substitute Original Sheet No. 32-AC
Original Sheet No. 32-AC.1
Original Sheet No. 32-AC.2
First Substitute Original Sheet No. 32-AE
First Substitute Original Sheet No. 32-AF
First Substitute Original Sheet No. 32-AG
First Substitute Original Sheet No. 32-AI
Original Sheet No. 32-AI.1

To Be Effective July 1, 1987

First Substitute First Revised Sheet No. 32-Y

To Be Effective July 6, 1987

First Revised Sheet No. 32-AC.1
First Substitute Original Sheet No. 32-AH.1
Second Substitute First Revised Sheet No. 32-AI

To Be Effective October 1, 1987

First Substitute Alternate Second Revised Sheet No. 32-Y
First Substitute First Revised Sheet No. 32-AA

[FR Doc. 88-793 Filed 1-14-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. GP87-73-000]

State of Louisiana, Department of Natural Resources; Preliminary Findings

Issued January 12, 1988.

Before Commissioners: Martha O. Hesse, Chairman; Anthony G. Sousa, Charles G. Stalon, Charles A. Trabandt and C. M. Naeve.

On various dates in 1983 and 1984, the State of Louisiana, Department of Natural Resources (Louisiana), filed with the Federal Energy Regulatory Commission ten notices of well category

determinations.[1] The determinations pertained to nine wells that qualified for the Natural Gas Policy Act of 1978 (NGPA) section 102[2] status and one that qualified for NGPA section 108[3] status. These 10 wells are operated by four different producers.

Absent Commission action, the notices would have become final after 45 days pursuant to § 275.202(a) of the Commission's regulations. The Commission advised Louisiana within 45 days of receipt of each notice that the notices were incomplete, lacking either sufficient explanation of the basis for each determination or sufficient information to complete the applications. Despite repeated requests for the necessary additional information, neither Louisiana nor the applicants have provided such information. Consequently, none of the determinations has become final. The Appendix to this order summarizes each determination and its deficiency.

Under section 503(a)(2) of the NGPA, when a jurisdictional state or federal agency makes a determination as to whether natural gas qualifies under one of the pricing categories found in NGPA sections 102, 103, 107, or 108, the jurisdictional agency is required to provide the Commission with notice of the determination. Section 503(c)(3) allows the Commission to prescribe the form and content of filings made with jurisdictional agencies in connection with determinations. Section 503(b) provides that the Commission shall reverse any jurisdictional agency determination if the Commission finds that the determination is not supported by substantial evidence.

Since its initial conclusion that the notices were incomplete, the Commission has attempted repeatedly to obtain the information required to complete the notices. Finally, in a letter dated February 3, 1987, the Commission advised Louisiana and the applicants that the Commission might reverse the Louisiana determinations if the required information were not received and noted that refunds might be required. No response has been received for the subject cases.

Accordingly, the Commission believes that a preliminary finding should be issued that the notices of determinations submitted by Louisiana are not supported by substantial evidence. Further, our finding here is consistent with a finding in *Delta Gas Corporation*[4] where the data to support a determination was incomplete for a substantial period of time and a final order reversed the determination.

The Commission Orders

(A) Pursuant to § 275.202 of the Commission's regulations and section 503 of the NGPA, the Commission makes a preliminary finding that the above-mentioned ten well category determinations made by the State of Louisiana and described in the Appendix are not supported by substantial evidence in the record on which the determinations were made.

(B) Jurisdictional agencies, interested parties, or any other person may, within 30 days after issuance of this notice, submit written comments and request an informal conference with the Commission's staff

By the Commission.

Lois D. Cashell,

Acting Secretary.

[1] *See* Appendix.

[2] 15 U.S.C. 3312 (1982).

[3] 15 U.S.C. 3318 (1982).

[4] *See* 35 FERC ¶61,097 (1986); 36 FERC ¶61,188 (1986).

APPENDIX—INCOMPLETE LOUISIANA NOTICES OF DETERMINATION

Applicant	Well name	NGPA section	FERC No.	LA Docket No.	Initial FERC letter	Deficiency in record
Centennial Exploration, Inc.	Hoss SU42 Kalmbach #1	102	JD83-28231	NGPA 82-3355	4-29-83	Apparent marker wells not explained.
Do	Kalmbach #1D	102	JD83-28232	NGPA 82-3354	4-29-83	Do
Mid Louisiana Gas Company	MLGC Fee Gas #870	108	JD83-42141	NGPA 83-0507	8-04-83	Record shows too much gas production during initial 90-day production period.
Do	MLGC Fee Gas #988	108	JD83-42150	NGPA 83-0516	8-04-83	Do
Do	MLGC Fee Gas #687	108	JD83-42159	NGPA 83-0525	8-04-83	Do
Samatha Petroleum Corporation	Guillot #4	102	JD84-05448	NGPA 82-0395	12-15-83	Apparent marker well not explained.
Do	Guillot #6	102	JD84-05492	NGPA 82-0396	12-15-83	Appears subject well is an old well.
Do	Guillot A-1	102	JD84-10342	NGPA 82-3442	1-19-84	Apparent marker well not explained.
McIhenny-Powell Operating Company.	Frank Matthews #1 & 1D	108	JD84-12487	NGPA 83-1558	2-02-84	Record shows zero production days during initial 90-day production period.
Samatha Petroleum Corporation	Guillot #1	102	JD84-24198	NGPA 82-0392	4-27-84	Apparent marker wells not explained.
Do	Guillot #2	102	JD84-24199	NGPA 82-0393	4-27-84	Do
Do	Guillot #3	102	JD84-24200	NGPA 82-0394	4-27-84	Do
Turmac Energy Company	St. Landry Securities #1	102	JD84-36169	NGPA 81-2841	7-16-84	Insufficient engineering and geological evidence to support new onshore reservoir finding.

[FR Doc. 88-789 Filed 1-14-88; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. RM87-34-054]

Regulation of Natural Gas Pipelines After Partial Wellhead Decontrol

Issued January 7, 1988.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Order denying rehearing.

SUMMARY: The Federal Energy Regulatory Commission is denying the request of Tennessee Gas Pipeline Company for rehearing of the Commission's November 20, 1987, letter order, directing Tennessee to complete its response to the Commission's Take-or-Pay Data Request.

EFFECTIVE DATE: January 7, 1988.

FOR FURTHER INFORMATION CONTACT: Richard Howe, Jr., Office of General Counsel, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, (202) 357-8274.

SUPPLEMENTARY INFORMATION:

Before Commissioners: Martha O. Hesse, Chairman; Anthony G. Sousa, Charles G. Stalon, Charles A. Trabandt and C. M. Naeve.

On December 8, 1987, Tennessee Gas Pipeline Co. (Tennessee) requested rehearing of the Commission's November 20, 1987 letter order, directing Tennessee to complete its response to the Commission's Take-or-Pay Data Request. That data request was issued pursuant to Order No. 500[1] in order to obtain information on the nature and extent of interstate pipelines' take-or-pay problems. The deadline for compliance was November 2, 1987.

[1] 52 FR 30334 (Aug. 14, 1987).

Tennessee asserts that it responded to the data request on November 2, 1987 to the best of its ability. However, Tennessee's November 2 response did not comply in all respects with the data request. For example, the data request required pipelines to provide identification of sellers, and their relative working interests, under those contracts which were to be reported on an individual-contract basis. Tennessee had not provided this data nor furnished an adequate explanation of why such information was unavailable or could not be developed. Without this information, the Commission would be unable to analyze fully Tennessee's take-or-pay situation.

On November 23, Tennessee filed a supplemental response which included working interest data or information upon which a reasonable assignment of relative working interest could be developed. Regardless of whether the data in the November 23 filing was sufficient to comply with the data request, it is clear that as of the November 20, 1987 issuance of the letter order directing Tennessee to comply with the data request, Tennessee was not in compliance with the take-or-pay data request. Accordingly, the Commission sees no reason to grant rehearing of the November 20 letter order.

The Commission Orders

Rehearing of the November 20, 1987 letter order directing Tennessee to comply with the Commission's take-or-pay data request is denied.

By the Commission.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-787 Filed 1-14-88; 8:45 am]

BILLING CODE 6717-01-M

ENVIRONMENTAL PROTECTION AGENCY

[FRL-3216-3]

Ambient Air Monitoring Reference and Equivalent Methods; Correction

In a notice of "Reference Method Designations" published in the **Federal Register** (Vol. 52, page 45684, December 1, 1987), a component of the high-volume air samplers associated with the designated PM ^{10} reference methods was inadvertently omitted from the list of such components under the method identified as RFPS-1287-063. The component "Electronic mass flow controller" should be added to that list. In the method identified as RFPS-1287-064, the model number of one of the high-volume air samplers associated with the method was identified incorrectly as "SAU-11H". The correct model number is "SAUV-11H". On page 45685, column 2, line 9, "Model inlet" should read "Model 321 inlet".

Erich Bretthauer,

Acting Assistant Administrator for Research and Development.

[FR Doc. 88-764 Filed 1-14-88; 8:45 am]

BILLING CODE 6560-50-M

[OPTS-40016; FRL-3216-7]

Conditional Exemptions From Toxic Substances Control Act Test Rules

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA is granting conditional exemptions from Toxic Substances Control Act (TSCA) section 4 test rule requirements to certain manufacturers of chemical substances subject to these rules.

DATES: These conditional exemptions are effective on January 15, 1988.

FOR FURTHER INFORMATION CONTACT: Edward A. Klein, Director, TSCA Assistance Office (TS-799), Office of Toxic Substances, Environmental Protection Agency, Room E-543, 401 M Street, SW., Washington, DC 20460, (202) 554-1404.

SUPPLEMENTARY INFORMATION: This notice grants conditional exemptions from TSCA section 4 test rule requirements to all manufacturers of the chemical substances identified below who submitted exemption applications in accordance with CFR 790.80. In each case, EPA has received a letter of intent to conduct the testing from which exemption is sought. Accordingly, the Agency has conditionally approved these exemption applications because the conditions set out in 40 CFR 790.87 have been met. All conditional exemptions thus granted are contingent upon successful completion of testing and submission of data by test sponsors according to the requirements of the applicable test rule.

If the test requirements are not met and EPA terminates a conditional exemption under 40 CFR 790.93, the Agency will notify each holder of an affected conditional exemption by certified mail or **Federal Register** notice.

This conditional approval applies to all manufacturers who submitted exemption applications for testing of the chemical substances named in the final test rules listed below as of the date of this notice. Any applications received after that date will be addressed separately.

Chemicals	CAS No.	CFR citation
Chlorinated benzenes (health effects testing):		
1,2,4-Trichlorobenzene (1,2,4-TCB)	120-82-1	40 CFR 799.1053
Monochlorobenzene (MCB)	108-90-7	40 CFR 799.1051
1,2-Dichlorobenzene (1,2-DCB)	95-50-1	40 CFR 799.1052
1,4-Dichlorobenzene (1,4-DCB)	106-46-7	40 CFR 799.1052
1,2,4,5-Tetrachlorobenzene (1,2,4,5-TCB)	95-94-3	40 CFR 799.1054
Bisphenol A (BPA, 4,4-isopropylidenediphenol)	80-05-7	40 CFR 799.940
2-Ethylhexanoic acid (EHA)	149-57-5	40 CFR 799.1650
9,10-Anthraquinone (anthraquinone)	84-65-1	40 CFR 799.500
Fluoroalkenes:		
Vinyl fluoride (VF)	75-02-5	40 CFR 799.1700
Vinylidene fluoride (VDF)	75-38-7	40 CFR 799.1700
Hexafluoropropene (HFP)	116-15-4	40 CFR 799.1700
Tetrafluoroethene (TFE)	116-14-3	40 CFR 799.1700
Tetrabromobisphenol A (TBBPA)	79-94-7	40 CFR 799.4000
2-Ethylhexanol (EH)	104-76-7	40 CFR 799.1645

As provided in 40 CFR 790.80, processors are not required to apply for an exemption or conduct testing unless EPA so specifies in a test rule or in a special Federal Register notice.

Authority: 15 U.S.C. 2603.

Dated: January 4, 1988.

J.A. Moore,

Assistant Administrator for Pesticides and Toxic Substances.

[FR Doc. 88-765 Filed 1-14-88; 8:45 am]

BILLING CODE 6560-50-M

[ER-FRL-33165]

Environmental Impact Statements; Availability

Responsible Agency: Office of Federal Activities, General Information (202) 382-5073 or (202) 382-5075. Availability of Environmental Impact Statements Filed January 4, 1988 Through January 8, 1988 Pursuant to 40 CFR 1506.9

EIS No. 880000, Draft, FHW, MD, US 50/ Salisbury Bypass Construction, US 50 east of Rockawalkin Road to the US 50 and US 13 Bypass Interchange, Funding and 404 Permit, Wicomico County, MD, Due: February 29, 1988, Contact: Edward Terry (301) 962-4010.

EIS No. 880001, FSuppl, FHW, RI, RI-138 Improvement, Jamestown Bridge Replacement to Newport Bridge Toll Plaza, Safety and Traffic Improvement Alternatives, Funding, Newport County, RI, Due: February 15, 1988, Contact: Michael Moan (401) 277-2694.

EIS No. 880002, DSuppl, FHW, SC, Mark Clark Expressway/I-526 Construction Project, I-526/Cooper River Bridge Crossing, Fog Hazard Alternate Mitigation Measures, Funding, Berkeley and Charleston Counties, SC, Due: February 29, 1988, Contact: William Rice (803) 765-5411.

EIS No. 880003, Final, AFS, OH, Wayne National Forest, Land and Resource Management Plan, Implementation, Athens, Gallia, Hocking, Jackson, Lawrence, Monroe, Perry, Scioto, Vinton and Washington Counties, OH, Due: February 15, 1988, Contact: Terry Hoffman (812) 275-5987.

EIS No. 880004, Draft, COE, WA, Puget Sound Unconfined Open-Water Disposal Sites for Dredged Material, Phase 1 (Central Puget Sound), Site Identification and sections 10 and 404 Permits, San Juan, Mason, Thurston, Island, Jefferson, Whatcom, Skagit, Clallam, and Snohomish Counties, WA, Due: February 29, 1988, Contact: Frank J. Urabeck (206) 764-3708.

EIS No. 880005, FSuppl, COE, CA, Sacramento River Bank Protection, Erosion Control, Collinsville to Chico Landing, River Mile 0 to 194, Updated Information, Solano, Sacramento, Sutter, Colusa, Glenn, Yolo and Butte Counties, CA, Due: February 15, 1988, Contact: George Qualley (916) 445-8984.

EIS No. 880006, DSuppl, FHW, OR, North Roseburg Interchange/I-5 Construction Project, Skewed Diamond Alternative, Funding, Douglas County, OR, Due: March 1, 1988, Contact: Dale Wilken (503) 399-5749.

EIS No. 880007, Draft, AFS, OR, Umpqua National Forest, Land and Resource Management Plan, Implementation, Lane, Douglas and Jackson Counties, OR, Due: April 15, 1988, Contact: Robert Devlin (503) 672-6601.

Amended Notices

EIS No. 870440, Final, BLM, San Juan Resource Area, Resource Management Plan, Implementation, San Juan County, UT, Due: February 1, 1988, Contact: Steve Howard (801) 524-3127. Published FR 12-18-87—Review period extended.

Dated: January 12, 1988.

Richard E. Sanderson,

Director, Office of Federal Activities.

[FR Doc. 88-775 Filed 1-14-88; 8:45 am]

BILLING CODE 6560-50-M

[ER-FRL-3316-6]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared December 28, 1987 through December 31, 1987 pursuant to the Environmental Review Process (ERP), under section 309 of the Clean Air Act and section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (F202) 382-5075/76. An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in Federal Register April 24, 1987 (52 FR 13749).

Draft EISs

ERP No. D-FHW-E40711-NC, Rating LO, US 220 Construction, Steed to Ulah Connection, Funding, Randolph and Montgomery Counties, NC. SUMMARY: EPA finds this document adequately addresses air quality. While there are some streams to be crossed, wetland impacts will be minimal if no stream channels are relocated. The major project impact will be the relocation of 25 homes.

ERP No. DS-NAS-E12002-00, Rating LO, Galileo Mission Project, Jovian System Investigation Program and Ulysses Mission Project, Helisphere Exploration Program, Spacecraft Modifications, Implementations, SUMMARY: EPA concludes that no significant long-term, adverse environmental impacts will occur based on the current data base.

Final EISs

ERP No. F-BIA-K08015-CA, Colmac 45mw Biomass-Fueled Power Plant, Construction and Operation, Lease Approval, Cabazon Indian Reservation, Riverside County, CA. SUMMARY: EPA requests that gound water quality and wastewater be periodically monitored to ensure that project wastewater does not leach selenium or toxics into local aquifers.

ERP No. F-BLM-J61050-MT, Missouri Brooks WSA's Recommendations, Wilderness Designation or Nondesignation, Dog Creek South, Stafford, Ervin Ridge, Woodhawk, Antelope Creek, Cow Creek, Bridge Coulee, Mussellshell Breaks, Billy Creek, Seven Blackfoot, Burnt Lodge and Terry Badlands WSA's, Fergus, Blaine, Phillips, Valley, Garfield and Prairie Counties, MT. SUMMARY: EPA has no objections to the recommendations in this document.

ERP No. FS-COE-A36034-CA, Corate Madera Creek Flood Control Project, Unit No. 4, Updated Modifications, Implementation, Town of Ross, Marin County, CA. SUMMARY: EPA had no comments on this document.

ERP No. F-FHW-E0691-FL, Northwest Hillsborough Expressway Construction, I-275 to FL-597/Dale Mabry Highway, Funding and 404 Permit, Hillsborough County, FL. SUMMARY: EPA's comments regarding the Hydrocarbon Burden Analysis was adequately responded to in this document. However, the response to intersectional analysis is not adequate. EPA cannot make a determination as to air quality impacts with regard to carbon monoxide until this information is made available. This document also adequately addressed potential impact to wetlands.

ERP No. F-FHW-F40287-MI, I/96 BL/ Cedar Street Improvement, Cloverland Drive to Mt. Hope Road, Reconstruction and Right-Way Acquisition, Funding, City of Lansing, Ingham County, MI. SUMMARY: EPA has no objections to the project as proposed in this document.

ERP No. F-SFW-F64003-00, Upper Mississippi River National Wildlife and Fish Refuge Master Plan, Implementation, NM, WI, IA, and IL. SUMMARY: EPA has no objections to

the preferred alternative. EPA agrees with the recommendations that the U.S. Fish and Wildlife Service would provide future NEPA documentation once the detailed designs for the necessary component projects are finalized.

Dated: January 12, 1988.

Richard E. Sanderson,

Director, Office of Federal Activities.

[FR Doc. 88-776 Filed 1-14-88; 8:45 am]

BILLING CODE 6560-50-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: 224-200082.

Title: Commercial Port of Saipan Terminal Agreement.

Parties:

Commercial Port of Saipan,
Commonwealth Ports of Authority
Saipan Stevedore Company

Synopsis: The proposed agreement provides for the lease of Charlie Dock at the Commercial Port of Saipan to Saipan Stevedore Company to conduct a terminal and stevedoring business. The agreement's term is to expire July 31, 2000.

By Order of the Federal Maritime Commission.

Dated: January 12, 1988.

Joseph C. Polking,

Secretary.

[FR Doc. 88-794 Filed 1-14-88; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

Agency Forms Under Review

January 11, 1988.

Background

Notice is hereby given of final approval of proposed information collection(s) by the Board of Governors of the Federal Reserve System (Board) under OMB delegated authority, as per 5 CFR 1320.9 (OMB Regulation on Controlling Paperwork Burdens on the Public).

For Further Information Contact

Federal Reserve Board Clearance Officer—Nancy Steele—Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, DC 20551 (202-452-3822).

OMB Desk Officer—Robert Fishman—Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3228, Washington, DC 20503 (202-395-7340).

Proposal to approve under OMB delegated authority the extension, with revision, of the following report:

1. Report title: Quarterly and Annual Reports of Repurchase Agreements on U.S. Government and Federal Agency Securities with Specified Holders.

Agency form number: FR 2090a, 2090q.

OMB Docket Number: 7100-0205.

Frequency: Annually and quarterly.

Reporters: Commercial banks, S&Ls, MSBs, FSBs and U.S. agencies and branches of foreign banks.

Annual reporting hours: 2355.

Small businesses are not affected.

General description of report: This information collection is voluntary [12 U.S.C. 248(a) and 3105(b)] and is given confidential treatment [5 U.S.C. 552(b)(4)].

These reports provide data used in the computation of the repurchase agreement (RP) component of the monetary aggregate. The revised selection criteria for the annual and quarterly panels reduce the number of respondents in each case with only a small reduction in RP coverage.

Board of Governors of the Federal Reserve System, January 11, 1988.

William W. Wiles,

Secretary of the Board.

[FR Doc. 88-721 Filed 1-14-88; 8:45 am]

BILLING CODE 6210-01-M

Agency Forms Under Review

January 11, 1988.

Background

On June 15, 1984, the Office of Management and Budget (OMB) delegated to the Board of Governors of the Federal Reserve System (Board) its approval authority under the Paperwork Reduction Act of 1980, as per 5 CFR § 1320.9, "to approve of and assign OMB control numbers to collection of information requests and requirements conducted or sponsored by the Board under conditions set forth in 5 CFR 1320.9." Board-approved collections of information will be incorporated into the official OMB inventory of currently approved collections of information. A copy of the SF 83 and supporting statement and the approved collection of information instrument(s) will be placed into OMB's public docket files. The following forms, which are being handled under this delegated authority, have received initial Board approval and are hereby published for comment. At the end of the comment period, the proposed information collection, along with an analysis of comments and recommendations received, will be submitted to the Board for final approval under OMB delegated authority. Date: Comments must be received within fifteen working days of the date of publication in the Federal Register. Address: Comments, which should refer to the OMB Docket number (or Agency form number in the case of a new information collection that has not yet been assigned an OMB number), should be addressed to Mr. William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, 20th and C Streets NW., Washington, DC 20551, or delivered to room B-2223 between 8:45 a.m. and 5:15 p.m. Comments received may be inspected in room B-1122 between 8:45 a.m. and 5:15 p.m., except as provided in § 261.6(a) of the Board's Rules Regarding Availability of Information, 12 CFR 261.6(a).

A copy of the comments may also be submitted to the OMB Desk Officer for the Board: Robert Fishman, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3228, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: A copy of the proposed form, the request for clearance (SF 83), supporting statement, instructions, and other documents that will be placed into OMB's public docket files once approved may be requested from the agency clearance officer, whose name

follows: Federal Reserve Board Clearance Officer—Nancy Steele—Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, DC 20551 (202–452–3822).

Proposal to approve under OMB delegated authority the extension, without revision, of the following reports:

1. *Report title:* Weekly and Monthly Money Market Fund Asset Reports.
Agency form number: FR 2051 a, b, c, and d.
OMB Docket number: 7100–0012.
Frequency: Weekly and Monthly.
Reporters: Money Market Mutual Funds.
Annual reporting hours: 2643.
Small businesses are not affected.
General description of report: This information collection is voluntary [12 U.S.C. 353 et. seq.] and is given confidential treatment [5 U.S.C. 552(b)(4)].

These reports provide information on the assets of money market mutual funds which is used by the Federal Reserve System in the construction of the monetary aggregates.

2. *Report title:* Ongoing Intermittent Survey of Households.
Agency form number: FR 3016.
OMB Docket number: 7100–0150.
Frequency: Monthly if needed.
Reporters: Households and individuals.
Annual reporting hours: 156.
Small businesses are affected.
General description of report: This information collection is voluntary [12 U.S.C. 225a, 263, 1828(c), 1842, 1843, 4008, and 15 U.S.C. 1693b(a)]. No isues arise either under the Freedom of Information Act (FOIA) or under the Privacy Act.

The survey provides the Federal Reserve with considerable flexibility in obtaining household-based information specifically tailored to the Federal Reserve's policy and regulatory and operational responsibilities.

Board of Governors of the Federal Reserve System, January 11, 1988.

[FR Doc. 88–722 Filed 1–14–88; 8:45 am]

BILLING CODE 6210–01–M

Bryn Mawr Bank Corp. et al.; Applications To Engage de Novo in Permissible Nonbanking Activities

The companies listed in this notice have filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than February 5, 1988.

A. Federal Reserve Bank of Philadelphia (Thomas K. Desch, Vice President) 100 North 6th Street, Philadelphia, Pennsylvania 19105:

1. **Bryn Mawr Bank Corporation**, Bryn Mawr, Pennsylvania; to engage *de novo* through its subsidiary, Havens & Company, Inc., Radnor, Pennsylvania, in providing (i) advice concerning marketing of loans or other extensions of credit and (ii) assistance to any person in selling and purchasing such assets. This application has been submitted pursuant to §§ 225.25(b)(1), (b)(4), and (b)(5) of the Board's Regulation Y.

B. Federal Reserve Bank of San Francisco (Harry W. Green, Vice President) 101 Market Street, San Francisco, California 94105:

1. **U.S. Bancorp**, Portland, Oregon; to engage *de novo* through its subsidiary, Qualivest Capital Management, Inc., Portland, Oregon, in providing consumer financial counseling pursuant to § 225.25(b)(20) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, January 11, 1988.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 88–723 Filed 1–14–88; 8:45 am]

BILLING CODE 6210–01–M

FBC Holding Co., Inc., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 224.14) 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 February 5, 1988.

A. Federal Reserve Bank of Atlanta (Robert E. Heck, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. *FBC Holding Company, Inc.*, Crestview, Florida; to become a bank holding company by acquiring 100 percent of the voting shares of First Bank of Crestview, Crestview, Florida.

B. Federal Reserve Bank of Dallas (W. Arthur Tribble, Vice President) 400 South Akard Street, Texas 75222:

1. *First American Bankcorp, Inc.*, New York, New York; to become a bank holding company by acquiring 100 percent of the voting shares of Texas American Bank/Levelland, Levelland, Texas.

Board of Governors of the Federal Reserve System, Janaury 11, 1988.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 88-724 Filed 1-14-88; 8:45 am]

BILLING CODE 6210-01-M

Change in Bank Control Notice; Acquisition of Shares of Banks or Bank Holding Companies

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 January 29, 1988.

A. **Federal Reserve Bank of St. Louis** (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *Judy Long, Thomas Lipford, and Kerrie Simon,* trustees for the First Citizens National Bank Employee Stock Ownership Plan and Trust, Dyersburg, Tennessee, to acquire an additional 11.47 percent of the voting shares of First Citizens Bancshares, Inc., Dyersburg, Tennessee, and thereby indirectly acquire First Citizens National Bank of Dyersburg, Dyersburg, Tennessee.

Board of Governors of the Federal Reserve System, January 11, 1988.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 88-725 Filed 1-14-88; 8:45 am]

BILLING CODE 6210-01-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 December 11, 1987.

Office of Human Development Services

(Call Reports Clearance Officer on 202-472-4415 for copies of package)

1. Head Start Salary Survey—NEW—To determine comparability of salaries among Head Start teacher salaries and public school teachers salaries. Respondents: 1,905; Frequency of Response: One-time; Estimated Annual Burden: 1,119 hours.

OMB Desk Officer: Shannah Koss-McCallum.

Office of the Secretary

(Call Reports Clearance Officer on 202-245-0509 for copies of package)

1. PHS Acquisition Regulations—Part 380—Special Program Requirements Affecting PHS Acquisitions and, Part 352-Solicitation Provisions and Contract Clauses—0990-0128—These reporting and recordkeeping requirements in the Public Health Service Acquisition Regulations cover special programs such as drugs and medical supplies; laboratory animals; Indian Self Determination; reusable cylinders; and safety and health. The requirements are necessary to assure the proper monitoring of these special requirements. Respondents: State or local governments, Businesses or other for-profit, Non-profit institutions, Small businesses or organizations. Number of Respondents: 1,282; Frequency of Response: Occasionally; Estimated Annual Burden: 7,148 hours.

2. Preferred Provider Organization Study—NEW—This survey will be completed by physicians participating in select Preferred Provider Organizations (PPO) and will gather information on the physicians' experience with the PPOs. The result will be incorporated into the HHS study of PPOs. Respondents: Businesses or other for-profit. Number of Respondents: 1,575; Frequency of Response: Single-time; Estimated Annual Burden: 210 hours.

3. Evaluation of Demonstration of Innovative Approaches to Reduce Long Term AFDC Dependency Among Teenage Parents; Task 13: Survey of Child Care Supply and Demand—NEW—This study will collect data from child care centers, family day care providers and day care users in three evaluation sites. The data will be used to analyze child care supply and demand for the sites. Respondents: Individuals or households, Businesses or other for-profit, Non-profit institutions, Small businesses or organizations. Number of Respondents: 16,000; Frequency of Response: Single-time; Estimated Annual Burden: 1,549 hours.

OMB Desk Officer: Shannah Koss-McCallum.

Public Health Services

(Call Reports Clearance Officer on 202-245-2100 for copies of package)

Food and Drug Administration

1. Tamper Resistent Packaging Requirements for Certain OTC Drug and Cosmetic Products—091-0149—This regulation requires certain over-the counter human drug and cosmetic products to be appropriately labeled, alerting consumers to the tamper-resistent packaging. Respondents: Businesses or other for-profit. Number of Respondents: 500; Frequency of Response: Occasionally; Estimated Annual Burden: 2,000 hours.

2. New Animal Drug Application—0910-0032—Applicants proposing to market animal drugs must detail the scientific and technical information required for the physical manufacture of the drug product, and scientific information relative to the safety and effectiveness of the drug use. Respondents: Businesses or other for-profit, Small businesses or organizations. Number of Respondents: 220; Frequency of Response: Occasionally; Estimated Annual Burden: 419,883 hours

3. Investigational New Drug Application—21 CFR Part 312—0910-0014—Provides data needed by FDA medical officers in determining whether and how a proposed new drug may be tested for safety and effectiveness. This revision adds the information collection requirements of the "Treatment Use of an Investigational New Drug" which affects the availability of unapproved drugs for use in the treatment of life threatening diseases for which there is no known effective therapy. Respondents: Businesses or other for-profit, Non-profit institutions, Small businesses or organizations. Number of Respondents: 4,300; Frequency of Response: Occasionally; Estimated Annual Burden: 627,752 hours.

4. Declaration of Sodium Content of Foods and Label Claims for Foods on the Basis of Sodium Content—0910-0198—Approximately 25-60 million Americans have sodium related disorders and are trying to reduce sodium consumption. Food manufacturers will provide nutrition labeling for persons to select appropriate foods to achieve desired intakes of sodium. Respondents:

Businesses or other for-profit, Small businesses or organizations. Number of Respondents: 3,500; Frequency of Response: Occasionally; Estimated Annual Burden: 19,712 hours.

Centers for Disease Control

1. AIDS Prevention and Surveillance Project Reports—NEW—Information and data gathered by recipients of AIDS Cooperative Agreements will be reported to CDC as narrative or summary statistical reports. Projects will report on activities such as: AIDS Surveillance, assessment of AIDS-related knowledge, attitudes, and behavior, AIDS public information and education, and counseling and HIV testing, and special activities to reach minorities at risk. Respondents: State or local governments. Number of Respondents: 64; Frequency of Response: Quarterly; Estimated Annual Burden: 768 hours.

2. NIOSH Information Dissemination strategy—0920-0031—A short questionnaire is sent annually to new additions to the NIOSH mailing list in order to update the list and to select the particular areas of interest of mailing list patrons. This information collection also accomplishes the revisions in the mailing list mandated by the Joint Committee on Printing. Respondents: Individuals or householders. Number of Respondents: 3,000; Frequency of Response: Annual; Estimated Annual Burden: 200 hours.

3. Third National Health and Nutrition Examination Survey (NHANES III) Pilot Tests—0937-0178—NHANES III will measure and monitor the health and nutrition status of the U.S. as a six-year survey involving 60,000 participants ages two months and older. Pilot testing is necessary to evaluate and refine questionnaire design; sampling, training and examination procedures; equipment; automation; and outreach efforts. Respondent: Individuals or households. Number of Respondents: 1,750; Frequency of Response: 1; Estimated Annual Burden: 5,696 hours.

4. HIV Testing Laboratory Survey—NEW—Laboratories participating in the CDC HIV testing performance evaluation program will be asked to respond to quarterly surveys in order to access the quality of the HIV testing process. Laboratories will describe current HIV testing processes. Respondents: Businesses or other for-profit, Small businesses or organizations. Number of Respondents: 960; Frequency of Response: 2.5; Estimated Annual Burden: 3,600 hours.

Office of the Assistant Secretary for Health

1. 1987 National Medical Expenditure Survey (NMES) (Round 4 of Household Survey of American Indians and Alaska Natives; Phase III of Institutional Population Component)—0937-0179—NMES will survey the civilian noninstitutionalized population and population in nursing homes and facilities for the mentally retarded, providing national estimates of use and expenditures for health care and health insurance coverage to evaluate current and proposed health policy decisions. Respondents: Individuals or households, Businesses or other for-profit, Non-profit institutions, Small businesses or organizations. Number of Respondents: 63,290; Frequency of Response: Ocasionally; Estimated Annual Burden: 54,015 hours.

National Institutes of Health

1. Factors Associated with Premature Births: Missouri Followback Survey—NEW—More accurate information is need to better understand why some women deliver very low birth weight infants or suffer fetal deaths. This survey will collect population-based data which can be used to examine this major health problem in order to design future intervention strategies to reduce infant mortality. Respondents: Individuals or households, State or local governments. Number of Respondents: 6,500; Frequency of Response: Single-time; Estimated Annual Burden: 4,544 hours.

2. Expedited Review for competition for Funds to Participate in IV International AIDS Conference—NEW—the information collected will be used by NIH staff to increase participation of young investigators at the IV International AIDS Conference, to be held in Stockholm, Sweden in June 1988. The information is necessary to establish the need for subsidized financial support; to verify submission of a research abstract to the Conference Committee; and to document the proper state of professional development of applicants. Respondents: Individuals or households, State or local governments, Businesses or other for-profit, Federal agencies or employees, Non-profit institutions, Small businesses or organizations. Number of Respondents: 150; Frequency of Response: Single-time; Estimated Annual Burden: 41 hours.

OMB Desk Officer: Shannah Koss-McCallum.

As mentioned above, copies of the information collection clearance packages can be obtained by calling the Reports Clearance Officer, or one of the following numbers:

PHS: 202-245-2100
OS: 202-245-0509
HDS: 202-472-4415

Written comments and recommendations for the proposed information collections should be sent directly to the appropriate OMB desk Officer designated above at the following address: OMB Reports Management Branch, New Executive Office Building, Room 3208, Washington, DC 20503 Attn: (name of OMB Desk Officer).

Dated: January 11, 1988.

James F. Trickett,

Deputy Assistant Secretary, Administrative and Management Services.

[FR Doc. 88-755 filed 1-14-88; 8:45 am]

BILLING CODE 4150-04-M

Food and Drug Administration

Advisory Committees Meetings

AGENCY: Food and Drug Administration.

ACTION: Notice; amendment.

SUMMARY: The Food and Drug Administration (FDA) is amending a public advisory committees' meetings notice of the Ophthalmic Devices Panel on January 21 and 22, 1988, and the Vaccines and Related Biological Products Advisory Committee on January 25 and 26, 1988. The amendment reflects an addition to the agenda on January 22, 1988, and changes in agenda and meeting times on January 25, 1988. The agendas for January 21, 1988, and January 26, 1988, remain unchanged. Notice of the January 21 and 22, 1988, and January 25 and 26, 1988, meetings was published in the **Federal Register** of December 22, 1987 (52 FR 48461).

SUPPLEMENTARY INFORMATION: In FR Doc. 87-29230, appearing at page 48461 in the **Federal Register** of December 22, 1987, the following corrections are made under the headings, "Ophthalmic Devices Panel" and "Vaccines and Related Biological Products Advisory Committee":

1. On page 48461, second column, under the heading, "Ophthalmic Devices Panel" at the end of the *Open committee discussion* paragraph, two sentences are added to the agenda scheduled for January 22, 1988, to read as follows:

Open committee discussion:

* * * The committee will also discuss the clarification of scientific and administrative issues surrounding use of premarket approval for salt tablets indicated for rinsing, heat disinfection,

and storage of soft (hydrophilic) contact lenses. An evaluation of the labeling changes introduced by FDA with regard to the approved salt tablet and enzyme tablet applications will also be discussed.

2. On page 48462, first column, lines 1–7 of the *Type of meeting and contact person* paragraph, the agenda on January 25, 1988, is revised to read as follows:

Type of meeting and contact person. Closed committee deliberations, January 25, 8:30 a.m. to 12:30 p.m.; open public hearing 1:30 p.m. to 2:30 p.m., unless public participation does not last that long; open committee discussion, 2:30 p.m. to 5:30 p.m.; * * *.

3. On page 48462, first column, lines 1–5 of the *Open committee discussion* paragraph, the meeting times in the open committee discussion scheduled for January 25, 1988, are revised to read as follows:

Open committee discussion. On January 25, 1988, from 2:30 p.m. to 5:30 p.m., the committee will discuss influenza vaccine formulation for the 1988–89 season.* * *

4. On page 48462, first column, lines 1–8 of the *Closed committee deliberations* paragraph, the meeting times in the closed committee deliberations scheduled for January 25, 1988, are revised to read as follows:

Closed committee deliberations. On January 25, 1988, from 8:30 a.m. to 12:30 p.m.,* * * the committee will review trade secret or confidential commercial information relevant to pending license applications and investigational new drugs.

Dated: January 12, 1988.

Ronald G. Chesemore,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 88–856 Filed 1–13–88; 10:59 am]

BILLING CODE 4160–01–M

National Institutes of Health

Fogarty International Center Advisory Board; Meeting

Notice is hereby given of a change in the meeting of the Fogarty International Center (FIC) Advisory Board, John E. Fogarty International Center for Advanced Study in the Health Sciences, January 26–27, 1988, Stone House (Building 16), National Institutes of Health, which was published in the **Federal Register** on December 31, 1987 (52 FR 49518).

This was to be a 2-day meeting of the Board, convening at 8:30 a.m., on January 26 and 27, but has been changed to 1 day, 8:30 a.m., January 27.

The meeting will be open to the public from 8:30 a.m. to 1 p.m.

In accordance with the provisions set forth in section 552b(c)(9)(B), Title 5, U.S.C., the Board meeting will be closed to the public on January 27 from 1:30 to 3 p.m. to discuss FIC program initiatives. Public discussion of this information is likely to disclose information prematurely and could significantly frustrate implementation of the proposed initiatives.

In accordance with the provisions of sections 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. and section 10(d) of Pub. L. 92–463, the meeting will also be closed to the public on January 27, from 3 p.m. to adjournment for the review, discussion, and evaluation of individual research fellowship applications. These applications contain information of a proprietary nature, including detailed research protocols, designs, and other technical information; and personal information about individuals associated with the applications.

A revised agenda of the Board meeting may be obtained from Myra Halem, Committee Management Officer, Fogarty International Center, Building 38A, Room 609, National Institutes of Health, Bethesda, Maryland 20892 (301–496–1491).

Dated: January 11, 1988.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 88–737 Filed 1–14–88; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY–930–08–4212–14; W–94373]

Wyoming; Realty Action; Direct Sale of Public Lands

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action—sale of public lands in Lincoln County, Wyoming (W–94373).

SUMMARY: The following public lands have been examined and found suitable for Direct Sale under Section 203 of the Federal Land Policy and Management Act of 1976, (FLPMA), 43 U.S.C. 1713 (1982):

Sixth Principal Meridian, Wyoming

T. 21. N., R. 114 W.,

Tract 46

The land described contains 14.30 acres.

FOR FURTHER INFORMATION CONTACT: Ron Wenker, Area Manager, Kemmerer Resource Area, Bureau of Land Management, P.O. Box 632, Kemmerer, Wyoming 83101, (307) 877–3933.

SUPPLEMENTARY INFORMATION: The Bureau proposes to sell the land to the Town of Opal for a wastewater treatment facility. The lands are currently leased to the Town for that purpose. The proposed direct sale to the Town of Opal would be made at fair market value.

The proposed sale is consistent with the Kemmerer Resource Area Management Plan, and would serve important public objectives which cannot be achieved prudently or feasible elsewhere. The lands contain no other public values. The planning document and environment assessment/land report covering the proposed sale will be available for review at the address above.

Conveyance of the above public lands will be subject to:

1. The following floodplain covenant: Pursuant to the authority contained in section 3(d) of Executive Order 11988 of May 24, 1977 (42 FR 26951) and section 203 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1713 (1982), this patent is subject to a permanent restriction which constitutes a covenant running with the land and lying within the Housing and Urban Development (HUD) 100 year floodplain. The floodplain is identified in the HUD National Floodplain Insurance Program Community Panel Map 560032–1125–B, effective February 15, 1980. The floodplain may not be used for residential building; public service installations needing high protection; permanent memorial cemeteries; and similar type use and structures.

2. Reservation of a right-of-way for ditches or canals pursuant to the Act of August 30, 1890, 43 U.S.C. 945.

3. Reservation of all minerals to the United States.

4. Oil and gas leases BLM serial numbers W–92729 and W–104231.

The public lands described above shall be segregated from all forms of appropriation under the public land laws, including the mining laws upon publication of this notice in the **Federal Register**. The segregative effect will end upon issuance of the patent or 270 days from the date of publication, whichever occurs first.

For a period of forty-five (45) days from the date this notice is published in the **Federal Register**, interested parties may submit comments on the land sale to the Area Manager, Kemmerer Resource Area, P.O. Box 632, Kemmerer, Wyoming 83101. Any adverse comments to the land sale 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 final.

Ron Wenker,

Area Manager.

December 21, 1987.

[FR Doc. 88-1 Filed 1-14-88; 8:45 am]

BILLING CODE 4310-22-M

[WY-042-07-4212-14; W-89369]

Wyoming; Realty Action; Lease of Public Land

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action—noncompetitive commercial lease of public land in Uinta County, Wyoming (W-89369).

SUMMARY: Notice is given that the following described parcel of public land has been examined and found suitable for leasing under provisions of section 302 of the Federal Land Policy and Management Act of 1976 (90 Stat. 2762; 43 U.S.C. 1732). The parcel includes 5 acres of public land in:

Sixth Principal Meridian, Wyoming

T. 16. N., R. 116 W.
Section 32: S½SE¼SE¼SE¼

FOR FURTHER INFORMATION CONTACT: Ron Wenker, Area Manager, Kemmerer Resource Area, Bureau of Land Management, P.O. Box 632, Kemmerer, Wyoming 83101, (307) 877-3933.

SUPPLEMENTARY INFORMATION: The lease is intended to authorize the use of a sewage evaporation pond by Burns Brothers, Inc. at its Bingo Fuel Stop near Fort Bridger, Wyoming. The 10 year renewable lease will legalize an activity that has been occurring for several years. The parcel would be offered to Burns Brothers, Inc. for a direct, noncompetitive lease at no less than fair market rental. The lease would be subject to all valid existing rights.

For a period of forty-five (45) days from the date this notice is published in the **Federal Register**, interested parties may submit comments on the noncompetitive commercial lease to the Area Manager, Kemmerer Resource Area, P.O. Box 632, Kemmerer, Wyoming 83101. Any adverse comments to the noncompetitive commercial lease 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 final.

Ron Wenker,

Area Manager.

December 21, 1987.

[FR Doc. 88-2 Filed 1-14-88; 8:45 am]

BILLING CODE 4310-22-M

[NM-030-8-4410-08]

Availability of Draft Socorro Resource Area Resource Management Plan/ Environmental Impact Statement (RMP/EIS)

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Availability and Public Hearings.

SUMMARY: Bureau of Land Management (BLM) announces the availability of the Draft Socorro RMP/EIS for public review and comment. This document analyzes land-use planning options for approximately 1,520,610 acres of public land and 2,235,440 acres of Federal mineral estate in west-central New Mexico. The BLM also recommends designation of three new Areas of Critical Environmental Concern (ACEC) and the expansion of an existing one.

DATE: Comments on the Draft RMP/EIS must be submitted or postmarked no later than April 22, 1988. All comments must be sent to: Bureau of Land Management, RMP Team Leader, 198 Neel Avenue, NW, Socorro, NM 87801. There will be public hearings on the adequacy of the draft impact analysis at the following locations:

Quemado, NM—March 23, 1988; 7 p.m.; Community Center

Socorro, NM—March 24, 1988; 7 p.m.; 198 Neel Avenue, NW

Oral testimony will be limited to 10 minutes per person.

A copy of the Draft RMP/EIS will be sent to all individuals, Government agencies, and groups who have expressed interest in the Socorro planning process. In addition, review copies may be examined at:

BLM State Office, Joseph M. Montoya Federal Bldg., Santa Fe, NM

BLM Las Cruces District, 1800 Marquess, Las Cruces, NM

BLM Socorro Resource Area, 198 Neel Avenue NW., Socorro, NM

Socorro Public Library, 401 Park SW., Socorro, NM

BLM DSC Library, Denver Service Center, Building 50, Denver, CO

State of New Mexico Library, 325 Don Gaspar, Santa Fe, NM

University of New Mexico, School of Law Library, 1117 Stanford NE., Albuquerque, NM

Thomas Branigan Memorial Library, 200 E. Picacho, Las Cruces, NM.

SUPPLEMENTARY INFORMATION: Four alternatives for managing the public lands in the Socorro Resource Area are proposed in the Draft RMP/EIS. Each alternative discusses the following issues:

1. Land Ownership Adjustments
2. Vegetative Uses
3. Off-Road Vehicle Use
4. Access
5. Special Management Areas
6. Wild Horse Management
7. Coal Leasing Suitability/ Assessment

In addition, two management concerns were addressed by alternatives: fluid leasing and right-of-way exclusion and avoidance areas.

Alternatives A, the Current Management Alternative, discusses a level of management similar to the current situation. This alternative corresponds to the No Action Alternative required by NEPA.

Alternative B, the Balanced (or Preferred) Alternative, provides for a combination of resource uses that would protect important environmental values and sensitive resources while at the same time allow development of certain resources which provide commercial goods and services.

Alternative C, the Resource Conservation Alternative, emphasizes maintaining or improving important values.

Alternative D, the Resource Production Alternative, maximizes the production of resources and economic development from the public lands.

Areas of Critical Environmental Concern: The potential ACECs which are evaluated in the Draft RMP/EIS are described below. Following the description of the values for which the area was nominated are the major use restrictions (alphabetical characters) which apply to the ACEC. The alphabetical characters are defined at the end of the ACEC discussion.

Potential ACECs Proposed for Designation in the Preferred Alternative of the Drat RMP/EIS

1. Ladron Mountain (62,460 acres)—Program emphasis is on wildlife values. Major use restrictions include: A, B, C, D, F, G, J, K, L, O, and Q.

2. Sawtooth (120 acres)—Program emphasis is on sensitive plants. Major actions include: D, H, I, N, and Q.

3. Tinajas (3,520 acres)—Currently 1,280 acres are designated as an ACEC; this area is being proposed for expansion. Program emphasis is on cultural values. Major actions include: D, E, G, L, N, and Q.

4. San Pedro (1,200 acres)—Program emphasis is on sensitive plants. Major actions include: D, G, L, and Q.

Potential ACECs Evaluated But Not Proposed for Designation in the Draft RMP/EIS

1. Pelona Mountain (78,320 acres)—Program emphasis was for wildlife values. Major actions include: A, E, H, K, R, and P.

2. Aqua Fri (10,770 acres)—Program emphasis was for wildlife values. Major actions include: E, H, K, M, N, O, and Q.

3. Cerro Pomo (8,840 acres)—Program emphasis was for recreation values. Major actions include: E, H, K, M, N, P, and Q.

4. Soaptree (1,200 acres)—Program emphasis was for sensitive plants. Major actions inclue: E, H, M, Q, and S.

5. Horse Mountain (7,720 acres)—Program emphasis was for wildlife values. Major actions include: A, E, H, K, M, N, and R.

6. Continental Divide National Scenic Trail (7,680 acres)—Program emphasis was on recreation values. Major actions include: D, H, J, K, M, O, and Q.

7. Walnut Canyon (1,730 acres)—Program emphasis was for recreation values. Major actions include: E, H, K, M, N, P, and Q.

8. Rio Salado (6,400 acres)—Program emphasis was for cultural values. Major actions include: E, H, K, M, O, and Q.

9. Town of Riley (600 acres)—Program emphasis was for cultural values. Major actions include: E, H, K, M, N, O, and Q.

10. San Lorenzo Canyon (4,800 acres)—Program emphasis was for recreation values. Major actions include: E, H, P, and R.

11. Iron Mine Ridge (800 acres)—Program emphasis was for sensitive plants. Major actions include: E, H, K, M, and Q.

12. Taylor Canyon (320 acres)—Program emphasis was for sensitive plants. Major actions include: E, H, M, and Q.

13. Harvey Plot (3 acres)—Program emphasis was for rangeland values. Major actions include: E, H, N, and Q.

Symbols for Major Use Restrictions

A. Close to domestic sheep and goat grazing.

B. Close allotment No. 1152 to grazing.

C. Reintroduce Desert Bighorn Sheep.

D. Limit motor vehicle use to existing roads and trails.

E. Close to motor vehicle use.

F. Close certain vehicle trails.

G. Restrict authorization for rights-of-way and leases.

H. Exclude authorization for rights-of-way and leases.

I. Designate as a fire suppression area.

J. Limit fire suppression.

K. Close to woodcutting.

L. Restrict mineral material disposals.

M. Exclude mineral material disposals.

N. Withdraw from locatable mineral entry.

O. Restrict geophysical operations.

P. Exclude geophysical operations.

Q. Fluid Leasing Stipulations.

R. Close to fluid leasing.

S. Exclude vegetative material sales.

FOR FURTHER INFORMATION CONTACT: For additional information or to obtain copies of the Draft RMP/EIS, contact Joel Farrell, RMP Team Leader, Socorro Resource Area, 198 Neel Avenue, NW, Socorro, NM 87801. Telephone: (505) 835-0412.

Larry L. Woodard,

State Director.

Dated: January 7, 1988.

[FR Doc. 88-850 Filed 1-14-88; 9:23 am]

BILLING CODE 4310-FB-M

[CO-050-4322-02]

Canon City Grazing Advisory Board Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Meeting.

SUMMARY: Notice is hereby given in accordance with the Federal Advisory Committee Act (Pub. L. 463), that the Canon City District Grazing Advisory Board meeting will be held at 10 a.m. Friday, February 26, 1988, at the office of the Bureau of Land Management, Canon City District, 3170 East Main Street, Canon City, Colorado.

Matters to be discussed at this meeting include but are not limited to:

1. Requests for expenditure of range betterment funds.

2. Prioritization of range improvement projects for Fiscal Year 1989.

3. Arkansas River Recreation Area Management Plan.

This meeting will be open to the public. However, facilities and space to accommodate members of the public are limited and persons will be accommodated on a first come, first served basis. Any member of the public may file with the Board a written statement concerning matters to be discussed. Further information concerning the meeting may be obtained from Donnie R. Sparks, District Manager, Bureau of Land Management, 3170 East Main Street, Canon City, Colorado 81212 or telephone at (303) 275-0631. Minutes of the meeting will be made available for public inspection 30 days after the meeting.

Donnie R. Sparks,

District Manager.

[FR Doc. 88-734 Filed 1-14-88; 8:45 am]

BILLING CODE 4310-JB-M

[ID-030-08-4322-15]

Idaho Falls District Grazing Advisory Board Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Meeting of the Idaho Falls Grazing Advisory Board.

SUMMARY: The Idaho Falls District Grazing Advisory Board will meet Tuesday, February 23, 1988. Notice of this meeting is in accordance with Pub. L. 92-463. The meeting will begin at 9:00 a.m. at the Idaho Falls District Office on 940 Lincoln Road, Idaho Falls, Idaho. The meeting is open to the public; public comments on the agenda items will be accepted from 9:30 to 10:00 a.m.

The agenda items are the Election of Officers, District Highlights, noxious weed program, the Pocatello RMP and Blackfoot River stock driveway update and funding for range projects.

Detailed minutes of the Board meeting will be maintained in the District Office and will be available for public review during regular business hours, (7:45 a.m. to 4:30 p.m. Monday through Friday) within 30 days following the meeting.

DATE: February 23, 1988.

ADDRESS: Written comments should be submitted to the District Manager, Bureau of Land Management, 940 Lincoln Road, Idaho Falls, Idaho 83401.

FOR FURTHER INFORMATION CONTACT: Scott Powers, Public Affairs Specialist, Telephone (208) 529-1020.

Lloyd H. Ferguson,

District Manager.

[FR Doc. 88-735 Filed 1-14-88; 8:45 am]

BILLING CODE 4310-GG-M

[MT-930-08-4212-13; M-74197]

Conveyance and Order Providing for Opening of Public Land in Carter County; Montana.

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: This order will open lands reconveyed to the United States in an exchange under the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1701 et seq. (FLPMA), to the operation of the public land laws. It also informs the public and interested state and local governmental officials of the issuance of the conveyance document.

EFFECTIVE DATE: March 9, 1988.

FOR FURTHER INFORMATION CONTACT: Edward H. Croteau, BLM Montana State Office, P.O. Box 36800, Billings, Montana 59107, 406–657–6082.

1. Notice is hereby given that pursuant to Section. 206 of FLPMA, the following described surface estate was conveyed to Charles L. Oleson and Ella V. Oleson:

Principal Meridian, Montana

T. 5 S., R. 62 E.,
Sec. 32, SW¼SW¼.
T. 6 S., R. 62 E.,
Sec. 1, SW¼NE¼;
Sec. 2, lot 4;
Sec. 4, lot 1;
Sec. 10, E½NE¼, SW¼NE¼.
Aggregating 280.40 acres.

2. In exchange for the above selected land, the United States acquired the surface estate of the following described land in Carter County, Montana:

Principal Meridian, Montana

T. 5 S., R. 61 E.,
Sec. 33, SE¼NE¼, E½SE¼;
Sec. 34, SW¼NW¼, NW¼SW¼.
T. 6 S., R. 61 E.,
Sec. 1, lots 1 and 2.
Aggregating 280.46 acres.

3. The values of federal public land and the nonfederal land in the exchange were appraised at $9,800 each.

4. At 9 a.m. on March 9, 1988, the land described in paragraph 2 will be opened to operation of the public land laws generally, subject to valid existing rights, the provisions of existing withdrawals, and the requirements of applicable law. All valid applications received at or prior to 9 a.m. on March 9, 1988, shall be considered as simultaneously filed at that time. Those received thereafter shall be considered in the order of filing.

5. The lands described in paragraph 1 were segregated from settlement, sale, location, and entry under the public land laws, including the mining laws, but not from exchange by the Notice of Realty Action published in the **Federal Register** on August 21, 1987 (52 FR 31672). The segregation terminated on the affected lands on issuance of the patent on December 21, 1987.

James Binando,

Acting Deputy State Director, Division of Lands and Renewable Resources.

January 8, 1988.

[FR Doc. 88–736 Filed 1–14–88; 8:45 am]

BILLING CODE 4310–DN–M

Realty Action; Exchange of Public and Private Lands in Butte County, Lake County, Mendocino County, Siskiyou County, Sonoma County and Tehama County, CA

SUMMARY. This document corrects the legal descriptions for Tracks 5 and 9 contained in the Notice of Realty Action dated December 17, 1987 and published on page 48882 in the **Federal Register** of Monday, December 28, 1987 (52 FR 48882).

FOR FURTHER INFORMATION CONTACT: Bruce Dawson, Acting Clear Lake Area Manager, Bureau of Land Management, 555 Leslie Street, Ukiah, California 95482; Phone (707) 462–3873.

Corrections for Tracts 5 and 9 should read as follows:

Tract 5 T. 24 N., R. 2 E.,
Sec. 32, NE¼NE¼;
Tract 9 T. 42 N., R. 5 W.,
Sec. 28, SW¼NE¼.

Date: January 8, 1988.

Edwin G. Katlas,

Acting District Manager.

Note: Please note that an additional correction to this document is published elsewhere in the Corrections Section of this issue of the **Federal Register.**

[FR Doc. 88–628 Filed 1–14–88; 8:45 am]

BILLING CODE 4310–40–M

Fish and Wildlife Service

Availability of Environmental Assessment for the Furbearer Management Plan, Kenai National Wildlife Refuge, Alaska

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability.

SUMMARY: The U.S. Fish and Wildlife Service (the Service) has prepared, for public review, a draft environmental assessment of the Furbearer Management Plan for the Kenai National Wildlife Refuge, Alaska. This action has been taken pursuant to section 102(2)(c) of the National Environmental Policy Act (NEPA) of 1969.

DATES: Remarks on this environmental assessment must be submitted on or before February 26, 1988, to receive consideration in determining the action to be taken.

ADDRESS: Remarks should be addressed to: Office of the Kenai National Wildlife Refuge, Attn: Daniel Doshier, P.O. Box 2139, Soldotna, AK 99669–2139.

FOR FURTHER INFORMATION CONTACT: Daniel Doshier, Refuge Manager, Kenai National Wildlife Refuge, P.O. Box 2139, Soldotna, AK 99669–2139; telephone (907) 262–7021.

SUPPLEMENTARY INFORMATION: In August 1987, the Service prepared a draft Furbearer Management Plan for the Kenai National Wildlife Refuge under the management constraints and direction provided by the Kenai Refuge Comprehensive Conservation Plan and Service policy. This plan is intended to provide specific guidance for the management of furbearers and their uses, including trapping. Because of the importance of furbearers as a wildlife resource and the local and national interest in their management and use, the Service determined under the provisions of the National Environmental Policy Act that an environmental assessment needed to be prepared.

It should be noted that the Service has substantially modified its preferred alternative (Alternative B) for managing furbearers on the Kenai Refuge from proposals in the draft Furbearer Management Plan. The Service took this action in response to the public comments received on the draft plan and recommendations from the Kenai Refuge furbearer management charrette, held on December 2–4, 1987, in Soldotna.

The Service is accepting comments, suggestions and recommendations from the public on this draft environmental assessment for 45 days. The comment period will end on February 26, 1988. A decision document on the action taken by the Service, a summary of the comments on the draft environment assessment, and a description of how the assessment was modified, if necessary, to address the public comments will be sent to all those individuals and groups that commented on the environmental assessment or expressed an interest.

Based on its selection of a preferred alternative, the Service will be forwarding recommendations to the state Board of Game to take action at its March 1988 meeting. Under its Memorandum of Understanding with the Alaska Department of Fish & Game, the Service cooperatively manages the fish and wildlife resources of the Kenai Refuge. The desired approach of the

Service is for the Board of Game to implement any proposed closures or changes in harvest regulations on the Kenai Refuge.

Date: January 8, 1988.

Walter O. Stieglitz,

Regional Director.

[FR Doc. 88-756 Filed 1-14-88; 8:45 am]

BILLING CODE 4310-55-M

Endangered Species Permit Issued for the Months of October, November, December 1987

Notice is hereby given that the U.S. Fish and Wildlife Service has taken the following action with regard to permit applications duly received according to section 10 of the Endangered Species Act of 1973, as amended, 16 U.S.C. 1539. Each permit listed as issued was granted only after it was determined that it was applied for in good faith, that by granting the permit it will not be to the disadvantage of the endangered species; and that it will be consistent with the purposes and policy set forth in the Endangered Species Act of 1973, as amended.

Additional information on these permit actions may be requested by contacting the Office of Management Authority, P.O. Box 27329, Central Station, Washington, DC 20038-7329, telephone (202/343-4955) between the hours of 7:45 a.m. to 4:15 p.m. weekdays.

October 1987		
Calvin, David James	720885	10/07/87
November 1987		
National Park Service	719521	11/06/87
Grimm, James R.	721784	11/06/87
Cardarelli, Nathan F	717523	11/06/87
National Zoological Park	723055	11/10/87
Zoo Atlanta	716097	11/13/87
San Diego Zoological Society	721599	11/16/87
San Diego Zoological Society	721880	11/16/87
Thomas, William P	721879	11/16/87
San Diego Zoological Society	722143	11/19/87
Sachse, William S.	721285	11/20/87
Cincinnati Zoo	721480	11/23/87
Lowry Park Zoological Gardens	721795	11/23/87
Duke University Primate Center	721555	11/25/87
American Type Culture Collection	718938	11/27/87
American Type Culture Collection	722152	11/27/87
Morgan, Richard W.	722302	11/30/87
Cincinnati Zoo	722067	11/30/87
San Diego Zoological Society	722365	11/30/87
December 1987		
Smithsonian Institute	721953	12/02/87
Honolulu Zoo	719813	12/03/87
Conant, David S.	721915	12/03/87
Cincinnati Zoo	722430	12/03/87
San Diego Zoological Society	722364	12/08/87
Foster, James W.	721342	12/28/87

Date: January 11, 1988.

R.K. Robinson,

Chief, Permit Branch, Office of Management Authority.

[FR Doc. 88-815 Filed 1-14-88; 8:45 am]

BILLING CODE 4310-55-M

[PRT-720915 et al.]

Receipt of Applications for Permits; J. Randell Hales et al.

The following applicants have applied for permits to conduct certain activities with endangered species. This notice is provided pursuant to Section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, *et seq.*):

PRT-720915

Applicant: J. Randell Hales, Stone Mountain, GA

The applicant requests a permit to import a sport-hunted trophy of a bontebok (*Damaliscus dorcas dorcas*) culled from the captive herd maintained by Mr. F.W.M. Bowker, Jr., Grahamstown, Republic of South Africa, for the purpose of enhancement of the survival of the species.

PRT-724318

Applicant: Thelma June Fedonick, Norfolk, NY

The applicant requests a permit to purchase three pairs of captive-hatched Hawaiian (-nene) geese (*Nesochen (-Branta) sandvicensis*) from Mr. Walter Sturgeon of Durham, New Hampshire, for captive propagation purposes.

PRT-723926

Applicant: Robert M. Biedenharn, Long Beach, CA

The applicant requests a permit to import a sport-hunted trophy of a bontebok (*Damaliscus dorcas dorcas*) culled from the captive herd of Phil van der Merwe, Cape Province, Republic of South Africa, for the purpose of enhancement of the survival of the species.

PRT-723091

Applicant: Bruce McCaw, Bellvwe, WA

The applicant requests a permit to import a sport-hunted trophy of a bontebok (*Damaliscus dorcas dorcas*) culled from the captive herd on the Tsolwana Game Farm, Queenstown, South Africa, for the purpose of enhancement of the survival of the species.

PRT-724290

Applicant: Montrose Nursery, Hillsborough, NC

The applicant requests a permit to sell in interstate commerce nursery cultivated plants of Tennessee coneflower (*Echinacea tennessiensis*) in order to enhance the survival of the species in the wild.

Documents and other information submitted with these applications are available to the public during normal business hours (7:45 am to 4:15 pm) Room 403, 1375 K Street NW., Washington, DC 20005, or by writing to the Director, U.S. Office of Management Authority, P.O. Box 27329, Central Station, Washington, DC 20038-7329.

Interested persons may comment on any of these applications within 30 days of the date of this publication by submitting written views, arguments, or data to the Director at the above address. Please refer to the appropriate applicant and PRT number when submitting comments.

Date: January 11, 1988.

R.K. Robinson,

Chief, Branch of Permits, U.S. Office of Management Authority.

[FR Doc. 88-816 Filed 1-14-88; 8:45 am]

BILLING CODE 4310-55-M

National Park Service

Jamaica Bay Riding Academy, Inc.; Intention to Negotiate Concession Contract

Pursuant to the provisions of section 5 of the Act of October 9, 1965 (79 Stat. 969; 16 USC 20), public notice is hereby given that the Department of the Interior, through the Director of the National Park Service, proposes to negotiate a concession contract with Jamaica Bay Riding Academy, Inc., authorizing it to continue to provide riding academy facilities and services for the public at Gateway National Recreation Area, New York, for a period of ten (10) years from January 1, 1989. The Fact Sheet which describes this opportunity will be released to the public in the near future, and sixty days will be allowed from the date of release for responses to be received.

This contract renewal has been determined to be categorically excluded from the procedural provisions of the National Environmental Policy Act and no environmental document will be prepared.

The foregoing concessioner has performed its obligations to the satisfaction of the Secretary under an existing contract which expired by limitation of time on December 31, 1983, and therefore, pursuant to the Act of October 9, 1965, as cited above, is entitled to be given preference in the renewal of the contract and in the

negotiation of a new contract as defined in 36 CFR 51.5.

The Secretary will consider and evaluate all proposals received as a result of this notice. Any proposal, including that of the existing concessioner, must be postmarked or hand delivered on or before the sixtieth (60th) day following publication of this notice to be considered and evaluated.

Interested parties should contact The Superintendent, Gateway National Recreation Area, Floyd Bennett Field, Brooklyn NY 11234, for information as to the requirements of the proposed contract.

Date: January 6, 1988.

Steven H. Lewis,

Acting Regional Director, North Atlantic Region.

[FR Doc. 88-727 Filed 1-14-88; 8:45 am]

BILLING CODE 4310-70-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 intercorporated hauling operations as authorized in 49 U.S.C. 10524(b).

1. The parent corporation and the address of its principal office is: Vyquest, Inc., a corporation incorporated under the laws of the State of New Jersey, 1033 Clifton Avenue, P.O. Box 1727, Clifton, NJ 07015-1727.

2. The wholly-owned subsidiaries which will participate in the operations are all incorporated in the State of Indiana and are as follows:

(i) Beach Craft Motor Homes Corporation.
(ii) Beach Craft Commercial Vehicles Corporation.
(iii) Bravo RV's, Inc.
(iv) Goshen Coach Corporation.
(v) Honey RV's, Inc.
(vi) Parkwood Homes, Inc.
(vii) Touraco, Inc.
(viii) Van Express, Inc.
(ix) Yellowstone, Inc.

Noreta R. McGee,

Secretary.

[FR Doc. 88-710 Filed 1-14-88; 8:45 am]

BILLING CODE 7035-01-M

[Finance Docket No. 31191]

Missouri Pacific Railroad Co.; Merger Exemption; the Weatherford, Mineral Wells and Northwestern Railway Co.

The Missouri Pacific Railroad Company, Inc. (MP) and its wholly-owned subsidiary, The Weatherford, Mineral Wells and Northwestern Railway Company (Weatherford), have filed a notice of exemption to merge Weatherford into MP on December 31, 1987.

This is a transaction within a corporate family of the type specifically exempted from prior approval under 49 CFR 1180.2(d)(3). It will not result in adverse changes in service levels, significant operational changes, or a change in the competitive balance with carriers outside the corporate family. The proposed transaction is intended to provide recordkeeping efficiencies through corporate simplification.

To ensure that all employees who may be affected by the transaction are given the minimum protection afforded under sections 10505(g)(2) and 11347, the labor conditions set forth in *New York Dock Ry.-Control-Brooklyn Eastern Dist.*, 360 I.C.C. 60 (1979), will be imposed.

Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not stay the transaction. Pleadings must be filed with the Commission and served on: Robert B. Batchelder, General Commerce Counsel, 1416 Dodge Street, Omaha, NE 68179.

Decided: December 24, 1987.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

FR Doc. 88-412 Filed 1-14-88; 8:45 am]

BILLING CODE 7035-01-M

[Finance Docket No. 31192]

Union Pacific Railroad Co.; Merger Exemption; Oregon Short Line Railroad Co., Oregon-Washington Railroad & Navigation Co., Des Chutes Railroad Co., Los Angeles & Salt Lake Railroad Co. and Spokane International Railroad Co.

Union Pacific Railroad Company (UP), Oregon Short Line Railroad Company (OSL), Oregon-Washington Railroad & Navigation Company (OWRN), Des Chutes Railroad Company (DCRR), Los Angeles & Salt Lake Railroad Company (LASL) and Spokane International Railroad Company (SIRR) have filed a notice of exemption for the following described mergers. SIRR and OSL are wholly-owned subsidiaries of UP. OWRN and DCRR are wholly-owned subsidiaries of OSL, while LASL is a wholly-owned subsidiary of both OSL and UP.

The transactions proposed in this exemption involve five sequential phases which are described below.

I. On December 29, 1987, OWRN was to be merged into OSL.

II. On December 29, 1987, DCRR was to be merged into OSL.

III. On December 30, 1987, following the mergers of OWRN and DCRR into OSL, OSL was to merge into UP.

IV. On December 31, 1987, subsequent to the merger of OSL, LASL was to be merged into UP.

V. On December 31, 1987, SIRR was to be merged into UP. UP shall continue as the surviving corporation after all the mergers.

These mergers constitute one aspect in an overall process of consolidating the UP rail companies into a single, efficient operating company. Consummation of the mergers will eliminate the inefficiencies inherent in maintaining six carrier entities, particularly with regard to record keeping, and through coordination and consolidation improve the efficiency of the operations and services now being provided by the carriers as separate entities. No adverse changes in the level of transportation services or significant operational changes are contemplated to result from the mergers.

The mergers involve a series of transactions that are all within a corporate family of the type specifically exempted from prior review and approval under 49 CFR 1180.2(d)(3). These transactions will not result in adverse changes in service levels, significant operational changes, or a change in the competitive balance with carriers outside the corporate family.

As a condition to the use of this exemption, any employee affected by the transactions will be protected by the conditions set forth in *New York Dock Ry.—Control—Brooklyn Eastern Dist.*, 360 I.C.C. 60 (1979).

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 transactions. Pleadings must be filed with the Commission and served on: Robert B. Bathelder, General Commerce Counsel, 1416 Dodge Street, Omaha, NE 68179.

Decided: January 4, 1988.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 88-413 Filed 1-14-88; 8:45 am]

BILLING CODE 7035-01-M

[Docket No. AB-55 (Sub-No. 233X)]

CSX Transportation, Inc.; Abandonment Exemption; Warren, Simpson, and Logan Counties, KY

Applicant has filed a notice of exemption under 49 CFR Part 1152 Subpart F—*Exempt Abandonments* to abandon its 9.66-mile line of railroad between milepost LF-118.34 near Memphis Jct., and milepost LF-128.0 near South Union, located in Warren, Simpson and Logan Counties, KY.

Applicant has certified: (1) That no local traffic has moved over the line for at least 2 years and that overhead traffic is not moved over the line or may be rerouted, and (2) that no formal complaint filed by a user of rail service on the line (or by a State or local governmental entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or any U.S. District Court, or has been decided in favor of the complainant within the 2-year period. The appropriate State agency has been notified in writing at least 10 days prior to the filing of this notice.

As a condition of use of this exemption, any employee affected by the abandonment shall be protected pursuant to *Oregon Short Line R. Co.-Abandonment-Goshen,* 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10505(d) must be filed.

The exemption will be effective February 14, 1988 (unless stayed pending reconsideration). Petitions to stay must be filed by January 25, 1988, and petitions for reconsideration, including environmental, energy, and public use concerns, must be filed by February 4, 1988 with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any petition filed with the Commission should be sent to applicant's representative: Charles M. Rosenberger, 500 Water Street, Jacksonville, FL 32202.

If the notice of exemption contains false or misleading information, use of the exemption is void *ab initio.*

Applicant has filed an environmental report which addresses environmental or energy impacts, if any, from this abandonment.

The Section of Energy and Environment (SEE) will prepare an environmental assessment (EA). SEE will serve the EA on all parties by January 20, 1988. Other interested persons may obtain a copy of the EA from SEE by writing to it (Room 3115, Interstate Commerce Commission, Washington, DC 20423) or by calling Carl Bausch, Chief, SEE at (202) 275-7316.

A notice to the parties will be issued if use of the exemption is conditioned upon environmental or public use conditions.

Decided: January 11, 1988.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 88-884 Filed 1-14-88; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to National Cooperative Research Act of 1984; Composite Materials Characterization, Inc.

Notice is hereby given that, pursuant to section 6(a) of the National Cooperative Research Act of 1984, 15 U.S.C. 4301 *et seq.,* written notice has been filed by Composite Materials Characterization, Inc. ("CMC, Inc.") simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties to CMC, Inc. and (2) the nature and objectives of CMC, Inc. The notification was filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to section 6(b) of the Act, the identities of the parties to CMC, Inc. and its general areas of planned activity are given below.

The parties to CMC, Inc. are General Electric Company; Grumman Aerospace Corporation; Lockheed Corporation; LTV Aerospace and Defense Company; Rohr Industries, Incorporated; and United Technologies Corporation, Sikorsky Aircraft Division. The objective of CMC, Inc. is to undertake research and development on testing of composite materials and on a standardized system for grading and characterizing composite materials.

Joseph H. Widmar,

Director of Operations Antitrust Division.

[FR Doc. 88-766 Filed 1-14-88; 8:45 am]

BILLING CODE 4410-01-M

Notice Pursuant to National Cooperative Research Act of 1984; West Argo, Inc.; Iodophors Joint Venture

Notice is hereby given that, pursuant to section 6(a) of the National Cooperative Research Act of 1984, 15 U.S.C. 4301 *et seq.,* written notice has been filed by West Argo, Incorporated simultaneously with Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties to the Iodophors Joint Venture (the "Joint Venture") and (2) the nature and objectives of the Joint Venture. The notification was filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to section 6(b) of the Act, the identities of the parties to the Joint Venture and its general areas of planned activity are given below.

The parties to the Joint Venture are A & L Labs; Chemical Specialties Manfacturers Association; Chemland, Inc.; Diversey Wyandotte; Ecolab, Inc.; H. B. Fuller, Monarch Division; GAF Chemicals; Huntington Labs; West Argo, Inc.; and West Chemical Products. The objective of the Joint Venture is to sponsor and conduct toxicological research on the class of antimicrobials known as Isodophors and to submit the results of this research to the U.S. Environmental Protection Agency ("EPA") in response to the Antimicrobial Data Call-In Notice issued by the EPA on March 4, 1987.

Joseph H. Widmar,

Director of Operations Antitrust Divisions.

[FR Doc. 88-767 Filed 1-14-88; 8:45 am]

BILLING CODE 4410-01-M

United States v. Westinghouse Electric Corp. et al.; Proposed Final Judgment and Competitive Impact Statement

Notice is hereby given pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b)-(h), that a complaint, proposed final judgment, stipulation, and competitive impact statement have been filed with the United States District Court for the District of Columbia in *United States of America* v. *Westinghouse Electric Corporation; Challenger Electrical Equipment*

Corporation; and American Properties Corporation.

The complaint of the United States in this case alleges that the acquisition by Westinghouse Electric Corporation ("Westinghouse") of Challenger Electrical Equipment Corporation ("Challenger"), including its residential circuit breaker production facilities located in Puerto Rico, pursuant to their acquisition agreement, may substantially lessen competition in the production and sale in the United States of residential circuit breakers for use in residential dwellings and small commerical buildings in violation of section 7 of the Clayton Act (15 U.S.C. 18).

A circuit breaker is an overcurrent protection device that acts as a safety switch by interrupting the flow of power in the event of a power overload. Residential circuit breakers are circuit breakers, ranging in rating from 15 amperes to about 100 amperes, that are produced principally for sale to electrical contractors for use in load centers installed in newly-constructed housing. They also are sold to electricians and home owners for use as replacements in and additions to existing load centers.

Challenger and Westinghouse are the third and fifth largest suppliers of residential circuit breakers in the United States. Challenger produces residential circuit breakers at three plants located in Puerto Rico and at a facility in Albermarle, North Carolina. Westinghouse produces residential circuit breakers through its Distribution and Control Business Unit, at plants in Puerto Rico and the Dominican Republic. In 1986, Challenger accounted for about 13 percent of residential circuit breaker sales in the United States and Westinghouse accounted for about 10 percent.

Westinghouse would not have acquired Challenger's Albemarle facility, which would have been retained by certain shareholders of Challenger, but which they planned to sell. However, pursuant to the acquisition agreement, Westinghouse would have received from these shareholders a covenant not to compete that would have prevented them from using the Albemarle facility to compete for sales of residential circuit breakers for use in load centers installed in newly-constructed housing. Thus, this covenant would have precluded these shareholders from selling a load center compatible with the residential circuit breakers produced at the Albemarle facility. The Albemarle facility, therefore, would have been relegated to competing only in the replacement market.

The proposed Final Judgment would require Westinghouse to relinquish the covenant not to compete regarding the Albemarle facility and also would require the Albemarle facility to be sold through a court-appointed trustee to a purchaser that will operate the Albemarle facility as a viable, ongoing business, engaged in the production and sale in the United States of residential circuit breakers for use in load centers installed in newly-constructed housing. The trustee would be given six months to accomplish the sale.

Public comment is invited within the statutory 60-day comment period. Such comments, and responses thereto, will be published in the **Federal Register** and filed with the court. Comments should be directed to P. Terry Lubeck, Chief, Litigation II Section, Antitrust Division, Room 10–437, Judiciary Center Building, 555 4th Street, NW., Washington, DC 20001 (202/724–7966).

Joseph H. Widmar,

Director of Operations, Antitrust Division.

United States District Court for the District of Columbia

United States of America, Plaintiff, v. *Westinghouse Electric Corporation; Challenger Electrical Equipment Corporation; and American Properties Corporation*, Defendants.

[Civil No. 87–3528]

Filed: December 30, 1987.

Antitrust: Judge Oberborfer.

Stipulation

It is stipulated by and between the undersigned parties, by their respective attorneys, as follows:

(1) The Court has jurisdiction over the subject matter of this action and over each of the parties hereto, and venue of this action is proper in the District of Columbia.

(2) The parties consent that a Final Judgment in the form hereto attached may be filed and entered by the Court, upon the motion of any party or upon the Court's own motion, at any time after compliance with the requirements of the Antitrust Procedures and Penalties Act (15 U.S.C. 16), and without further notice to any party of other proceedings, provided that plaintiff has not withdrawn its consent, which it may do at any time before the entry of the proposed Final Judgment by serving notice thereof on defendants and by filing that notice with the Court;

(3) In the event plaintiff withdraws its consent or if the proposed Final Judgment is not entered pursuant to this Stipulation, this Stipulation shall be of no effect whatever, and the making of this Stipulation shall be without prejudice to any party in this or any other proceeding.

Dated: December 30, 1987.

For Plaintiff United States of America:
Michael Boudin,

Acting Assistant Attorney General.

Judy Whalley,
John W. Clark,
P. Terry Lubeck,
Mark C. Schechter,

Attorneys, U.S. Department of Justice,

Willie L. Hudgins, Jr.,
Lisa M. Phelan,

Attorneys, U.S. Department of Justice Antitrust Division Washington, DC 20001 (202) 724–7990.

For Defendant Westinghouse Electric Corporation:
Joe Sims,

Jones, Day, Reavis & Pogue, Metropolitan Square, 1450 G Street NW., Washington, DC.

For Defendant Challenger Electrical Equipment Corporation:
Sidney S. Rosdeitcher,

Paul, Weiss, Rifkind, Wharton & Garrison, 1285 Avenue of the Americas, New York, New York.

For Defendant American Properties Corporation:
Sidney S. Rosdeitcher,

Paul, Weiss, Rifkind, Wharton & Garrison, 1285 Avenue of the Americas, New York, New York.

Stipulation approved for filing.
Done this ____ day of December, 1987.

United States District Judge.

United States District Court for the District of Columbia

United States of America, Plaintiff, v. *Westinghouse Electric Corporation; Challenger Electrical Equipment Corporation; and American Properties Corporation*, Defendants.

[Civil No. 87–3528]

Filed: December 30, 1987.

Antitrust: Judge Oberborfer

Final Judgment

Whereas, plaintiff, United States of America, has filed its Complaint herein on December 30, 1987, and plaintiff and defendants, by their respective attorneys, have consented to the entry of this Final Judgment without trial or adjudication of any issue of fact or law herein and without this Final Judgment constituting any evidence against or an admission by any party with respect to any such issue;

And whereas, defendants have agreed to be bound by the provisions of this Final Judgment pending its approval by the Court;

And whereas, prompt and certain divestiture is the essence of this agreement, and defendants have represented to the plaintiff that the divestiture required below can and will be made and that defendants will later raise no claims of hardship or difficulty as grounds for asking the Court to modify any of the divestiture provisions contained below:

Now, therefore, before the taking of any testimony and without trial or adjudication of any issue of fact or law herein, and upon consent of the parties hereto, it is hereby

Ordered, adjudged and decreed as follows:

I.

This Court has jurisdiction over the subject matter of this action and over each of the parties hereto. The Complaint states a claim upon which relief may be granted against defendants under Section 7 of the Clayton Act, as amended (15 U.S.C. 18).

II.

As used in this Final Judgment:

A. "Westinghouse" means defendant Westinghouse Electric Corporation; each division, subsidiary, or affiliate thereof; and each officer, director, employee, attorney, agent, or other person acting for or on behalf of any of them.

B. "Challenger" means defendant Challenger Electrical Equipment Corporation; each division, subsidiary, or affiliate thereof; and each officer, director, employee, attorney, agent, or other person acting for or on behalf of any of them.

C. "American" means defendant American Properties Corporation; each division, subsidiary, or affiliate thereof; and each officer, director, employee, attorney, agent, or other person acting for or on behalf of any of them.

D. "Person" means any natural person, corporation, association, firm, partnership, or other business or legal entity.

E. "Circuit breaker" means an overcurrent protection device that acts as a safety switch by interrupting the flow of power in the event of a power overload.

F. "Residential circuit breaker" means a circuit breaker, ranging in rating from 15 amperes to about 100 amperes, that is used in a load center in a residential dwelling or a small commercial building.

III.

A. The provisions of the Final Judgment shall apply to Westinghouse, Challenger, and American, each of their successors and assigns, and to all other persons in active concert or participation with any of them who shall have received actual notice of this Final Judgment by personal service or otherwise.

B. Nothing contained in this Final Judgment shall suggest that any portion of this Final Judgment is or has been created for the benefit of any third party, and nothing herein shall be construed to provide any rights to any third party.

C. Westinghouse shall require, as a condition of the sale or other disposition of all or substantially all of its assets or stock, that the acquiring party agree to be bound by the provisions of this Final Judgment.

IV.

A. Westinghouse having committed itself to acquire Challenger pursuant to a Stock Purchase Agreement dated October 1, 1987, (1) Westinghouse is hereby ordered and directed prior to that acquisition to release the shareholders of American from the covenant not to compete contained in Section 5.10 of that agreement, as the covenant relates to the residential circuit breaker business of Challenger located at Albemarle, North Carolina, (2) Challenger is hereby ordered and directed prior to that acquisition to transfer to American its circuit breaker business located at Albemarle, North Carolina, and all of its other assets (excluding receivables), wherever located, related solely to its residential circuit breaker business at that location, and (3) American is hereby ordered and directed thereafter to sell through a trustee all of its stock or assets. Only the trustee, and not American, shall have the right to sell American, and neither it nor the other defendants shall take any action to interfere with or impede the trustee's accomplishment of the required sale.

B. Sale of American shall be accomplished in such a way as to satisfy plaintiff that American's assets can and will be operated by the purchaser as a viable, ongoing business, engaged in the production and sale in the United States of residential circuit breakers for use in load centers installed in newly constructed housing. Sale shall be made to a purchaser for whom it is demonstrated to plaintiff's satisfaction that (1) the purchase is for the purpose of competing promptly and effectively in the production and sale in the United States of residential circuit breakers for use in load centers installed in newly constructed housing and (2) the purchaser has the managerial, operational, and financial capability to compete promptly and effectively in the manufacture and sale in the United States of residential circuit breakers for use in load centers installed in newly constructed housing.

C. Wheeler Financial Services of Malvern, Pennsylvania is hereby appointed trustee to sell American pursuant to this Final Judgment. The trustee shall have the full power and authority to accomplish the sale at such price and on such terms as are then obtainable upon a reasonable effort by the trustee, subject to the provisions of Section VI of this Final Judgment, and shall have such other powers as the Court deems appropriate. American shall use all reasonable efforts to assist the trustee in accomplishing the required sale. American shall not object to a sale by the trustee on any grounds other than malfeasance. Any such objection by American must be conveyed in writing to plaintiff and the trustee within fifteen (15) days after the trustee has notified American of the proposed sale.

D. The trustee shall serve at the cost and expense of Westinghouse, pursuant to the fee agreement between them dated December 29, 1987, and shall account for all monies derived from the sale of American and all costs and expenses incurred. After the accounting is completed to the parties' and the trustee's satisfaction, or upon Court approval if the parties and the trustee cannot agree, all monies derived from the sale shall be paid to American or its shareholders and the trust shall be terminated.

E. The trustee shall have full and complete access to the personnel, books, records, and facilities of American, and it shall develop such financial or other information relevant to the sale as the trustee may request. At the trustee's option and subject to customary confidentiality assurances, prospective purchasers shall have full and complete access to such personnel, facilities, and information.

F. The trustee shall file monthly reports with plaintiff, Westinghouse, American, and the Court setting forth the trustee's efforts to accomplish the sale ordered by this Final Judgment. If the trustee has not accomplished such sale within six (6) months after the trustee's appointment, the trustee shall thereupon promptly file with the Court a report setting forth (1) the trustee's efforts to accomplish the required divestiture, (2) the reasons, in the trustee's judgment, why the required divestiture has not been accomplished, and (3) the trustee's recommendations. The trustee shall at the same time furnish such report to plaintiff, Westinghouse, and American, but only

plaintiff and American shall have the right to be heard and to make additional recommendations consistent with the purpose of the trust. The Court shall thereafter enter such orders as it shall deem appropriate in order to carry out the purpose of the trust, which shall, if necessary, include extending the term of the trust and the term of the trustee's appointment.

Until the sale of American is completed pursuant to this Final Judgment, American shall: (A) Take no steps with respect to the operation of its residential circuit breaker business, except in the ordinary course of business, that negatively would impact the operation of the Albemarle residential circuit breaker business as a profitable business; (B) refrain from terminating or reducing one or more current employment, salary, or benefit agreements for one or more management, engineering, or other technical personnel of American's residential circuit breaker business, except in the ordinary course of business, or unless reasonably comparable alternative benefits are provided, without prior approval of plaintiff; (C) maintain normal repair maintenance schedules for American's residential circuit breaker business and at least preserve such schedules as they currently exist; (D) preserve American as a viable producer of residential circuit breakers; (E) refrain from offering or selling any assets of American's residential circuit breaker business, except in the ordinary course of business, or from taking any action that would have the effect of reducing the scope of American's residential circuit breaker business' manufacturing or sales operations, except in the ordinary course of business, from that existing at the time of the consummation of the acquisition by Westinghouse of Challenger, without the prior approval of the plaintiff; and (F) refrain from taking any action that would jeopardize its sale as a viable producer of residential circuit breakers.

VI

At least thirty (30) days prior to the scheduled closing date of the proposed sale pursuant to Section IV of this Final Judgment, the trustee shall notify plaintiff and American of the proposed sale. The notice shall set forth the details of the proposed transaction and, for each person not previously identified that offered or expressed an interest or desire to acquire any ownership interest in American, the name, address, and telephone number of that person together with full details of that person's interest or desire to acquire such ownership interest. Within fifteen (15) days after receipt of notice of the proposed sale, plaintiff may request from American and the proposed purchaser additional information concerning the proposed sale. American shall furnish the additional information requested from it within twenty (20) days of the receipt of the request, unless plaintiff shall agree to extend the time. Plaintiff may also require the proposed purchaser to commit to provide periodic reports concerning its efforts promptly and effectively to compete in the production and sale in the United States of residential circuit breakers for use in load centers installed in newly constructed housing. Until plaintiff certifies in writing that it is satisfied that the proposed purchaser has provided the additional information requested from it, and has committed to provide the periodic reports required of it, the sale shall not be consummated. Within thirty (30) days after receipt of the notice or within fifteen (15) days after receipt of the additional information from American and the proposed purchaser, whichever is later, unless American shall agree to extend the time, plaintiff shall notify in writing American and the trustee if it objects to the proposed sale. If plaintiff fails to object within the period specified, or if plaintiff notifies American and the trustee in writing that it does not object, the sale may be consummated, subject only to American's right to object to the sale under the proviso in Section IV.C. Upon objection by plaintiff, the proposed sale shall not be consummated. Upon objection by American under the proviso in Section IV.C., the proposed sale shall not be consummated unless approved by the Court.

VII

For the purpose of determining or securing compliance with this Final Judgment, and subject to any legally recognized privilege, from time to time:

A. Duly authorized representatives of the Department of Justice shall, upon written request of the Attorney General or of the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to any defendant made to its principal office, be permitted:

(1) Access during office hours of the defendant to inspect and copy all books, ledgers, accounts, correspondence, memoranda and other records and documents in the possession or under the control of the defendant, which may have counsel present, relating to any matters contained in this Final Judgment; and

(2) Subject to the reasonable convenience of the defendant and without restraint or interference from it, to interview officers, employees and agents of the defendant, who may have counsel present, regarding any such matters.

B. Upon the written request of the Attorney General or of the Assistant Attorney General in charge of the Antitrust Division, made to any defendant's principal office, the defendant shall submit such written reports, under oath if requested, with respect to any of the matters contained in this Final Judgment as may be requested.

C. No information or documents obtained by the means provided in this Section VII shall be divulged by any representative of the Department of Justice to any person other than a duly authorized representative of the Executive Branch of the United States, except in the course of legal proceedings to which the United States is a party (including grand jury proceedings), or for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

D. If at the time information or documents are furnished by any defendant to plaintiff, the defendant represents and identifies in writing the material in any such information or documents to which a claim of protection may be asserted under Rule 26(c)(7) of the Federal Rules of Civil Procedure, and the defendant marks each pertinent page of such material, "Subject to claim of protection under Rule 26(c)(7) of the Federal Rules of Civil Procedure," then ten (10) days notice shall be given by plaintiff to the defendant prior to divulging such material in any legal proceeding (other than a grand jury proceeding).

VIII

Jurisdiction is retained by this Court for the purpose of enabling any of the parties to this Final Judgment to apply to this Court at any time for such further orders and directions as may be necessary or appropriate for the construction, implementation, or modification of any of the provisions of this Final Judgment, for the enforcement of compliance herewith, and for the punishment of any violations hereof.

IX

This Final Judgment will expire on the third anniversary of the completion of the sale required herein.

X

Entry of this Final Judgment is in the public interest.

United States District Judge.

United States District Court for the District of Columbia

United States of America, Plaintiff, v. *Westinghouse Electric Corporation; Challenger Electrical Equipment Corporation; and American Properties Corporation*, Defendants.

[Civil No. 87-3528]

Filed: December 30, 1987.
Antitrust: Judge Oberborfer.

Competitive Impact Statement

Pursuant to section 2(b) of the Antitrust Procedures and Penalties Act (15 U.S.C 16(b)-(h)), the United States of America files this Competitive Impact Statement relating to the proposed Final Judgment submitted for entry with the consent of Westinghouse Electric Corporation, Challenger Electrical Equipment Corporation, and American Properties Corporation in this civil antitrust proceeding.

I. Nature and Purpose of the Proceeding

This civil proceeding began on December 30, 1987 when the United States filed a complaint alleging that the proposed acquisition by Westinghouse Electric Corporation (hereinafter "Westinghouse") of Challenger Electrical Equipment Corporation (hereinafter "Challenger"), including certain of its residential circuit breaker production facilities, would violate section 7 of the Clayton Act (15 U.S.C. 18). The complaint alleges that the effect of the acquisition by Westinghouse of the Challenger facilities pursuant to their acquisition agreement may be substantially to lessen competition in the production and sale in the United States of residential circuit breakers. A circuit breaker acts as an overcurrent protection device by interrupting the flow of electric current in the event of a power overload. Residential circuit breakers, which carry ratings from 15 to about 100 amperes, are designed to be clipped into load centers, which are metal boxes that hold the circuit breakers, and are used in residential dwellings and small commercial buildings. The complaint requests that Challenger's residential circuit breaker plant located at Albemarle, North Carolina be divested to a purchaser able promptly to become a viable independent competitor in the production and sale in the United States of residential circuit breakers.

The United States, Westinghouse, Challenger, and American Properties Corporation (hereinafter "American") have agreed that the proposed Final Judgment may be entered after compliance with the Antitrust Procedures and Penalties Act. Entry of the proposed Judgment will terminate the action, except that the Court will retain jurisdiction to construe, modify, and enforce the Judgment, and to punish violations of the Judgment.

II. Events Giving Rise to the Alleged Violation

Westinghouse and Challenger entered into an agreement on October 1, 1987, pursuant to which Westinghouse would acquire Challenger, including all of its plants that produce residential circuit breakers, except for a plant located in Albemarle, North Carolina at which Challenger produces its Stab-Lok line of residential circuit breakers. Under the agreement, Westinghouse also would preclude the Challenger shareholders who would own the Albemarle plant, which they plan to sell after the acquisition, from producing a compatible line of load centers for the Stab-Lok breakers. The purchase price to be paid by Westinghouse is $195 million.

Westinghouse and Challenger both produce a broad line of electrical equipment for residential and commercial construction markets. Westinghouse reported total 1986 sales of about $11 billion, and Challenger reported total 1986 sales of about $260 million. Both firms currently manufacture residential circuit breakers. Westinghouse produces residential circuit breakers at facilities located in Aguas Buenas and San Lorenzo, Puerto Rico and in the Dominican Republic. Westinghouse's 1986 sales of residential circuit breakers totaled about $35 million. Challenger produces residential circuit breakers at facilities located in Caquas, Comerio, and Canovana in Puerto Rico, as well as at the Albemarle facility. Its 1986 residential circuit breaker sales totaled about $56 million.

The complaint alleges that the production and sale of residential circuit breakers is a relevant product market for antitrust purposes. Circuit breakers are installed in virtually all new residential construction. Fuses, the only functional substitutes for circuit breakers, are considerably less convenient and less durable than circuit breakers. Industrial circuit breakers, which are designed to handle high voltage and amperage ratings, cannot be substituted for residential circuit breakers. Electrical contractors do not view fuses or industrial circuit breakers as substitutes for residential circuit breakers, and a small but non-transitory increase in the price of residential circuit breakers would not cause purchasers to switch from residential circuit breakers.

Residential circuit breakers are sold individually for use in a compatible load center. Some residential circuit breakers are discrete in design and will fit only in a particular load center, while others are interchangeable and will fit in load centers produced by several manufacturers.

Residential circuit breaker manufacturers distribute most of their products through electrical distributors to electrical contractors. The contractors install the circuit breakers in load centers in newly constructed homes and small buildings. In addition, a small number of residential circuit breakers are sold as replacements in or additions to already-installed load centers.

Entry into the production and sale of residential circuit breakers requires at least two years. Among the reasons that entry is time consuming are the need for a new entrant to design a full line of residential circuit breakers of all amperages customarily used in residential dwellings, the need to obtain Underwriters Laboratories Incorporated ("UL") approval for the new residential circuit breakers, and the need to offer a circuit breaker that is compatible with a load center suitable for use in newly constructed houses.

UL approval is an important factor in the sale of residential circuit breakers in the United States. UL tests residential circuit breakers for endurance and interrupting capability. UL requires that the tested circuit breakers be samples made on actual production lines rather than prototypes individually constructed.

The complaint alleges that the production and sale in the United States of residential circuit breakers is highly concentrated. In 1986, Challenger, the third largest producer of residential circuit breakers in the United States, accounted for about 13 percent of the market, and Westinghouse, the fifth largest producer, accounted for about 10 percent. Of the remaining eight firms that compete in the United States, only five accounted for more than 5 percent of sales in 1986. Imports of residential circuit breakers accounted for only about 3 percent of total United States sales in 1986. By acquiring Challenger's residential circuit breaker plants located in Puerto Rico, Westinghouse would become the second largest producer of residential circuit breakers for sale in the United States with a market share of

about 20 percent. By requiring that the shareholders of Challenger, the only firm that had produced a load center compatible with the residential circuit breakers it produces at its Albemarle facility, not produce such a load center, Westinghouse would eliminate that facility as a competitor in the production and sale in the United States of residential circuit breakers for use in load centers installed in newly constructed housing. Such an acquisition would increase the Herfindahl-Hirschman Index by about 208 to 1866.

III. Explanation of the Proposed Final Judgment and Its Anticipated Effects on Competition

The United States brought this action because the effect of an acquisition by Westinghouse of Challenger's Puerto Rican residential circuit breaker production facilities pursuant to their acquisition agreement may be substantially to lessen competition in violation of section 7 of the Clayton Act in the production and sale of residential circuit breakers in the United States. The risk to competition posed by this acquisition substantially would be eliminated through the sale of Challenger's Albemarle, North Carolina plant to a purchaser that would operate the plant as an active and independent competitor in the residential circuit breaker business.

To this end, Section IV of the proposed Final Judgment would require that Westinghouse release the shareholders of American from the covenant not to compete with the residential circuit breaker plant located at Albemarle, North Carolina, that Challenger transfer the Albemarle, residential circuit breaker plant to American, a corporation owned by those Challenger shareholders, and that American be sold to a purchaser that has the intent and capability to compete promptly and effectively in the production and sale of residential circuit breakers. Until the sale is completed, American must not take any action that would jeopardize its sale as a viable producer of residential circuit breakers and shall preserve itself as a viable producer of such circuit breakers.

Under this section, the Court would appoint a trustee to sell American. Only the trustee would have the right to sell the company. Westinghouse would be required to pay all of the trustee's expenses in selling American.

Section VI of the proposed Final Judgment would provide the United States an opportunity to review any proposed sale before it occurs. Under Section VI, if the United States were to request information from American to assess a proposed sale, the sale could not be consummated until 15 days after American supplied the information. If the United States were to request information from the proposed purchaser, the sale could not be consummated until the United States certified in writing that it was satisfied that the proposed purchaser has provided the additional information. If the United States were to object to a sale of American, the sale could not be completed.

Section IX would provide that the Final Judgment would expire on the third anniversary of the required sale of American.

IV. Remedies Available to Potential Private Litigants

Section 4 of the Clayton Act (15 U.S.C. 15) provides that any person who has been injured as a result of conduct prohibited by the antitrust laws may bring suit in federal court to recover three times the damages the person has suffered, as well as costs and reasonable attorney fees. Entry of the proposed Final Judgment will neither impair nor assist the bringing of any private antitrust damage actions. Under provision of section 5(a) of the Clayton Act (15 U.S.C. 16(a)), entry of the proposed Final Judgment would have no prima facie effect in any subsequent private lawsuit that may be brought against the defendants.

V. Procedures Available for Modification of the Proposed Final Judgment

The United States, Westinghouse, Challenger, and American have stipulated that the proposed Final Judgment may be entered by the Court after compliance with the provisions of the Antitrust Procedures and Penalties Act, provided that the United States has not withdrawn its consent. The Act conditions entry upon the Court's determination that the proposed Final Judgment is in the public interest.

The Act provides a period of at least sixty (60) days preceding the effective date of the proposed Final Judgment within which any person may submit to the United States written comments regarding the proposed Final Judgment. Any person who wants to comment should do so within sixty (60) days of the date of publication of this Competitive Impact Statement in the **Federal Register**. The United States will evaluate the comments, determine whether it should withdraw its consent, and respond to the comments. The comments and the response of the United States will be filed with the Court and published in the **Federal Register**.

Written comments should be submitted to: P. Terry Lubeck, Chief, Litigation II Section, Antitrust Division, U.S. Department of Justice, 555 4th Street, NW., Judiciary Center Building, Room 10–437, Washington, DC 20001.

Under Section VIII of the proposed Final Judgment, the Court would retain jurisdiction over this matter for the purpose of enabling the United States or the defendants to apply to the court for such further orders or directions as may be necessary or appropriate for the construction, implementation, modification, or enforcement of compliance with the Judgment, or for the punishment of any violations of the Judgment.

VI. Alternatives to the Proposed Final Judgment

The proposed Final Judgment would require that Challenger's Stab-Lok residential circuit breaker business be sold through a court appointed trustee to a purchaser that would use the business promptly to become a viable competitor in the newly constructed housing segment of the residential circuit breaker business. Thus, it would assure that Challenger's former Stab-Lok business would remain a viable business separate from Westinghouse and an active competitor to Westinghouse in the United States market for residential circuit breakers.

Compliance with the proposed Final Judgment and the completion of the sale required by the Judgment would resolve the competitive concerns raised by the proposed transaction. The lessening of competition due to the acquisition of these Challenger facilities would be corrected by reestablishing the Stab-Lok business as a viable independent competitor.

The only alternative considered to settling this action pursuant to the proposed Final Judgment was for the United States to file suit and seek a preliminary injunction to enjoin Westinghouse's acquisition of Challenger's Puerto Rican residential circuit breaker plants. The United States rejected this alternative because the sale required under the Final Judgment should establish a viable independent competitor in the United States residential circuit breaker market and prevent the acquisition from having a significant anticompetitive effect in that market. The government believes that in the hands of an appropriate purchaser, the Albemarle facility quickly could account for a substantial share of the domestic residential circuit breaker

market. In 1986, Stab-Lok's residential circuit breaker sales totaled about $21 million, over 5 percent of the United States residential circuit breaker market. The plant has substantial excess capacity and its products utilize a well-known trademark.

Under the circumstances, the government determined that the public interest in preserving competition in the United States residential circuit breaker market would be served best by obtaining an enforceable consent decree requiring the sale of the Albemarle facility and by filing the decree with the Court prior to the consummation of any part of the proposed acquisition. Although the proposed Final Judgment may not be entered until the criteria established by the Antitrust Procedures and Penalties Act (15 U.S.C. 15(b)–(h)) have been satisfied, the public will benefit immediately from the safeguards in the proposed Final Judgment because the defendants have stipulated to comply with the terms of the Judgment pending its entry by the Court.

VII. Determinative Documents

No documents were determinative in the formulation of the proposed Final Judgment. Consequently, the United States has not attached any such documents to the proposed Final Judgment.

Dated: December 30, 1987.

Respectfully submitted,

Willie L. Hudgins, Jr.,

Attorney, U.S. Department of Justice, Antitrust Division, 555 4th Street NW., Judiciary Center Building, Washington, DC 20001.

United States District Court for the District of Columbia

United States of America, Plaintiff, v. *Westinghouse Electric Corporation; Challenger Electrical Equipment Corporation; and American Properties Corporation, Defendants*

[Civil No. 87-3528]

Filed: December 30, 1987.
Antitrust: Judge Oberdorfe.

Certificate of Service

I, Willie L. Hudgins, Jr., hereby certify that a copy of the attached plaintiff's Competitive Impact Statement has been served this 30th day of December, 1987, by depositing said document in the United States mail with postage prepaid to:

Sidney S. Rosdeitcher, Paul, Weiss, Rifkind, Wharton & Garrison, 1285 Avenue of the Americas, New York, NY 10019

Joe Sims, Jones, Day, Reavis & Pogue, Metroplitan Square, 1450 G. Street NW., Washington, DC 20005–2008.

Willie L. Hudgins, Jr.,

Attorney, U.S. Department of Justice, Antitrust Division, Rm. 10–437, 555 4th St., NW., Washington, DC 20001, 202/724–7990.

[FR Doc. 88–802 Filed 1–14–88; 8:45 am]

BILLING CODE 4410-01-M

Drug Enforcement Administration

[Docket No. 87–14]

Carmel Ben-Eliezer, M.D., Glenshaw, PA; Hearing

Notice is hereby given that on February 2, 1987, the Drug Enforcement Administration, Department of Justice, issued to Carmel Ben-Eliezer, M.D. an Order to Show Cause as to why the Drug Enforcement Administration should not revoke your DEA Certificate of Registration, AB7911046 and deny any pending applications for registration.

Thirty days having elapsed since the said Order to Show Cause was received by Respondent, and written request for a hearing having been filed with the Drug Enforcement Administration, notice is hereby given that a hearing in this matter will be held commencing at 10:00 a.m. on Friday, January 15, 1988, in the United States Claims Court, Courtroom No. 10, Room 309, 717 Madison Place NW., Washington, DC.

Dated: January 11, 1988.

John C. Lawn,

Administrator, Drug Enforcement Administration.

[FR Doc. 88–728 Filed 1–14–88; 8:45 am]

BILLING CODE 4410-09-M

Manufacturer of Controlled Substances; Application

Pursuant to § 1301.43(a) of Title 21 of the Code of Federal Regulations (CFR), this is notice that on November 16, 1987, Janssen Inc., HC 02 Box 19250, Gurabo, Puerto Rico 00658–9629, made application to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
Alfentanil (9737)	II
Sufentanil (9740)	II

Any other such applicant and any person who is presently registered with DEA to manufacture such substances 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 (February 16, 1988).

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

Dated: January 6, 1988.

[FR Doc. 88–729 Filed 1–14–88; 8:45 am]

BILLING CODE 4410-09-M

Manufacturer of Controlled Substances; Application

Pursuant to § 1301.43(a) of Title 21 of the Code of Federal Regulations (CFR), this is notice that on December 10, 1987, M.D. Pharmaceutical, Inc., 3501 West Garry Avenue, Santa Ana, California 92704, made application to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
Methylphenidate (1724)	II
Diphenoxylate (9170)	II

Any other such applicant and any person who is presently registered with DEA to manufacture such substances 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 February 16, 1988.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control Drug Enforcement Administration.

Dated: January 6, 1988.

[FR Doc. 88–730 Filed 1–14–88; 8:45 am]

BILLING CODE 4410-09-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 comment 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 (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts," shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, NW., Room S-3504, Washington, DC 20210.

Withdrawn General Wage Determination Decision

This is to advise all interested parties that the Department of Labor is withdrawing, from the date of this notice, General Wage Determination No. FL88-41 dated January 8, 1988.

Supersedeas Decisions to General Wage Determination Decisions

The numbers of the decisions being superseded and their date of notice in the **Federal Register** are listed with each State. Supersedeas decision numbers are in parentheses following the number of the decisions being superseded.

Texas, TX 87-45 (TX 88- 45). Jan. 2, 1987.

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

Delaware, DE88-2 (Jan. 8, 1988). p. 94.
Maryland, MD88-15 (Jan. 8, 1988). p. 454.
New York:
NY88-6 (Jan. 8, 1988) ..... pp. 727-736
NY88-7 (Jan. 8, 1988) ..... pp. 737-754
NY88-8 (Jan. 8, 1988) ..... pp. 755-766
NY88-9 (Jan. 8, 1988) ..... pp. 767-768
NY88-10 (Jan. 8, 1988) ..... pp. 769-780
NY88-11 (Jan. 8, 1988) ..... pp. 781-790
Pennsylvania:
PA88-4 (Jan. 8, 1988) ..... pp. 870-871.
PA88-14 (Jan. 8, 1988) ..... pp. 944-947.
Listing by Decision (index).. pp. xlix, lvi.

Volume II:

Illinois:
IL88-1 (Jan. 8, 1988) ..... p. 71.
IL88-3 (Jan. 8, 1988) ..... p. 114.
IL88-5 (Jan. 8, 1988) ..... p. 126.
IL88-12 (Jan. 8, 1988) ..... p. 164.
IL88-13 (Jan. 8, 1988) ..... p. 174.
Indiana:
IN88-4 (Jan. 8, 1988) ..... pp. 278-288b.
IN88-6 (Jan. 8, 1988) ..... pp. 302-316b.
Listing by Decision (index) p. lxi.

Volume III

Utah, UT88-1 (Jan. 8, 1988) p. 336.

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 7th day of January 1988.

Alan L. Moss,

Director, Division of Wage Determinations.

[FR Doc. 88-566 Filed 1-14-88; 8:45 am]

BILLING CODE 4510-27-M

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards, Subcommittee on Generic Items; Meeting

The ACRS Subcommittee on Generic Items will hold a meeting on January 29, 1988, Room 1046, 1717 H Street NW., Washington, DC.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows:

Friday, January 29, 1988—1:00 p.m. until the conclusion of business: The Subcommittee will discuss the procedures being used by the NRC staff in: (a) Defining the scope of generic issues and unresolved safety issues, and (b) modifying the original scope of these issues.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Subcommittee, its consultants, and Staff. Persons desiring to make oral statements should notify the ACRS staff member named below as far in advance as is practicable so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittee, along with any of its consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will then hear presentations by and hold discussions with representatives of the NRC Staff, its consultants, and other interested persons regarding this review.

Further information regarding topics to be discussed, whether the meeting has been canceled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by a prepaid telephone call to cognizant ACRS staff member, Mr. Sam Duraiswamy (telephone 202/634–3267) between 8:15 a.m. and 5:00 p.m. Persons planning to attend this meeting are urged to contact the above named individual one or two days before the scheduled meeting to be advises of any changes in schedule, etc., which may have occurred.

Date: January 12, 1988.

Morton W. Libarkin,

Assistant Executive Director for Project Review.

[FR Doc. 88–668 Filed 1–14–88; 8:45 am]

BILLING CODE 7590–01–M

Correction to Florida Power Corp. (Crystal River Unit 3); Exemption

On December 31, 1987, the **Federal Register** published a notice of an Exemption which had been granted to the Florida Power Corporation for Crystal River Unit 3. There is a correction to that notice. On Page 49537, first column, the heading should have read: "Florida Power Corporation, et al." instead of "Florida Power and Light Company, et al."

Dated at Bethesda, Maryland, this 11th day of January, 1988.

For the Nuclear Regulatory Commission.

Harley Silver,

Project Manager, Project Directorate II–2, Division of Reactor Projects–I/II.

[FR Doc. 88–818 Filed 1–14–88; 8:45 am]

BILLING CODE 7590–01–M

[Docket Nos. 50–327 and 50–328]

Tennessee Valley Authority; Consideration of Issuance of Amendments to Facility Operating Licenses and Proposed No Significant Hazards; Consideration Determination and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of amendments to Facility Operating License No. DPR–77 and Facility Operating License No. DPR–79, issued to the Tennessee Valley Authority (the licensee), for operation of the Sequoyah Nuclear Plant, Units 1 and 2, located in Hamilton County, Tennessee. The proposed amendments are in response to the licensee's submittal dated January 11, 1988.

The proposed amendments would revise the Technical Specification (TS) surveillance requirement 4.7.7.e.3 (Units 1 and 2) to allow up to 1000 cubic feet per minute intake of fresh air to the control room during operation of the control room emergency ventilation system (CREVS).

Because of the potential for impacting the heatup of Sequoyah Nuclear Plant, Unit 2, the licensee has requested these proposed TS amendments be processed on an emergency basis or as expeditiously as possible. TVA has stated the proposed TS changes are a result of hardware related deficiencies which were previously unidentified. TVA has actively pursued numberous parallel paths in an attempt to meet the existing surveillance requirements. At the point where it was indicated that a TS change was required, the change package was developed with the highest priority.

NRC has reviewed the circumstances resulting in the submittal of the proposed TS changes. It is desirable to promptly act on this change in order to assure operational and procedural continuity of the Sequoyah (SQN) heatup. Accordingly, NRC staff has determined that sufficient justification exists for consideration of these amendments on an exigent basis.

Before issuance of the proposed license amendments, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards considerations. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendments would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

NRC staff has reviewed the licensee's proposed application and has determined that an increase in control room filtered fresh air intake from 200 cubic feet per minute (CFM) to $\leq$ 1000 cfm does not affect the probability of any accident previously evaluated. Rather, this change results in a very small increase in the worst case postulated control room operator dose, from 1.1 to 1.5 rem. This increase is insignificant and well below the 10 CFR Part 50 Appendix A, Criterion 19 limit of 5 rem. There appear to be no other affects on the consequences of any accident previous analyzed.

NRC staff has also determined that the proposed TS changes do not create the possibility of a new or different kind of accident from any previously analyzed because the function and operation of the CREVS is unchanged. The percentage of fresh air intake with respect to recirculated air is the only change proposed and, therefore, would not create a new accident.

The proposed TS changes do not involve a significant reduction in a margin of safety. Although there is a very small increase in the calculated

worst case postulated dose to the control room operators, the dose still remains less than one-third of the dose limit specified in 10 CFR Part 50 Appendix A, Criterion 19, and there are no systems, equipment, or components adversely affected.

TVA has provided the following analysis:

Operation of SQN in accordance with the proposed amendment will not:

(1) *Involve a significant increase in the probability or consequences of an accident previously evaluated.* CREVS is an engineered safety features (ESF) system designed to recirculate a portion of the control room air through cleanup trains composed of high efficiency particulate attenuation (HEPA) filters and charcoal absorbers. The system also supplies a stream of fresh air to the control room to keep it pressurized relative to the outdoors and the adjacent areas of the plant. This fresh air is processed by the cleanup trains described above. This serves to minimize the inleakage of unfiltered, contaminated air into the control room. Calculations have shown that increasing the fresh air makeup flow up to 1000 cfm will not increase the postulated control room operator doses above 10 CFR 50 Appendix A limits. Increasing the makeup flow also ensures proper pressurization of the control room, minimizing any unfiltered inleakage.

(2) *Create the possibility of a new or different kind of accident from any previously analyzed.* Increasing the makeup flow to the control room has only minor effects on control room operator dose, and ensures adequate control room pressurization. The function and operation of CREVS is otherwise unchanged.

(3) *Involve a significant reduction in a margin of safety.* Calculations have shown that there are small changes in control room operator dose as a result of increasing the filtered makeup flow to the control room. The resultant doses, however, remain well below the limits of 10 CFR 50 Appendix A, Criterion 19. Additionally, the increased makeup flow ensures that the control room is adequately pressurized, minimizing the potential for unfiltered inleakage.

TVA has evaluated the proposed TS change and determined that it does not represent a significant hazards consideration based on criteria established in 10 CFR 50.92(c).

The staff has reviewed the licensee's no significant hazards consideration determination as discussed above and agrees with the licensee's conclusion that this action does not involve a significant hazards consideration. Therefore, the Commission proposes to determine that this change does not involve significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 15 days after the date of publication of this notice will be considered in making any final determination.

Written comments may be submitted by mail to the Rules and Procedures Branch, Division of Rules and Records, Office of Administration and Resources Management, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and should cite the publication date and page number of the **Federal Register** notice.

Written comments may also be delivered to Room 4000, Maryland National Bank Building, 7735 Old Georgetown Road, Bethesda, Maryland from 8:15 a.m. to 5:00 p.m. Copies of written comments received may be examined at the NRC Public Document Room, 1717 H Street NW., Washington, DC. The filing of requests for hearing and petitions for leave to intervene is discussed below.

By February 16, 1988, the licensee may file a request for a hearing with respect to issuance of the amendments to the subject facility operating licenses and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rule of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene if filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene, which must include a list of the contentions that are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If the amendments are issued before the expiration of 30 days, the Commission will make a final determination on the issue of no significant hazards considerations. If a hearing is requested, the final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards considerations, the Commission may issue the amendments and make them effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendments.

If the final determination is that the amendment request involves significant hazards considerations, any hearing held would take place before the issuance of any amendment.

Normally, the Commission will not issue the amendments until the expiration of the 15-day notice period. However, should circumstances change during the notice period, such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendments before the expiration of the 15-day notice period, provided that its final determination is that the amendments involve no significant hazards considerations. The final

determination will consider all public and State comments received.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 1717 H Street NW., Washington, DC, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at (800) 325–6000 (in Missouri (800) 342–6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to Gary G. Zech, Assistant Director for Projects: Petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this Federal Register notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to General Counsel, Tennessee Valley Authority, 400 West Summit Hill Drive, E11 B33, Knoxville, Tennessee 37902.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board, that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendments dated January 11, 1988, which is available for public inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, DC 20555, and at the Local Public Document Room, Chattanooga-Hamilton County Library, 1001 Broad Street, Chattanooga, Tennessee 37402.

Dated at Bethesda, Maryland, this 13th day of January 1988.

For the Nuclear Regulatory Commission.

Jack N. Donohew,

Acting Assistant Director for Projects, TVA Projects Division, Office of Special Projects.

[FR Doc. 88–871 Filed 1–14–88; 8:45 am]

BILLING CODE 7590-01-M

SECURITIES AND EXCHANGE COMMISSION

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Midwest Stock Exchange, Inc.

January 11, 1988.

The above named national securities exchange has filed applications with the Securities and Exchange Commission pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f–1 thereunder, for unlisted trading privileges in the following stock:

Millipore Coporation

Common Stock, Par Value $1.00 (File No. 7–1048) This security is listed and registered on one or more other national securities exchange and is reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before February 1, 1988 written data, views and arguments concerning the above-referenced applications. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the applications if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 88–738 Filed 1–14–88; 8:45 am]

BILLING CODE 8010-01-M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Philadelphia Stock Exchange, Inc.

January 11, 1988.

The above named national securities exchange has filed applications with the Securities and Exchange Commission pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f–1 thereunder, for unlisted trading privileges in the following stock:

Wells Fargo Company

Common Stock, Par Value $5.00 (File No. 7–1047) This security is listed and registered on one or more other national securities exchange and is reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before February 1, 1988 written data, views and arguments concerning the above-referenced applications. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 88–739 Filed 1–14–88; 8:45 am]

BILLING CODE 8010-01-M

[File No. 1–7080]

Reliance Financial Services Corp.; Issuer Delisting

In the matter of an application to withdraw from listing and registration; Reliance Financial Services Corporation (8½% Sinking Fund Debentures, Due 1992; 9⅝% Sinking Fund Debentures, Due 1997; 11⅜% Sinking Fund Debentures, Due 2008; Senior Reset Notes Due November 1, 2000; and Senior Reset Notes Due December 1, 2000).
January 11, 1988.

Reliance Financial Services Corportion ("Company") 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 securities from listing and registration on the Philadelphia Stock Exchange, Inc. ("Phlx"). The securities are also listed and actively traded on the New York Stock Exchange ("NYSE").

The reasons alleged in the application for withdrawing these securities from listing and registration include the following:

The Company believes that the listing and registration of these securities on the Phlx has become unnecessary because the securities are listed and registered on the NYSE.

Any interested person may, on or before February 1, 1988, 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. 88-740 Filed 1-14-88; 8:45 am]

BILLING CODE 8010-01-M

[File No. 1-8278]

Reliance Group, Inc.; Issuer Delisting

In the matter of an Application to Withdraw from listing and registration; Reliance Group, Incorporated (9⅞% Subordinated Sinking Fund Debentures, Due September 1, 1988; 9⅞% Subordinated Sinking Fund Debentures, Due June 1, 1999). January 11, 1988.

Reliance Group, Incorporated ("Company"), has filed an application with the Securities and Exchange Commission pursuant to section 12(d) of the Securities Exchange Act of 1934 and Rule 12d2-2(d) promulgated thereunder, to withdraw the above specified securities from listing and registration on the Philadelphia Stock Exchange, Inc. ("Phlx"). The Company's securities are also listed and registered on the New York Stock Exchange, Inc. ("NYSE").

The reasons alleged in the application for withdrawing these securities from listing and registration include the following:

The Company believes that the listing and registration of the above mentioned securities on the Phlx has become unnecessary because the securities are listed and registered on the NYSE.

Any interested person may, on or before February 1, 1988, 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. 88-741 Filed 1-14-88; 8:45 am]

BILLING CODE 8010-01-M

[File No. 1-8305]

Reliance Group Holdings, Inc., Issuer Delisting

In the matter of an application to withdraw from listing and registration; Reliance Group Holdings, Inc. (14% Senior Debentures, Due 1996; 11½% Sinking Fund Debentures, Due December 1, 1997).
January 11, 1988.

Reliance Group Holdings, Inc. ("Company") 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 securities from listing and registration on the Philadelphia Stock Exchange, Inc. ("Phlx"). The Company's common stock is also listed on the New York Stock Exchange ("NYSE").

The reasons alleged in the application for withdrawing these securities from listing and registration include the following:

The Company believes that the listing and registration of the above mentioned securities on the Phlx has become unnecessary because the securities are listed and registered on the NYSE.

Any interested person may, on or before February 2, 1988, 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. 88-742 Filed 1-14-88; 8:45 am]

BILLING CODE 8010-01-M

[Release No. IC-16212; File No. 812-6921]

First Capital Life Insurance Co. et al.; Application

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 ("1940 Act").

Applicants: First Capital Life Insurance Company ("First Capital Life"), Pilgrim Variable Annuity Separate Account of First Capital Life Insurance Company ("Pilgrim Separate Account") and Pilgrim Distributors Corporation ("Pilgrim").

Relevant 1940 Act Sections: Exemption requested pursuant to section 6(c) from sections 26(a)(2)(C) and 27(c)(2) of the 1940 Act.

Summary of Application: Applicants seek an order to permit payment to First Capital Life from the assets of the Pilgrim Separate Account of the mortality and expense risk charge under a certain variable annuity contract (the "Contract").

Filing Date: The Application was filed on November 17, 1987.

Hearing or Notification of Hearing: If no hearing is ordered the requested exemption 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 February 4, 1988. Request a hearing in writing, giving the nature of your interest, the reasons for the request, and the issues of contest. Serve the Applicants 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, in the case of an attorney-at-law, by certificate. Request notifications of the date of a hearing by writing to the Secretary of the SEC.

ADDRESSES: SEC, 450 Fifth Street NW., Washington, DC 20549. Applicants, c/o First Capital Life Insurance Company, 11011 North Torrey Pines Road, P.O. Box 2700, La Jolla, California 92038.

FOR FURTHER INFORMATION CONTACT: Nancy M. Rappa, Staff Attorney (202) 272-2058 or Lewis Reich, Special Counsel (202) 272-2061 (Office of Insurance Products).

SUPPLEMENTARY INFORMATION: Following is a summary of the Application; the complete Application is available for a fee from either the SEC's Public Reference Branch in person or the SEC's commercial copier (800) 231-3282 (in Maryland (301) 258-4300).

Applicants' Representations

1. First Capital Life is a stock life insurance company organized under the laws of the State of California. It was authorized to conduct business as a life insurance company on January 18, 1963. From August 1, 1980, until September 1, 1987, First Capital Life conducted business under the name of E.F. Hutton Life Insurance Company. Pilgrim Separate Account is a separate investment account of First Capital Life established to act as a funding entity of variable annuity contracts. The Separate Account was established pursuant to a resolution of the Board of Directors of First Capital Life under California law adopted on July 29, 1981, and is registered with the SEC as a unit investment trust. A registration statement on Form N–4 has been filed with the SEC.

2. The Pilgram Separate Account is divided into subaccounts called "Variable Accounts." Each Variable Account will invest in shares of a designated Series of the Pilgrim Variable Investment Fund (the "Fund") which is a diversified, open-end management investment company. The Fund registered with the SEC as an open-end management investment company and filed a registration statement on Form N–1A. The Fund is a series-type mutual fund that contains six series: The Money Market Series, the Asset Allocation Series, the Rising Dividend Series, the Government Bond Series, the High Yield Bond Series, and the Natural Resources Series. Each of the Series will pursue different investment objectives and policies.

3. A Contract Owner will be permitted to allocate his or her account value to the First Capital Life Real Property Account ("Real Property Account") which will, after an initial starting period of not more than one year, invest at least 80% of its assets in real estate participating mortgage loans, equity ownership of real estate and conventional real estate nonparticipating loans. The balance of the assets will consist of some form of cash equivalent liquid assets. The Real Property Account has filed a registration statement on Form S–1 with the SEC.

4. A Contract Owner also will be permitted to allocate all or a portion of his or her account value to the Fixed Account. Accumulation Values allocated to the Fixed Account are combined with all General Account assets of First Capital Life. First Capital Life currently offers one Fixed Account option under which the guaranteed minimum interest credited to the Fixed Account will be at the effective rate of 4% per year, compounded daily. First Capital Life may declare excess interest to the Fixed Account at least annually at its sole discretion which will be guaranteed for one year.

5. Pilgrim Management Corporation will serve as investment adviser to each Series of the Fund. Pilgrim Management Corporation is a wholly-owned subsidiary of First Capital Holdings Corporation. Pursuant to a distribution agreement between First Capital Life and Pilgrim Distributors Corporation, Pilgrim will act as distributor of the Contracts. Pilgrim will distribute the Contract through representatives who are licensed to sell securities and variable annuities. The offering of the Contract will be continuous.

6. The Contract provides for the accumulation of values on a fixed or a variable basis. Payment of annuity benefits will be on a fixed basis. The variable aspects of the Contract differ significantly from the fixed aspects in that the value under the Contract will vary with the investment performance of the accounts and the Contract Owner and Annuitant under a Contract thereby assume the risk of investment gain or loss during the accumulation period rather than First Capital Life. A Contract Owner makes investment decisions under the Contract by directing the allocation of purchase payments and accumulated value to the Variable Accounts, the Real Property Account and the Fixed Account.

7. The Contract is currently intended to be used in connection with either a retirement plan qualified under sections 401, 403(a), 403(b), 408 or 457 of the Internal Revenue Code (Qualified Plan) or a Nonqualified Plan (individual purchaser).

8. The Contract is an individual flexible purchase payment Contract which provides for an initial purchase payment and for subsequent purchase payments if the Contract Owner so desires. There is, however, no obligation to make additional payments.

9. Prior to the date on which annuity payments are to commence, part of or all of the values under a Contract may be surrendered for cash payment, or alternatively, the values under the Contract may be applied to certain annuity payment options set forth in the Contract.

10. The Contract provides that during the accumulation period a mortality and expense risk charge will be deducted by First Capital Life in an amount equal on an annual basis to 1.25% of the average daily net asset values in each Variable account and in the Real Property Account. Of such charges, approximately 1.00% is for assuming the mortality risk and 0.25% is for assuming the expense risk. The mortality and expense risk charge is accrued daily and paid quarterly to First Capital Life to compensate it for the risk it assumes that the Annuitants under the Contract as a class may live longer than expected (necessitating a greater number of annuity payments) and that its expenses may be higher than the deduction for such expenses. The rate imposed for the mortality and expense risk charges is contractual and may not be changed by First Capital Life.

11. Applicants represent that they have reviewed the level of the mortality and expense risk charges under comparable variable annuity contracts currently being offered in the industry, taking into consideration such factors as current charge levels, the manner in which charges are imposed, presence of charge level or annuity rate guarantees and the markets in which the Contract will be offered, and based upon the foregoing, Applicants further represent that the maximum charges under the Contract are within the range of industry practices for comparable contracts. Applicants will maintain and make available to the Commission upon request a memorandum outlining the methodology underlying this representation.

12. Applicants do not believe that the sales load imposed under the Contract will necessarily cover the expected costs of distributing the Contract. Any "shortfall" will be made up from the general account assets which include, *inter alia*, amounts derived from risk charges. First Capital Life has concluded that there is a reasonable likelihood that the distribution financing arrangement being used in connection with the Contract will benefit the Pilgrim Separate Account and the Contract Owners. First Capital Life will keep and make available to the Commission upon request a memorandum setting forth the basis for this representation.

13. Applicants further represent that the Pilgrim Separate Account will only invest in underlying fund(s) which have undertaken to have a board of directors/trustees, a majority of whom are not interested persons of the fund, formulate and approve any plan under Rule 12b-1 under the Act to finance distribution expenses. Applicants reserve the right in any proceeding before the Commission, or in any suit or action in any court, to assert that the Commission has no authority to regulate the payment of these charges.

Applicants' Conditions

Applicants agree that if the requested order is granted such order will be expressly conditioned on Applicants' compliance with the undertakings set forth above.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

Dated: January 11, 1988.

[FR Doc. 88-810 Filed 1-14-88; 8:45 am]

BILLING CODE 8010-01-M

[Release No. IC-16211; File No. 811-1774]

Variable Annuity Life Insurance Company Separate Account One; Application

January 11, 1988.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application under section 8(f) of the Investment Company Act of 1940 ("1940 Act").

Applicant: The Variable Annuity Life Insurance Company Separate Account One ("Separate Account One").

Relevant 1940 Act Sections: Deregistration order requested under section 8(f) and Rule 8f-1.

Summary of Application: Applicant seeks an order declaring that it has ceased to be an investment company.

Filing Date: The application was filed on June 12, 1987.

Hearing or Notification of Hearing: If no hearing is ordered, the requested order will br granted. Any interested person may request a hearing on this application, or ask to be notified if a hearing is ordered. Any request must be received by the SEC by 5:30 p.m., on February 5, 1988. Request a hearing in writing, giving the nature of your interest and the reason for your request. Serve the Applicant, either personally or by mail, and also send it 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 a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 Fifth Street N.W., Washington, DC 20549; Applicant, 2929 Allen Parkway, Houston, Texas 77019.

FOR FURTHER INFORMATION CONTACT: Wendell M. Faria, Staff Attorney, at (202) 272-3450, or Lewis B. Reich, Special Counsel, at (202) 272-2061 (Division of Investment Management, Office of Insurance Products and Legal Compliance).

SUPPLEMENTARY INFORMATION: Following is a summary of the application; the complete application is available for a fee from either the SEC's Public Reference Branch in person, or the SEC's commercial copier (800) 231-3282 (in Maryland (301) 258-4300).

Applicant's Representations

1. Applicant is registered under the 1940 Act as a diversified open-end management investment company.

2. Applicant was reorganized under an Agreement and Plan of Reorganization ("Plan") on April 17, 1987. The purpose of the Plan was to merge The Variable Annuity Life Insurance Company Separate Account Two ("Separate Account Two"), a diversified open-end management investment company, and Applicant into a new division of The Variable Annuity Life Insurance Company Separate Account A ("Separate Account A"), a unit investment trust. The new division of Separate Account A then invested exclusively in a new fund of the American General Series Portfilio Company (the "Series Company") called the Quality Growth Fund (the "Fund").

3. The Plan was adopted by unanimous vote of Applicant's Board of Managers and by unanimous vote of the Series Company's Board of Directors, including unanimous vote of the independent directors, and was subsequently approved by a majority vote of Applicants contractowners. Applicant shall have effected its dissolution within one year of the date of the merger, as provided for in Article I, Section 1.01 of the Plan.

4. Applicant represents that it has retained no assets or liabilities under the Plan, nor is Applicant a party to any significant litigation or administrative proceeding, except that Applicant was named as a defendant in *Otto v. VALIC*, 814 F. 2d 1127 (7th Cir. 1986). Separate Account A has inherited Applicants position with respect to any present or future litigation.

5. Applicant further represents that it has no contractholders and is not now engaged in, nor proposes to engage in, any business activities. It has ceased to function as a diversified open-end management investment company.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 88-811 Filed 1-14-88; 8:45 am]

BILLING CODE 8010-01-M

[Release No. IC-16210; File No. 811-1828]

Variable Annuity Life Insurance Company Separate Account Two; Application

January 11, 1988.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application under section 8(f) of the Investment Company Act of 1940 ("1940 Act").

Applicant: The Variable Annuity Life Insurance Company Separate Account Two ("Separate Account Two").

Relevant 1940 Act Sections: Deregistration order requested under section 8(f) and Rule 8f-1.

Summary of Application: Applicant seeks an order declaring that it has ceased to be an investment company.

Filing Date: The application was filed on June 12, 1987.

Hearing or Notification of Hearing: If no hearing is ordered, the requested order will be granted. Any interested person may request a hearing on this application, or task to be notified if a hearing is ordered. Any request must be received by the SEC by 5:30 p.m., on February 5, 1988. Request a hearing in writing, giving the nature of your interest and the reason for your request. Serve the Applicant, either personally or by mail, and also send it 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 a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549; Applicant, 2929 Allen Parkway, Houston, Texas 77019.

FOR FURTHER INFORMATION CONTACT: Wendell M. Faria, Staff Attorney, at (202) 272-3450, or Lewis B. Reich, Special Counsel, at (202) 272-2061 (Division of Investment Management, Office of Insurance Products and Legal Compliance).

SUPPLEMENTARY INFORMATION: Following is a summary of the application; the complete application is available for a fee from either the SEC's Public Reference Branch in person, or the SEC's commercial copier (800) 231-3282 (in Maryland (301) 258-4300).

Applicants' Representations

1. Applicant is registered under the 1940 Act as a diversified open-end management investment company.

2. Applicant was reorganized under a Agreement and Plan of Reorganization ("Plan") on April 17, 1987. The purpose

of the Plan was to merge The Variable Annuity Life Insurance Company Separate Account One ("Separate Account One"), a diversified open-end management investment company, and Applicant into a new division of the The Variable Annuity Life Insurance Company Separate Account A ("Separate Account A"), a unit investment trust. The new division of Separate Account A then invested exclusively in a new fund of the American General Series Portfolio Company (the "Series Company") called the Quality Growth Fund (the "Fund"). Applicant achieved its objective under the Plan by transferring all of its assets via Separate Account One into Separate Account A, in exchange for equivalent interests in Separate Account A.

3. The Plan was adopted by unanimous vote of Applicant's Board of Managers and by unanimous vote of the Series Company's Board of Directors, including unanimous vote of the independent directors, and was subsequently approved by a majority vote of Applicant's countractowners. Applicant shall have effected its dissolution within one year of the date of the merger, as provided for in Article I, Section 1.01 of the Plan.

4. Applicant represents that it has retained no assets or liabilities under the Plan, nor is Applicant a party defendant to any significant litigation or administrative proceeding. The survivor Fund shall inherit the position of Applicant with respect to any future litigation. No litigation is expected to have a material impact on the financial position of the Fund.

5. Applicant further represents that it has no contractholders and is not now engaged in, nor proposes to engage in, any business activities. It has ceased to function as a diversified open-end management investment company.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 88–812 Filed 1–14–88; 8:45 am]

BILLING CODE 8010-01-M

SMALL BUSINESS ADMINISTRATION

[License No. 05/05-0150]

Comerica Capital Corp.; Surrender of License

Notice is hereby given that Comerica Capital Corporation, (CCC), 211 West Fort Street, Detroit, Michigan 48275, has surrendered its License to operate as a small business investment company under the Small Business Investment Act of 1958, as amended (Act). CCC was licensed by the Small Business Administration on June 23, 1981.

Under the authority vested by the Act and pursuant to the Regulations promulgated thereunder, the surrender was effective on October 31, 1987, and accordingly, all rights, privileges, and franchises therefrom have been terminated.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Robert G. Lineberry,

Deputy Associate Administrator for Investment.

Dated: January 12, 1988.

[FR Doc. 88–779 Filed 1–14–88; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF TRANSPORTATION

[88-01]

Aviation Proceedings; Agreements Filed During the Week Ending January 8, 1988

The following agreements were filed with the Department of Transportation under the provisions of 49 U.S.C. 408, 409, 412, and 414. Answers may be filed within 21 days of date of filing.

Docket No. 45383

Parties: Members of International Air Transport Association.

Date Filed: January 4, 1988.

Subject: Within TCl Fares.

Proposed Effective Date: February 15, 1988.

Phyllis T. Kaylor,

Chief, Documentary Services Division.

[FR Doc. 88–784 Filed 1–14–88; 8:45 am]

BILLING CODE 4910-62-M

[Docket 45165]

Seattle/Portland-Japan Service Case; Hearing

Served January 12, 1988.

Notice is given that the hearing in this proceeding will commence on February 16, 1988 at 10 a.m. and will run for the necessary consecutive days. Starting time each day will be 10 a.m. (local time) unless changed during the hearing. The site for the economic phase is Room 5332, U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC. The location of the civic party phase on February 25 and 26, 1988 is Courtroom 514, Henry M. Jackson Building, 915 Second Avenue, Seattle, Washington.

By letter dated December 31, 1987, American Airlines, Inc. advises that the last quarter of the cost year (year ending September 30, 1987) adopted at the prehearing conference now appears to have an "apples and oranges" problem because of the changed format for expense reports on Form 41 that affects that quarter. "Consequently, it would be very difficult to create unit costs for the year ended September 30, 1987, for purposes of this proceeding." Accordingly, I grant American's limited request that Item III B.l.e. and footnote 8 of the evidence request be modified so that unit costs for financial projections are for the 12 months ended June 30, 1987, rather than September 30, 1987. The April 1, 1987 date in footnote 5 will be unchanged.

Burton S. Kolko,

Administrative Law Judge.

[FR Doc. 88–784 Filed 1–14–88; 8:45 am]

BILLING CODE 4910-62-M

Federal Aviation Administration

Radio Technical Commission for Aeronautics (RTCA) Executive Committee; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. App. I) notice is hereby given of a meeting of the RTCA Executive Committee to be held on January 15, 1988, in the RTCA Conference Room, One McPherson Square, 1425 K Street, NW., Suite 500, Washington, DC, commencing at 9:30 a.m.

The Agenda for this meeting is as follows: (1) Chairman's remarks and introductions; (2) Approval of minutes of the meeting held on November 16, 1987; (3) Executive Director's Report; (4) Special Committee Activities Report for November–December 1987; (5) Report of the Fiscal and Management Subcommittee; (6) Consideration of proposals to hold a technology review in 1988 and move the annual assembly to May 1989; (7) Approve text for RTCA Federal Charter Proposal and Resolution for Assembly; (8) Consideration of proposals to establish new special committees; (9) Consider action on Department of Defense response to RTCA letter on Global Positioning System Constellation; (10) Other Business; (11) Date and place of next meeting.

Attendance is open to the interested public but limited to space available. With the approval of the Chairman, members of the public may present oral statements at the meeting. Persons

wishing to present statements or obtain information should contact the RTCA Secretariat, One McPherson Square, 1425 K Street, NW., Suite 500, Washington, DC 20005; (202) 682-0266. Any member of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on December 24, 1987.

Herbert P. Goldstein,

Designated Officer.

[FR Doc. 88-750 Filed 1-14-88; 8:45 am]

BILLING CODE 4910-13-M

Research and Special Programs Administration

[Appeal of Inconsistency Ruling No. IR-21; Docket No. IRA-38]

Connecticut Statute and Regulations Governing Transportation of Radioactive Materials; Invitation To Comment on Appeal of IR-21

AGENCY: Research and Special Programs Administration, DOT.

ACTION: Public notice and invitation to comment.

SUMMARY: The State of Connecticut has appealed to the Administrator of the Research and Special Programs Administration (RSPA) the September 28, 1987 decision of the Director, Office of Hazardous Materials Transportation (IR-21; 52 FR 37072, October 2, 1987), finding Connecticut's statutory and regulatory permitting system for the transportation of certain radioactive materials inconsistent with the Hazardous Materials Transportation Act (HMTA) and the Hazardous Materials Regulations (HMR) adopted thereunder. Comments are invited on the merits of the appeal.

DATES: Comments received on or before February 29, 1988 and rebuttal comments received on or before April 14, 1988 will be considered before an administrative ruling is issued by the Administrator. Rebuttal comments may discuss only those issues raised by comments received during the initial comment period and may not discuss new issues.

ADDRESSES: The appeal and any comments received may be reviewed in the Dockets Unit, Research and Special Programs Administration, Room 8426, Nassif Building, 400 Seventh Street SW., Washington, DC. Comments and rebuttal comments must be submitted to the Dockets Unit at the above address and include the Docket Number IRA-38. Three copies are requested. A copy of each comment and rebuttal comment must also be sent to Mr. Lindsey Audin, Technical Director, Citizens Against Nuclear Trucking, 1 Everett Avenue, Ossining, NY 10562, and to Hon. Joseph I. Lieberman, Attorney General, State of Connecticut, 30 Trinity Street, Hartford, CT 06106 ATTN: Assistant Attorney General Cornelius F. Tuohy

Each comment and rebuttal comment submitted to the Dockets Unit must certify that copies were sent to the above-named individuals. (The following format is suggested: "I hereby certify that copies of this comment have been sent to Messrs. Audin and Lieberman at the addresses specified in the Federal Register.")

FOR FURTHER INFORMATION CONTACT: Mary M. Crouter, Office of the Chief Counsel, Research and Special Programs Administration, 400 Seventh Street SW., Washington, DC 20590, telephone 202-366-4400.

SUPPLEMENTARY INFORMATION:

1. Background

The HMTA at section 112(a) (49 App. U.S.C. 1811(a)) expressly preempts any requirement of a State or political subdivision thereof which is inconsistent with any requirement of the HMTA or the HMR. Section 107.209(c) of Title 49, CFR, sets forth the following factors which are considered in determining whether a State or political subdivision requirement is inconsistent: (1) Whether compliance with both the State or political subdivision requirement and the HMTA or HMR is possible; and (2) the extent to which the State or political subdivision requirement is an obstacle to the accomplishment and execution of the HMTA and the HMR.

On July 16, 1986, Citizens Against Nuclear Trucking (CANT) filed an application for an administrative ruling seeking a determination that certain portions of Connecticut General Statutes (CGS) sections 16a-106 (a) and (b) and Connecticut Regulations sections 19-409d-51, 53, 54, and 55 regulating the transport from, into and through Connecticut of certain radioactive materials are inconsistent with the HMTA and the HMR. These statutory and regulatory provisions contain notice, routing, permit, information, documentation and time requirements.

2. The Inconsistency Ruling (IR-21)

On September 28, 1987, the Director, Office of Hazardous Materials Transportation (OHMT) issued Inconsistency Ruling 21 (IR-21), which was published at 52 FR 37072 on October 2, 1987. The Director determined that the Connecticut permitting system for transportation of certain radioactive materials is inconsistent with the HMTA and the HMR, and the ruling therefore preempted Connecticut General Statutes Sections 16a-106 (a) and (b) and Connecticut Regulations sections 19-409d-51, 53, 54 and 55. In reaching that decision, the Director made the following findings:

(1) Citizens Against Nuclear Trucking (CANT) has standing to apply for an inconsistency ruling.

OHMT encourages use of its administrative inconsistency ruling process to resolve preemption issues under the HMTA in as expeditious and inexpensive a manner as possible. Thus, OHMT applies a broad interpretation of the "person affected" standard in inconsistency proceedings. In any event, 49 CFR 107.209(b) authorizes the Director, OHMT, to issue inconsistency rulings *sua sponte*.

(2) The Connecticut permitting system constitutes an unauthorized prior restraint on shipments that are presumptively safe based on their compliance with Federal regulations.

State or local provisions requiring approval or authorizing conditions to be established for the transportation of radioactive materials (other than compliance with Federal regulations), such as Connecticut's permit requirement, are inconsistent with the HMTA and the HMR.

(3) Connecticut's permitting system contains burdensome time of application requirements and time of transport restrictions which are likely to cause delays in radioactive materials transportation.

Connecticut's two-hour advance notice requirement, and its prohibition on applications more than one working day in advance of each scheduled shipment, combined with the statutory provision for three or more days to act on the application, tend to ensure delays. In addition, Connecticut's statewide time restrictions on radioactive materials transportation tend to redirect and delay hazardous materials transportation.

3. The Appeal of IR-21

On October 29, 1987, the State of Connecticut filed an appeal of IR-21 with the Research and Special Programs Administration. The State filed a brief in support of its appeal by letter dated December 21, 1987. Connecticut argues that: (1) Its regulatory scheme is not an obstacle to the accomplishment of the HMTA, and (2) the undisputed facts in the case show that the regulations have not interfered with either the intrastate

or interstate transportation of radioactive materials. Connecticut asserts, therefore, that IR-21 is contrary to the facts and law and should be reversed.

4. Public Comment

Comments should be restricted to the issue of whether the challenged Connecticut permitting system is inconsistent with the HMTA or the regulations issued thereunder. Persons intending to comment should examine the complete appeal documents in the RSPA Dockets Branch and the procedures governing the Department's consideration of applications for inconsistency rulings (49 CFR 107.201-107.211).

Issued in Washington, DC on January 11, 1988.

Alan I. Roberts,

Director, Office of Hazardous Materials Transportation.

[FR Doc. 88-745 Filed 1-14-88; 8:45 am]

BILLING CODE 4910-60-M

Applications for Renewal or Modification of Exemptions or Applications To Become a Party to an Exemption

AGENCY: Research and Special Programs Administration, DOT.

ACTION: List of applications for renewal or modification of exemptions or application to become a party to an exemption.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, exemptions from the Department of Transportation's Hazardous Materials Regulations (49 CFR Part 107, Subpart B), notice is hereby given that the Office of Hazardous Materials Transportation has received the applications described herein. This notice is abbreviated to expedite docketing and public notice. Because the sections affected, modes of transportation, and the nature of application have been shown in earlier **Federal Register** publications, they are not repeated here. Except as otherwise noted, renewal applications are for extension of the exemption terms only. Where changes are requested (e.g. to provide for additional hazardous materials, packaging design changes, additional mode of transportation, etc.) they are described in footnotes to the application number. Application numbers with the suffix "X" denote renewal; application numbers with the suffix "P" denote party to. These applications have been separated from the new applications for exemptions to facilitate processing.

DATES: Comment period closes February 2, 1988.

ADDRESS COMMENTS TO: Dockets Branch, Research and Special Programs Administration, U.S. Department of Transportation, Washington, DC 20590.

Comments should refer to the application number and be submitted in triplicate.

FOR FURTHER INFORMATION: Copies of the applications are available for inspection in the Dockets Branch, Room 8426, Nassif Building, 400 7th Street SW. Washington, DC.

Application No.	Applicant	Renewal of exemption
1479-X..	Allied-Signal Inc., Morristown, NJ.	1479
3563-X..	U.S. Department of Energy, Washington, DC.	3563
3941-X..	Kerr-McGee Chemical Corp., Oklahoma City, OK.	3941
3996-X..	Stauffer Chemical Co., Westport, CT.	3996
4052-X..	Boeing Aerospace Co., Seattle, WA.	4052
4453-X..	Independent Explosives Co., of Pennsylvania, Scranton, PA.	4453
4850-X..	Owen Oil Tools, Inc., Fort Worth, TX.	4850
5643-X..	Union Carbide Corp., Danbury, CT.	5643
5704-X..	Trojan Corp., Salt Lake City, UT.	5704
5891-X..	U.S. Department of Energy, Washington, DC.	5891
6309-X..	Olin Corp., Stamford, CT ..	6309
6325-X..	Mining Services International Corp., Salt Lake City, UT.	6325
6484-X..	Angus Chemical Co., Northbrook, IL.	6484
6517-X..	Coyne Cylinder Co., Huntsville, AL.	6517
6530-X..	Brown Welding Supply, Inc., Salina, KS.	6530
6530-X..	Acme Welding Supply Co., Inc., Bismarck, ND.	6530
6563-X..	S.L.O. Health Products, Inc., Los Oso, CA.	6563
6611-X..	L'Air Liquide Corp., Le Blanc-Mesnil, France.	6611
6611-X..	Air Products and Chemicals, Inc., Allentown, PA.	6611
6637-X..	Russell-Stanley Corp., Rancho Cucamonga, CA.	6637
6691-X..	Union Carbide Corp., Danbury, CT.	6691
6746-X..	Firestone Tire and Rubber Co., Akron, OH.	6746
6765-X..	Airco Industrial Gases, Murray Hill, NJ.	6765
6787-X..	Russell-Stanley Corp., Rancho Cucamonga, CA.	6787
6921-X..	Airco Industrial Gases, Murray Hill, NJ.	6921
6985-X..	U.S. Department of Energy, Washington, DC.	6985
7011-X..	Russell-Stanley Corp., Rancho Cucamonga, CA.	7011
7052-X..	FABRIKA Ni-Cd BATERIJA "TREPCA", Gnjilane, Yugoslavia.	7052
7052-X..	Aluminum Co., of America, Pittsburgh, PA.	7052
7052-X..	Tadiran Ltd., Industries, Inc., Rehovot, Israel.	7052
7052-X..	Tadiran Electronic Industries, Inc., Woodland Hills, CA.	7052
7052-X..	U.S. Department of Energy, Washington, DC.	7052
7052-X..	Rayovac Corp., Madison, WI.	7052
7052-X..	Syntron, Inc., Houston, TX.	7052
7052-X..	Exploration Logging, Inc., Sacramento, CA.	7052
7052-X..	Datasonics, Inc., Cataumet, MA.	7052
7052-X..	Panasonic Industrial Co., Secaucus, NJ.	7052
7052-X..	Matsushita Battery Industrial Co., Osaka, Japan.	7052
7594-X..	Bromine Compounds, Limited, Beer Sheva, Israel.	7594
7598-X..	United Technologies Corp., Pratt & Whitney Mfg., East Hartford, CT.	7598
7654-X..	Mallinckrodt, Inc., Paris, KY.	7654
7731-X..	Minnesota Valley Engineering, Inc., New Prague, MN.	7731
7737-X..	Parker Hannifin Corp., Eastlake, OH.	7737
7770-X..	Arbel-Fauvet-Girel, Paris, France.	7770
7803-X..	Plastican, Inc., Leominster, MA.	7803
7811-X..	EM Science, Cincinnati, OH.	7811
7811-X..	J.T. Baker Chemical Co., Phillipsburg, NJ.	7811
7876-X..	J.T. Baker Chemical Co., Phillipsburg, NY.	7876

Application No.	Applicant	Renewal of exemption
7928-X..	Alaska Marine Highway System, State of Alaska, Juneau, AK.	7928
7954-X..	Air Products and Chemicals, Inc., Allentown, PA.	7954
7972-X..	E.I. du Pont de Nemours & Co., Inc., Wilmington, DE.	7972
7991-X..	Union Pacific Railroad Co., Omaha, NE.	7991
8006-X..	Strombecker Corp., Chicago, IL.	8006
8074-X..	Airco, The BOC Group, Inc., Murray Hill, NJ.	8074
8156-X..	Scott Environmental Technology Inc., Plumsteadville, PA.	8156
8156-X..	Cryogenic Rare Gas Laboratories, Inc., Hanahan, SC.	8156
8230-X..	G. Frederick Smith Chemical Co., Columbus, OH.	8230
8352-X..	Degussa Corp., Teterboro, NJ.	8352
8390-X..	Olin Hunt Speciality Products, Inc., West Paterson, NJ.	8390
8390-X..	Hi Pure Chemicals, Inc., Nazareth, PA.	8390
8390-X..	Image Technology, Tempe, AZ.	8390
8390-X..	Texas Instruments, Inc., Dallas, TX.	8390
8391-X..	EFI Corporation, d/b/a EFIC, San Jose, CA.	8391
8396-X..	Catalyst Resources, Inc., Elyria, OH.	8396
8409-X..	EM Science, Cincinnati, OH.	8409
8410-X..	EM Science, Cincinnati, OH.	8410
8414-X..	Arbel-Fauvet-Girel, Paris, France.	8414
8426-X..	C.K.C., Inc., Paso Robles, CA.	8426
8445-X..	Kerr-McGee Chemical Corp., Oklahoma City, OK.	8445
8445-X..	SET Liquid Waste Systems, Inc., Wheeling, IL.	8445
8450-X..	LTV Aerospace and Defense Co., Dallas, TX.	8450
8526-X..	North Star Transport, Inc., St. Paul, MN.	8526
8627-X..	Exxon Chemical Americas, Houston, TX.	8627
8843-X..	Owen Oil Tools, Inc., Fort Worth, TX.	8843
8870-X..	EM Science, Cincinnati, OH.	8870
8871-X..	Chase Bag Co., Greenwich, CT.	8871
8976-X..	Henkel Corp., Morristown, NJ.	8976
9118-X..	ICI Americas, Inc., Wilmington, DE.	9118
9134-X..	I.S.C., Limited, Avonmouth, Bristol, England.	9134
9145-X..	Exxon Pipeline Co., Houston, TX.	9145
9146-X..	Biefa-Felser GmbH, Postfach, West Germany.	9146
9157-X..	Air Products and Chemicals, Inc., Allentown, PA.	9157
9168-X..	All-Pak, Inc., Pittsburgh, PA.	9168
9181-X..	U.S. Department of Energy, Washington, DC.	9181
9262-X..	Jet Research Center, Inc., Arlington, TX.	9262
9281-X..	Jet Research Center, Inc., Arlington, TX.	9281
9514-X..	Control Data Corp., Minneapolis, MN.	9514
9577-X..	Altus Corp., San Jose, CA (see footnote [1]).	9577
9578-X..	Hughes Aircraft Co., Miami, FL.	9578
9770-X..	AMSPEC Chemical Corp., Gloucester City, NJ (see footnote [2]).	9770

[1] To authorize shipment of batteries containing lithium metal, thionyl chloride and by-products in discharged and depleted states.
[2] To authorize the round-trip shipment of sodium methylate, classed as flammable solid, in reusable DOT Specification 17H drums to an additional location in Newport, DE.

Application No.	Applicant	Parties to exemption
3569-P	NL Petroleum Services, Inc., Houston, TX.	3569
5600-P	Air Products and Chemicals, Inc., Allentown, PA.	5600
7052-P	Penwood, Inc., Fort Worth, TX	7052
7616-P	Norfolk Southern Corp. and Subsidiaries, Norfolk, VA.	7616
8035-P	NL Petroleum Services, Inc., Houston, TX.	8035
8196-P	Compagnie des Containers Reservoirs, Paris, France.	8196
8232-P	Compagnie des Containers Reservoirs, Paris, France.	8232
8426-P	Paramount Tank, Inc., Paramount, CA.	8426
8451-P	IRECO Inc., Salt Lake City, Ut	8451
8451-P	Reynolds Industries Systems, Inc., San Ramon, CA.	8451
8845-P	NL Petroleum Services, Inc., Houston, TX.	8845
8845-P	Penwood, Inc., Fort Worth, TX	8845
8845-P	Wedge CRC, Inc., Arlington, TX	8845
8915-P	Liquid Air Corp., Walnut Creek, CA	8915
8971-P	NL Petroleum Services, Inc., Houston, TX.	8971
8978-P	SAFT America, Inc., Cockeysville, MD.	8978
9262-P	NL Petroleum Services, Inc., Houston, TX.	9262
9266-P	Compagnie des Containers Reservoirs, Paris, France.	9266
9275-P	Scentura Creations, Atlanta, GA	9275
9507-P	Liquid Air Corp., Walnut Creek, CA	9507
9708-P	Metals Selling Corp., Putnam, CT	9708
9732-P	Wedge CRC, Inc., Arlington, TX	9732
9785-P	Degussa Corp., Teterboro, NJ	9785

This notice of receipt of applications for renewal of exemptions and for party to an exemption is published in accordance with section 107 of the Hazardous Materials Transportations Act (49 U.S.C. 1806; 49 CFR 1.53(e)).

Issued in Washington, DC, on January 6, 1988.

J. Suzanne Hedgepeth,

Chief, Exemptions Branch, Office of Hazardous Materials Transportation.

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Grants and Denials of Applications for Exemptions; Pennwalt Corp., et al

AGENCY: Research and Special Programs Administration, D.O.T.

ACTION: Notice of grants and denials of applications for exemptions.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, exemptions from the Department of Transportation's Hazardous Materials Regulations (49 CFR Part 107, Subpart B), notice is hereby given of the exemptions granted in October 1987. The modes of transportation involved are identified by a number in the "Nature of Application" portion of the table below as follows: 1—Motor vehicle, 2—Rail freight, 3—Cargo vessel, 4—Cargo-only aircraft, 5—Passenger-carrying aircraft. Application numbers prefixed by the letters EE represent applications for Emergency Exemptions.

RENEWAL AND PARTY TO EXEMPTIONS

Application No.	Exemption No.	Applicant	Regulation(s) affected	Nature of exemption thereof
2913-X	DOT-E 2913	U.S. Department of Energy, Washington, DC.	49 CFR 172.101, 173.301(d)(1), 173.301(d)(2), 173.302(a)(1), 173.34(d), 175.3.	To authorize use of non-DOT specification metal cylinders, for transportation of certain nonliquefied compressed gases. (Modes 1, 4.)

RENEWAL AND PARTY TO EXEMPTIONS—Continued

Application No.	Exemption No.	Applicant	Regulation(s) affected	Nature of exemption thereof
3569-X	DOT-E 3569	NL McCullough/NL Industries, Inc., Houston, TX.	49 CFR 173.246, 172.101 Column 4, 175.3.	To authorize use of non-DOT specification nonrefillable cylinders, for transportation of a liquid oxidizer. (Modes 1, 2, 3, 4)
4354-X	DOT-E 4354	Pennwalt Corp., Buffalo, NY	49 CFR 173.119(m), 173.245, 173.288(d), 173.288(a).	To authorize shipment of chloroformates in DOT Specification 6D or 37M cylindrical steel overpack with an inside DOT Specification 2S, 2SL or 2T polyethylene container. (Modes 1, 2, 3.)
4453-P	DOT-E 4453	Mining Services International, Salt Lake City, UT.	49 CFR 172.101, 173.114a(h)(3), 176.415, 176.83.	To become a party To exemption 4453 (Modes 1, 3.)
4453-X	DOT-E 4453	Woodard Explosives, Inc., Albuquerque, NM.	49 CFR 172.101, 173.114a(h)(3), 176.415, 176.83.	To authorize use of a non-DOT specification bulk, hopper-type tank, for transportation of blasting agent, n.o.s., or ammonium nitrate-fuel oil mixtures. (Modes 1, 3)
4453-X	DOT-E 4453	Thermex Energy Corp., Dallas, TX	49 CFR 172.101, 173.114a(h)(3), 176.415, 176.83.	To authorize use of a non-DOT specification bulk, hopper-type tank, for transportation of blasting agent, n.o.s., or ammonium nitrate-fuel oil mixtures. (Modes 1, 3.)
4932-X	DOT-E 4932	Federal Laboratories, Inc., Saltsburg, PA	49 CFR 172.101, 173.385(a), 175.3	To authorize shipment of tear gas devices in a telescopic type, cylindrical, wound-kraft container fitted with metal ends over-packed in DOT Specification 12B fiberboard box. (Modes 1, 2, 4.)
5600-P	DOT-E 5600	Athens Corp., Oceanside, CA	49 CFR 175.3, Part 173, Subparts D, F, G.	To become a party to exemption 5600 (Modes 1, 2, 4.)
6530-X	DOT-E 6530	Liquid Air Corp., Walnut Creek, CA	49 CFR 173.302(c)	To authorize shipment of hydrogen and mixtures of hydrogen with helium, argon or nitrogen in DOT Specification 3A, 3AA, 3AX or 3AAX steel cylinders. (Modes 1, 2.)
6530-X	DOT-E 6530	Scott Specialty Gases, Plumsteadville, PA	49 CFR 173.302(c)	To authorize shipment of hydrogen and mixtures of hydrogen with helium, argon or nitrogen in DOT Specification 3A, 3AA, 3AX or 3AAX steel cylinders. (Modes 1, 2.)
6530-P	DOT-E 6530	Amerigas, Inc., Elk Groove Village, IL	49 CFR 173.302(c)	To become a party to exemption 6530 (Modes 1, 2.)
6530-X	DOT-E 6530	Airco Industrial Gases, Murray Hill, NJ	49 CFR 173.302(c)	To authorize shipment of hydrogen and mixtures of hydrogen with helium, argon or nitrogen in DOT Specification 3A, 3AA, 3AX or 3AAX steel cylinders. (Modes 1, 2.)
6530-X	DOT-E 6530	Liquid Carbonic Corp., Chicago, IL	49 CFR 173.302(c)	To authorize shipment of hydrogen and mixtures of hydrogen with helium, argon or nitrogen in DOT Specification 3A, 3AA, 3AX or 3AAX steel cylinders. (Modes 1, 2.)
6530-X	DOT-E 6530	Air Products and Chemicals, Inc., Allentown, PA.	49 CFR 173.302(c)	To authorize shipment of hydrogen and mixtures of hydrogen with helium, argon or nitrogen in DOT Specification 3A, 3AA, 3AX or 3AAX steel cylinders. (Modes 1, 2.)
6657-X	DOT-E 6657	Liquid Air Corp., Walnut Creek, CA	49 CFR 173.34(e)(15)(i), 175.3	To authorize use of DOT Specification 3A or 3AA cylinders and cylinders marked ICC-3, 3A or 3AA having an age over 35 years for transportation of certain nonliquefied compressed gases. (Modes 1, 2, 3, 4, 5.)
6765-X	DOT-E 6765	Air Products and Chemicals, Inc., Allentown, PA.	49 CFR 173.318(a), 176.76(h)(4)	To authorize use of non-DOT specification containerized portable tanks, for transportation of a flammable and nonflammable gas. (Modes 1, 3.)
6765-X	DOT-E 6765	L'Air Liquide Corp., Le Blanc-Mesnil, France.	49 CFR 173.318(a), 176.76(h)(4)	To authorize use of non-DOT specification containerized portable tanks, for transportation of a flammable and nonflammable gas. (Modes 1, 3.)
6800-X	DOT-E 6800	Plasti-Drum Corp., Lockport, IL	49 CFR 173.266	To authorize manufacture, marking and sale of non-DOT specification 30- and 55-gallon polyethylene containers similar to DOT Specification 34, for shipment of certain flammable, corrosive, poison B liquids and hydrogen peroxide classed as an oxidizer. (Modes 1, 2, 3.)
6816-X	DOT-E 6816	McDonnell Douglas Astronautics Co., Saint Louis, MO.	49 CFR 173.53(p)	To authorize shipment of completely assembled liquid and solid fueled missiles in packaging prescribed in 173.57(a). (Modes 1, 2, 3.)
6861-X	DOT-E 6861	Teledyne McCormick Selph, Hollister, CA	49 CFR 173.65(a)	To authorize use of DOT Specification 21P fiber drums with DOT Specification 2SL or 2U polyethylene liners, for transportation of certain Class A explosives. (Mode 1.)
7205-X	DOT-E 7205	U.S. Department of Defense, Falls Church, VA.	49 CFR 46 CFR 146.29-99	To authorize use of a non-DOT specification cargo tank, for transportation of a flammable gas and a nonflammable gas. (Mode 3.)
7235-X	DOT-E 7235	Luxfer USA Limited, Riverside, CA	49 CFR 173.302(a)(1), 175.3	To authorize manufacture, marking and sale of non-DOT specification fiber reinforced plastric hoop wrapped cylinders, for transportation of certain nonflammable compressed gases. (Modes 1, 2, 3, 4, 5.)
7440-X	DOT-E 7440	Revlon Professional Products, Inc., Jacksonville, FL.	49 CFR 173.1200(a)(8)(ii)(A), 173.1200(a)(8)(ii)(E), 173.306(a)(3)(i), 173.306(a)(3)(v).	To authorize transport of a nonflammable gas, in non-DOT specification one-piece, impact-extrude, cylindrical, aluminum container. (Modes 1, 2, 3.)
7549-X	DOT-E 7549	Stauffer Chemical Co., Westport, CT	49 CFR 173.245a(a), 173.3a, 174.63(b), 178.245.	To authorize use of a non-DOT specification 316L stainless steel portable tank, for shipment of a certain corrosive material. (Modes 1, 2, 3.)
7594-X	DOT-E 7594	Bromine Compounds, Limited, Beer Sheva, Israel.	49 CFR 173.353	To authorize railroad as an additional mode of transportation. (Modes 1, 2, 3.)
7595-X	DOT-E 7595	American Cyanamid Co., Wayne, NJ	49 CFR 173.358, 173.359	To authorize transport of certain poison B liquids in DOT Specification MC-312 cargo tanks. (Mode 1.)
7607-X	DOT-E 7607	Baker/TSA, Inc., Coraopolis, PA	49 CFR 172.101, 175.3	To authorize shipment of hydrogen in certain non-DOT specification seamless stainless steel cylinders. (Mode 5.)
7607-P	DOT-E 7607	NUS Corp., Tucker, GA	49 CFR 172.101, 175.3	To become a party to exemption 7607. (Mode 5.)
7607-P	DOT-E 7607	Smith & Denison, Inc., Hayward, CA	49 CFR 172.101, 175.3	To become a party to exemption 7607. (Mode 5.)
7638-X	DOT-E 7638	Minnesota Valley Engineering, Inc., New Prague, MN.	49 CFR 173.316(a), 175.3	To authorize manufacture, marking and sale of DOT Specification 4L cylinders for transportation of certain nonflammable compressed gases. (Modes 1, 2, 3, 4.)
7887-P	DOT-E 7887	Enertek, Inc., Phoenix, AZ	49 CFR 172.101, 173.111, 175.3, Part 107, Appendix B.	To become a party to exemption 7887. (Modes 1, 2, 3, 4, 5.)
7887-X	DOT-E 7887	Estes Industries, Inc., Penrose, CO	49 CFR 172.101, 173.111, 175.3, Part 107, Appendix B.	To authorize transport of certain toy propellant devices and igniters, in DOT Specification 15A, 15B, 16A or 19A wooden boxes, or DOT Specification 12B fiberboard boxes. (Modes 1, 2, 3, 4, 5.)
7887-X	DOT-E 7887	Centuri Engineering Co., Inc., Penrose, CO.	49 CFR 172.101, 173.111, 175.3, Part 107, Appendix B.	To authorize transport of certain toy propellant devices and igniters, in DOT Specification 15A, 15B, 16A or 19A wooden boxes, or DOT Specification 12B fiberboard boxes. (Modes 1, 2, 3, 4, 5.)
7887-X	DOT-E 7887	Flight Systems, Inc., Raytown, MO	49 CFR 172.101, 173.111, 175.3, Part 107, Appendix B.	To authorize transport of certain toy propellant devices and igniters, in DOT Specification 15A, 15B, 16A, or 19A wooden boxes, or DOT Specification 12B fiberboard boxes. (Modes 1, 2, 3, 4, 5.)

RENEWAL AND PARTY TO EXEMPTIONS—Continued

Application No.	Exemption No.	Applicant	Regulation(s) affected	Nature of exemption thereof
7887-X	DOT-E 7887	Flight Systems, Inc., Burns Flat, OK	49 CFR 172.101, 173.111, 175.3, Part 107, Appendix B.	To authorize transport of certain toy propellant devices and igniters, in DOT Specification 15A, 15B, 16A, or 19A wooden boxes, or DOT Specification 12B fiberboard boxes. (Modes 1, 2, 3, 4, 5.)
7887-X	DOT-E 7887	Crown Rocket Technology, Mountlake Terrace, WA.	49 CFR 172.101, 173.111, 175.3, Part 107, Appendix B.	To authorize transport of certain toy propellant devices and igniters, in DOT Specification 15A, 15B, 16A, or 19A wooden boxes, or DOT Specification 12B fiberboard boxes. (Modes 1, 2, 3, 4, 5.)
7887-X	DOT-E 7887	Aero Technology Co., Las Vegas, NV	49 CFR 172.101, 173.111, 175.3, Part 107, Appendix B.	To authorize transport of certain toy propellant devices and igniters, in DOT Specification 15A, 15B, 16A, or 19A wooden boxes, or DOT Specification 12B fiberboard boxes. (Modes 1, 2, 3, 4, 5.)
7887-X	DOT-E 7887	Model Rectifier Corp., Edison, NJ	49 CFR 172.101, 173.111, 175.3, Part 107, Appendix B.	To authorize transport of certain toy propellant devices and igniters, in DOT Specification 15A, 15B, 16A, or 19A wooden boxes, or DOT Specification 12B fiberboard boxes. (Modes 1, 2, 3, 4, 5.)
7887-X	DOT-E 7887	Vulcan Systems, Inc., Colorado Springs, CO.	49 CFR 172.101, 173.111, 175.3, Part 107, Appendix B.	To authorize transport of certain toy propellant devices and igniters, in DOT Specification 15A, 15B, 16A, or 19A wooden boxes, or DOT Specification 12B fiberboard boxes. (Modes 1, 2, 3, 4, 5.)
8175-X	DOT-E 8175	Norac Company, Inc., Azusa, CA	49 CFR 173.157(a)(4), 178.224	To authorize shipment of benzoyl peroxide, wet, in a plastic lined DOT Specification 21C fiber drum, without an inside polyethylene container. (Mode 1.)
8180-X	DOT-E 8180	Dow Corning Corp., Midland, MI	49 CFR 173.119(m), 173.136(a)(3), 173.247(a)(7).	To authorize use of non-DOT specification steel drums for shipment of a corrosive material and a flammable liquid. (Modes 1, 2.)
8207-X	DOT-E 8207	Rexnord, Inc., Commerce City, CO	49 CFR 173.245(a)(17), 175.3, 178.131	To authorize shipment of certain corrosive liquids, n.o.s., in a one-quart tin can, placed in a molded polyethylene liner, overpacked in a modified 28 gauge, unlined DOT Specification 37A 2-gallon drum, also containing a non-hazardous resin mix. (Modes 1, 2, 3, 4.)
8230-X	DOT-E 8230	J. T. Baker Chemical Co., Phillipsburg, NJ	49 CFR 173.268(b)(6), 173.269(a)(4)	To authorize shipment of certain oxidizers, in non-DOT specification inside containers packed in DOT Specification 33A single bottle case. (Modes 1, 2, 3, 4.)
8264-X	DOT-E 8264	Hercules, Inc., Wilmington, DE	49 CFR 173.93	To authorize shipment of certain solid propellant explosives (Class B) and smokeless powders for small arms (flammable solids), in non-DOT specification fiber cans or tubes packed in fiberboard boxes. (Modes 1, 2.)
8265-X	DOT-E 8265	Hercules, Inc., Wilmington, DE	49 CFR 173.197a, 173.93, 177.838(g)	To authorize shipment of certain solid propellant explosives and smokeless powders for small arms in non-DOT specification fiber tubes packed in telescoping DOT Specification 12B fiberboard boxes, and certain smokeless powders for small arms in DOT-21C fiber drums packed in fiberboard boxes. (Modes 1, 2.)
8287-X	DOT-E 8287	Rohm and Haas Co., Philadelphia, PA	49 CFR 173.245(a)(16), 173.245(a)(26), 178.19-4(c), 178.35a-2(b).	To authorize shipment of a corrosive liquid in a DOT Specification 6D/2SL composite container or DOT Specification 34 drum equipped with a bung vent, or in a DOT Specification 12B fiberboard box with no more than four inside polyethylene bottles with vented closures. (Modes 1, 2, 3.)
8301-X	DOT-E 8301	Container Corporation of America, Wilmington, DE.	49 CFR 173.247, 173.295, 173.346, 173.359.	To authorize use of a 30-gallon capacity DOT Specification 34 polyethylene container, for shipment of certain flammable, corrosive and Poison B liquids, and liquid organic peroxides. (Modes 1, 2, 3.)
8348-X	DOT-E 8348	Frell, Inc., Corpus Christi, TX	49 CFR 173.119(a), 173.119(m), 173.245(a), 173.346(a), 178.340-7, 178.342-5, 178.343-5.	To authorize manufacture, marking and sale of non-DOT specification cargo tanks complying generally with DOT Specification MC-312 except for bottom outlet valve variation, for transportation of flammable or corrosive waste, liquids or semi-solids. (Mode 1.)
8377-X	DOT-E 8377	Teledyne McCormick Selph, Hollister, CA	49 CFR 172.101, 173.113, 175.3	To authorize transport of devices described as detonating fuzes, Class C explosives, in non-DOT specification fiberboard boxes packed in non-DOT specification strong wooden boxes. (Modes 1, 4.)
8390-P	DOT-E 8390	Olin Hunt Specialty Products, Inc., West Paterson, NJ.	49 CFR 173.272, 178.210, 178.24a	To become a party to exemption 8390. (Mode 1.)
8390-P	DOT-E 8390	Hi Pure Chemicals, Inc., Nazareth, PA	49 CFR 173.272, 178.210, 178.24a	To become a party to exemption 8390. (Mode 1.)
8390-P	DOT-E 8390	Image Technology, Tempe, AZ	49 CFR 173.272, 178.210, 178.24a	To become a party to exemption 8390. (Mode 1.)
8451-P	DOT-E 8451	Boeing Military Airplane Co., Wichita, KS	49 CFR 173.65, 173.86(e), 175.3	To become a party to exemption 8451. (Modes 1, 2, 4.)
8451-P	DOT-E 8451	Ford Aerospace and Communications Corp., Newport Beach, CA.	49 CFR 173.65, 173.86(e), 175.3	To become a party to exemption 8451. (Modes 1, 2, 4.)
8451-P	DOT-E 8451	New England Ordnance, Inc., Guild, NH	49 CFR 173.65, 173.86(e), 175.3	To become a party to exemption 8451. (Modes 1, 2, 4.)
8451-P	DOT-E 8451	LTV Missiles and Electronics Group, Dallas, TX.	49 CFR 173.65, 173.86(e), 175.3	To become a party to exemption 8451. (Modes 1, 2, 4.)
8451-P	DOT-E 8451	Atlantic Research Corp., Gainesville, VA	49 CFR 173.65, 173.86(e), 175.3	To become a party to exemption 8451. (Modes 1, 2, 4.)
8451-P	DOT-E 8451	Aerojet Solid Propulsion Co., Sacramento, CA.	49 CFR 173.65, 173.86(e), 175.3	To become a party to exemption 8451. (Modes 1, 2, 4.)
8453-X	DOT-E 8453	Nelson Brothers, Inc., Parrish, AL	49 CFR 173.114a	To authorize use of non-DOT specification cargo tanks and DOT Specification MC-306, MC-307, or MC-312 stainless steel cargo tanks, to transport blasting agent. (Mode 1.)
8453-X	DOT-E 8453	Pacific Powder Co., Tenino, WA	49 CFR 173.114a	To authorize use of non-DOT specification cargo tanks and DOT Specification MC-306, MC-307, or MC-312 stainless steel cargo tanks, to transport blasting agent. (Mode 1.)
8453-X	DOT-E 8453	Pacific Motor Transport, Inc., Tenino, WA	49 CFR 173.114a	To authorize use of non-DOT specification cargo tanks and DOT Specification MC-306, MC-307, or MC-312 stainless steel cargo tanks, to transport blasting agent. (Mode 1.)
8453-X	DOT-E 8453	Pacco, Inc., Tenino, WA	49 CFR 173.114a	To authorize use of non-DOT specification cargo tanks and DOT Specification MC-306, MC-307, or MC-312 stainless steel cargo tanks, to transport blasting agent. (Mode 1.)
8516-X	DOT-E 8516	Atlas Powder International, Limited, Pearlington, MS.	49 CFR 176.83(b)	To authorize stowage of certain oxidizers and blasting agents in the same hold, compartment or freight container. (Mode 3.)
8518-P	DOT-E 8518	Pacific Construction & Maintenance, Inc., Ventura, CA.	49 CFR 173.119(a), (m), 173.245(a), 173.346(a), 178.340-7, 178.342-5, 178.343-5.	To become a party to exemption 8518. (Mode 1.)
8554-P	DOT-E 8554	Luckey Trucking, Inc., Streator, IL	49 CFR 173.114a, 173.154, 173.93, 178.341-5, 178.342-5, 178.343-5.	To become a party to exemption 8554. (Mode 1.)
8556-X	DOT-E 8556	L'Air Liquide, Le Blanc-Mesnil, France	49 CFR 173.318(a), 176.76(h)(4)	To authorize use of non-DOT specification containerized portable tanks insulated with vacuum plus liquid nitrogen shield, for transportation of a flammable and nonflammable gas. (Modes 1, 3.)

RENEWAL AND PARTY TO EXEMPTIONS—Continued

Application No.	Exemption No.	Applicant	Regulation(s) affected	Nature of exemption thereof
8579-X	DOT-E 8579	E. I. du Pont de Nemours & Company, Inc., Wilmington, DE.	49 CFR 176.410(d)	To authorize shipment of ammonium nitrate fertilizer in multiple-wall paper bags or plastic bags stacked on wooden pallets aboard cargo vessel exempt from spacing criteria. (Mode 3.)
8582-X	DOT-E 8582	Consolidated Rail Corp., Philadelphia, PA	49 CFR Parts 100-177	To authorize transportation of railway track torpedoes and fusees packed in metal kits, in motor vehicles by railroad maintenance crews as non-regulated rail carrier equipment. (Mode 1.)
8650-X	DOT-E 8650	Ethyl Corp., Baton Rouge, LA	49 CFR 173.354, 174.63(b)	To authorize use of a non-DOT specification steel portable tank for shipment of motor fuel antiknock compound. (Modes 1, 2, 3.)
8716-X	DOT-E 8716	GTE Products Corp., Waltham, MA	49 CFR 173.28(m)	To authorize multi-trip use of DOT Specification 17C steel drums, for transportation of lithium metal, ingots, immersed in neutral oil. (Mode 1.)
8716-X	DOT-E 8716	Foote Mineral Co., Exton, PA	49 CFR 173.28(m)	To authorize multi-trip use of DOT Specification 17C steel drums, for transportation of lithium metal, ingots, immersed in neutral oil. (Mode 1.)
8720-X	DOT-E 8720	Applied Companies, San Fernando, CA	49 CFR 173.302(a), 175.3	To authorize manufacture, marking and sale of non-DOT specification welded high pressure non-refillable cylinders, for shipment of nonflammable and nonliquefied gases. (Modes 1, 2, 4.)
8723-P	DOT-E 8723	ECONEX Inc. Wheaton, IL	49 CFR 172.101, 173.114a(h)(3), 176.415, 176.83.	To become a party to exemption 8723 (Modes 1, 3.)
8732-X	DOT-E 8732	Dow Chemical U.S.A., Midland, MI	49 CFR 173.245	To authorize use of a DOT Specification MC-303 and MC-306 cargo tanks, made of aluminum or steel for transportation of a corrosive material. (Mode 1.)
8732-X	DOT-E 8732	Delta Distributors, Inc., Longview, TX	49 CFR 173.245	To authorize use of a DOT Specification MC-303 and MC-306 cargo tanks, made of aluminum or steel for transportation of a corrosive material. (Mode 1.)
8732-X	DOT-E 8732	Chemcentral, Inc., Chicago, IL	49 CFR 173.245	To authorize use of a DOT Specification MC-303 and MC-306 cargo tanks, made of aluminum or steel for transportation of a corrosive material. (Mode 1.)
8908-P	DOT-E 8908	M & T Chemicals Inc., Rahway, NJ	49 CFR 173.164	To become a party to exemption 8908. (Mode 1.)
8958-P	DOT-E 8958	De La Mare Engineering, Inc., San Fernando, CA.	49 CFR 172.101, 173.60	To become a party to exemption 8958. (Modes 1, 2.)
8960-X	DOT-E 8960	Sunshine Aero Industries, Inc., Crestview, FL.	49 CFR 172.101, 172.204(c)(3), 173.27, 175.30(a)(1), 175.320(b), Part 107, Appendix B.	To authorize carriage of certain Class A, B and C explosives that are not permitted for shipment by air, or are in quantities greater than those prescribed for shipment by air. (Mode 4.)
8995-X	DOT-E 8995	Foam Supplies, Inc., Olivette, MO	49 CFR 173.315(a)(1), 173.346, 174.63(b).	To authorize use of non-DOT specification steel portable tanks, for transportation of certain nonpoisonous, nonflammable compressed gases, and a class B poisonous liquid. (Modes 1, 2.)
9015-X	DOT-E 9015	Monsanto Co., St. Louis, MO	49 CFR 173.217	To authorize shipment of certain dry oxidizers in collapsible, polyethylene-lined, woven polypropylene bags having a capacity of not more than 2000 pounds (40 cubic feet) each. (Modes 1, 2, 3.)
9016-X	DOT-E 9016	Van Leer Verpackungen GmbH, Hamburg, West Germany.	49 CFR 173.127, 173.175, 173.184, 178.224.	To authorize manufacture, marking and sale of a non-DOT specification fiber drum not to exceed 200 liter capacity, for shipment of certain flammable liquids and flammable solids. (Modes 1, 2, 3.)
9066-X	DOT-E 9066	Bayern-Chemie GMBH	49 CFR 173.154, 175.3	To authorize an additional airbag gas generator containing a flammable solid, n.o.s. (Modes 1, 2, 3, 4.)
9066-X	DOT-E 9066	Porsche Cars North America, Inc., Reno, NV.	49 CFR 173.154, 175.3	To authorize two alternative packaging configurations, DOT Specification 12B30 fiberboard boxes, for shipment of airbag gas generators, classed as flammable solids. (Modes 1, 2, 3, 4.)
9066-X	DOT-E 9066	Volvo Cars of North America, Rockleigh, NJ.	49 CFR 173.154, 175.3	To authorize transport of an airbag gas generator as flammable solid, in a box constructed of single wall corrugated fiberboard with an inside styropor container insert for shock absorption, or DOT Specification 12B fiberboard box. (Modes 1, 2, 3, 4.)
9066-P	DOT-E 9066	Mercedes-Benz of North America, Inc., Montvale, NJ.	49 CFR 173.154, 175.3	To become a party to exemption 9066 (Modes 1, 2, 3, 4.)
9066-X	DOT-E 9066	Porsche Cars North America, Inc., Reno, NV.	49 CFR 173.154, 175.3	To authorize transport of an airbag gas generator as flammable solid, in a box constructed of single wall corrugated fiberboard with an inside styropor container insert for shock absorption, or DOT Specification 12B fiberboard box. (Modes 1, 2, 3, 4.)
9066-X	DOT-E 9066	Bayern-Chemie GmbH., Aschau, West Germany.	49 CFR 173.154, 175.3	To authorize transport of an airbag gas generator as flammable solid, in a box constructed of single wall corrugated fiberboard with an inside styropor container insert for shock absorption, or DOT Specification 12B fiberboard box. (Modes 1, 2, 3, 4.)
9082-X	DOT-E 9082	Rhone-Poulenc, Inc., Monmouth Junction, NJ.	49 CFR 173.365	To authorize shipment of a carbamate pesticide in collapsible, woven polypropylene bags having a capacity not exceeding 2200 pounds each. (Modes 1, 3.)
9130-P	DOT-E 9130	Applied Biochemists, Inc., Mequon, WI	49 CFR 173.154	To become a party to exemption 9130. (Modes 1, 2.)
9130-P	DOT-E 9130	Great Lakes Chemical Corp., El Dorado, AR.	49 CFR 173.154	To become a party to exemption 9130. (Modes 1, 2.)
9158-X	DOT-E 9158	General Ceramics, Inc., Haskell, NJ	49 CFR 173.365	To authorize shipment of solid waste materials contaminated with beryllium oxide, in a non-DOT specification roll-on, roll-off, bulk container. (Modes 1.)
9169-X	DOT-E 9169	Pacific Smelting Co., Torrance, CA	49 CFR 173.154	To authorize transport of a water reactive material in vented freight shipping containers. (Modes 1,a 3.)
9254-X	DOT-E 9254	Speer Products, Inc., Memphis, TN	49 CFR 173.304, 175.3, 178.33a	To authorize shipment of insecticides and liquefied gas mixtures in inside nonrefillable aluminum containers comparable to DOT Specification 2Q, with integral pressure relief system. (Modes 1, 2, 3, 4.)
9275-P	DOT-E 9275	Shaklee Corp., San Francisco, CA	49 CFR Parts 100-199	To become a party to exemption 9275. (Modes 1, 2, 3, 4, 5.)
9330-X	DOT-E 9330	MarkAir, Inc., Anchorage, AK	49 CFR 172.101 Column 6, 173.315, 175.30.	To authorize use of non-DOT specification portable tank of 1,000 to 2,200 gallon capacity, for transportation of nitrogen refrigerated liquid. (Modes 4.)
9352-X	DOT-E 9352	Maloney Pipeline Systems, Inc., Houston, TX.	49 CFR 173.119, 173.304, 173.315	To authorize manufacture, marking and sale of a non-DOT specification container described as mechanical displacement meter provers mounted on a truck chassis or trailer, for transportation of flammable liquids and flammable gases. (Modes 1.)
9355-X	DOT-E 9355	Black & Decker Corp., Hampstead, MD	49 CFR Parts 100-177	To authorize transport of a limited number of certain lithium batteries on passenger carrying aircraft. (Modes 1, 2, 3, 4, 5.)
9466-X	DOT-E 9466	Rhone-Poulenc, Inc., Monmouth Junction, NJ.	49 CFR 173.365(a)(6)	To authorize shipment of carbamate pesticide, solid, n.o.s., classed as a poison B in paper bags similar to DOT Specification 2D, overpacked in DOT Specification 12C fiberboard box. (Modes 1, 2, 3.)

RENEWAL AND PARTY TO EXEMPTIONS—Continued

Application No.	Exemption No.	Applicant	Regulation(s) affected	Nature of exemption thereof
9485-X	DOT-E 9485	Chem-Tech, Limited, Des Moines, IA	49 CFR 173.304	To authorize transport of an insecticide, liquefied gas mixture in DOT Specification 4BA260 cylinders. (Modes 1, 2, 3.)
9485-X	DOT-E 9485	Kaw Valley, Inc., Leavenworth, KS	49 CFR 173.304	To authorize transport of an insecticide, liquefied gas mixture in DOT Specification 4BA260 cylinders. (Modes 1, 2, 3.)
9498-P	DOT-E 9498	C-I-L Inc., North York, Ontario, Cana	49 CFR 173.367, 173.370	To become a party to exemption 9498 (Modes 1, 2, 3.)
9498-X	DOT-E 9498	E. I. du Pont de Nemours & Company, Inc., Wilmington, DE.	49 CFR 173.367, 173.370	To authorize shipment of potassium cyanide, solid, and sodium cyanide, solid, in collapsible, water-tight, polyethylene-lined, woven polypropylene bag, each having a capacity not exceeding 2,205 pounds each. (Modes 1, 2, 3.)
9505-X	DOT-E 9505	Norac Company, Inc., Azusa, CA	49 CFR 173.157	To authorize transport of wet benzoyl peroxide in polyethylene containers, packed in DOT Specification 12B fiberboard boxes. (Modes 1.)
9506-X	DOT-E 9506	Akzo Chemie America Armak Chemicals, Chicago, IL.	49 CFR 173.119(m), 173.242	To authorize transport of flammable liquids and corrosive liquids in the same outside packagings when the corrosive liquids are not in metal cans, packed in DOT Specification 12B fiberboard boxes. (Mode 1.)
9512-X	DOT-E 9512	Bryson Industrial Services, Inc., Lexington, SC.	49 CFR 173.119(a), (m), 173.245(a), 178.346(a), 178.342-5, 178.343-5.	To authorize use of non-DOT specification cargo tanks complying with DOT Specification MC-307/312 except bottom outlet and each bottom inlet must be equipped with an additional shut-off valve, blank flange or a sealing cap, for shipment of liquid and semi-solid waste material. (Mode 1.)
9536-X	DOT-E 9536	Transway Systems, Inc., Stoney Creek, Ont. Canada.	49 CFR 173.119(a) (m), 173.245(a), 173.346(a), 178.340-7, 178.342-5, 178.343-5.	To authorize manufacture, marking and sale of non-DOT specification cargo tank, patterned afater the MC-307 or MC-312 specifications with certain exceptions, for transportation of certain hazardous materials. (Mode 1.)
9549-P	DOT-E 9549	Owen Oil Tools, Inc., Fort Worth, TX	49 CFR 173.100(v), 175.30	To become a party to exemption 9549 (Modes 1, 3, 4.)
9654-P	DOT-E 9654	Degussa Corp. Teterboro, NJ	49 CFR 173.266(a) (2), 178.109-6	To become a party to exemption 9654 (Modes 1, 2, 3.)
9681-P	DOT-E 9681	ICI Americas Inc., Bryon, GA	49 CFR 173.65	To become a party to exemption 9681 (Modes 1, 3, 4.)
9711-X	DOT-E 9711	Konica USA, Inc./Konica Business Machine USA, Inc., Englewood Cliff, NJ.	49 CFR 173.245(a) (12), 175.3	To authorize rail and air shipments of a corrosive material in a polyethylene bag, packed inside a corrugated fiberboard carton then a maximum of two cartons overpacked in a DOT Specification 12B box. (Modes 1, 2, 4.)
9742-P	DOT-E 9742	Bromine Compounds Ltd., Beer-Sheva, Israel.	49 CFR 173.353, 178.245	To become a party to exemption 9742 (Modes 1, 2, 3.)
9748-X	DOT-E 9748	Grief Bros. Corp., Springfield, NJ	49 CFR 178.224, Part 173	To authorize water as an additional mode of transportation. (Modes 1, 2, 3.)

NEW EXEMPTIONS

Application No.	Exemption No.	Applicant	Regulation(s) affected	Nature of exemption thereof
9766-N	DOT-E 9766	Hercules, Inc., Wilmington, DE	49 CFR 173.92	To authorize use of non-DOT specification fiber drums containing not more than 9 TOW M114 Rocket Motors. (Mode 1.)
9769-N	DOT-E 9769	Rollins Environmental Services (FS), Inc. Wilmington, DE.	49 CFR 176.83, 1,77.848	To authorize use of lab-packs for transportation by vessel, partially exempts lab-packs from segregation requirements. (Modes 1, and 3.)
9802-N	DOT-E 9802	McNeely Charter Service, Inc., Earle, AR	49 CFR 172.101, 172.204(c)(3), 173.27, 175.30(a)(1), 175.320(b), Part 107, Appendix B.	To authorize carriage of certain Class A, B and C explosives that are not permitted for shipment by air, or are in quantities greater than those prescribed for shipment by air. (Mode 4.)
9803-N	DOT-E 9803	Transcon Transport, Inc., Smithville, TN	49 CFR 172.101, 172.204(c)(3), 173.27, 175.30(a)(1), 175.320(b), Part 107, Appendix B.	To authorize carriage of certain Class A, B and C explosives that are not permitted for shipment by air, or are in quantities greater than those prescribed for shipment by air. (Mode 4.)
9809-N	DOT-E 9809	Texas-New Mexico Pipe Line Company, San Angelo, TX.	49 CFR 173.119	To authorize use of a non-DOT specification container described as a mechanical displacement meter prover mounted on a truck, for transportation of flammable liquids. (Mode 1.)
9818-N	DOT-E 9818	Olin Corp., Stamford, CT	49 CFR 173.31(c), Retest Table 1, Note a.	To authorize use of a DOT Specification 105A500W tank car tank with the tank and safety relief valves overdue for retesting for a one-time shipment of chlorine. (Mode 2.)

EMERGENCY EXEMPTIONS

Application No.	Exemption No.	Applicant	Regulation(s) affected	Nature of exemption thereof
EE 9499-X	DOT-E 9499	Cleveland Container Corp., Cleveland, OH	49 CFR 178.19, part 173, subparts D, F	To authorize manufacture, marking and sale of 3½, 5, 5½, and 6-gallon capacity DOT Specification 35 removable head polythylene drums, for shipment of corrosive and flammable liquids. (Modes 1, 2, and 3.)
EE 9796-X	DOT-E 9796	Heavy Cargo Airlines Ltd., Stansted Essex, England.	49 CFR 172.101	To authorize a one time shipment of rocket ammunition with explosive projectile, Class A explosive, cargo-only aircraft, althought it is forbidden for transportation by air. (Mode 4.)
EE 9855-X	DOT-E 9855	Korean Air Lines Co., Ltd., Los Angeles, CA.	49 CFR 172.101, column 6(b), 175.30	To authorize shipment of explosive projectiles, Class A explosives; and rocket motor and propellant explosive, solids, Class B explosive, which are forbidden for transportation by air or are in quantities greater than those prescribed for transportation. (Mode 4).
EE 9856-N	DOT-E 9856	Shadyside Hospital, Pittsburgh, PA	49 CFR 173.316, 176.63(b)	To authorize use of non-specification packaging and patient use of oxygen systems on board a passenger ship. (Mode 3.)
EE 9869-N	DOT-E 9869	Sandoz Chemicals Corp., Charlotte, NC	49 CFR 173.365	To authorize use of insulated DOT Specification MC-307 stainless steel cargo tanks, for transportation of certain Classs B poison. (Mode 1.)

WITHDRAWAL EXEMPTIONS

Application No.	Applicant	Regulation(s) affected	Nature of exemption thereof
9698-N	Michelin Tire Corp., Greenville, SC	49 CFR 173.119(a) (3), (4)	To authorize shipment of a mixture of 80-90% heptane and 20-10% rubber and other non-hazardous materials, flammable liquids, n.o.s., classed a flammable liquid in a non-DOT dissolution tank assembly container inside a cage assembly. (Mode 1.)

Denials

9699-N Request by Aviex Jet, Inc. Houston, TX to authorize carriage of certain Class A, B and C explosives that are not permitted for air shipment or are in qualities greater than those prescribed for air shipment denied October 26, 1987.

9724-N Request by McDonnell Douglas Corporation St. Louis, MO to authorize shipment of limited quantities of flammable liquids, flammable solids, oxidizers, organic peroxides, corrosive materials, compressed gases, paints and paint related material in prescribed packages without the use of shipping papers, marking, labeling or placarding denied October 26, 1987.

9739-N Request by Unocal Corporation Los Angeles, CA to authorize shipment of sodium tetrathiocarbonate, classed as a corrosive liquid, in a DOT Specification MC-306 cargo tank denied October 7, 1987.

Note: DOT-E 9814 was published in the **Federal Register** on Thursday, October 8, 1987 on page 37708 as a grant of an emergency exemption request. It should have appeared as a denial of the emergency request.

Issued in Washington, DC, on January 5, 1988.

J. Suzanne Hedgepeth,

Chief, Exemptions Branch, Office of Hazardous Materials Transportation.

[FR Doc. 88-747 Filed 1-14-88; 8:45 am]

BILLING CODE 4910-60-M

Office of Hazardous Materials Transportation; Applications for Exemptions; Williams International et al.

AGENCY: Research and Special Programs Administrations, DOT.

ACTION: List of applicants for exemptions.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, exemptions from the Department of Transportation's Hazardous Materials Regulations (49 CFR Part 107, Subpart B), notice is hereby given that the Office of Hazardous Materials Transportation has received the applications described herein. Each mode of transportation for which a particular exemption is requested is indicated by a number in the "Nature of Application" portion of the table below as follows: 1—Motor vehicle, 2—Rail freight, 3—Cargo vessel, 4—Cargo-only aircraft, 5—Passenger-carrying aircraft.

DATE: Comment period closes February 16, 1988.

ADDRESS COMMENTS TO: Dockets Branch, Research and Special Programs Administration, U.S. Department of Transportation, Washington, DC 20590. Comments should refer to the application number and be submitted in triplicate.

FOR FURTHER INFORMATION CONTACT: Copies of the applications are available for inspection in the Dockets Branch, Room 8426, Nassif Building, 400 7th Street SW., Washington, DC.

NEW EXEMPTIONS

Application No.	Applicant	Regulation(s) affected	Nature of exemption thereof
9899-N	Williams International, Walled Lake, MI	49 CFR 173.102, 173.82, 175.3	To authorize shipment of cartridge power devices and explosive power devices, classed as Class C explosive, affixed on an empty gas turbine engine in a non-DOT specification packaging. (Modes 1, 2, and 4.)
9900-N	Natico, Inc., Chicago, IL	49 CFR 173.217, 178.224	To authorize manufacture, marking and sale of non-DOT specification fibre drums, equivalent to DOT 21C Specification fibre drums except the tops are constructed of polyethylene, for shipment of calcium hypochloride, hydrated, classed as oxidizer. (Modes 1, 2, and 3.)
9901-N	J.T. Baker Inc., Phillipsburg, NJ	49 CFR 173.268, 173.269	To authorize shipment of nitric acid, classed as oxidizer or corrosive material, and perchloric acid, classed as oxidizer, in a DOT Specification 12A fiberboard package with inside glass containers cushioned by molded polystyrene. (Modes 1, 2, and 3.)
9902-N	Stauffer Chemical Co., San Francisco, CA	49 CFR 173.273(b)(1)	To authorize shipment of sulfur trioxide, unstabilized, classed as a corrosive material in DOT Specification 3AA cylinders of approximately 7.3 gallons capacity without overpack. (Mode 1.)
9903-N	Sherwood, Division of Harsco, Lockport, NY	49 CFR 173.327(a)	To authorize manufacture, marking and sale specially designed and operated valves to be used on cylinders for shipment of poison A materials.

This notice of receipt of applications for new exemptions is published in accordance with Section 107 of the Hazardous Materials Transportations Act (49 U.S.C. 1806; 49 CFR 1.53(e)).

Issued in Washington, DC, on 01/06/1988.

J. Suzanne Hedgepeth,

Chief Exemptions Branch, Office of Hazardous Materials Transportation

[FR Doc. 88– Filed 1–14–88; 8:45 am]

BILLING CODE 4910-60-M

DEPARTMENT OF THE TREASURY

Customs Service

A Significant New Information Dissemination Product Pursuant to OMB Circular A–130; Customs Automated Commercial System

AGENCY: U.S. Customs Service, Department of the Treasury.

SUMMARY: This document gives the public notice of a proposed new information dissemination product. The Customs Service, through its Automated Commercial System (ACS), has been developing a module called the Automated Manifest System (AMS). Through the AMS, carriers, port authorities (PAs) and service centers electronically transmit data from inward vessel manifests to Customs. Customs uses this information concerning the nature and origin of the cargo to make decisions with respect to inspection and examination. Customs thereafter electronically informs the senders, their agents and others of this information. An underlying purpose for this exchange is to expedite the release of cargo from Customs custody.

In June, 1988, Customs intends to make available for sale to the public a *magnetic tape* which will contain data from all the manifests being transmitted electronically to Customs. At that time, Customs intends to provide to eligible PAs *on line access* to this manifest data, and to other data concerning the status of cargo moving within their port limits. This information will enable the PAs to more efficiently monitor the movement of cargo through their facilities, as well as perform their cargo release responsibilities.

Information from inward manifests is presently available to the public in hard copy, pursuant to section 431, Tariff Act of 1930, as amended, (19 U.S.C. 1431). The statute also requires that Customs safeguard the confidentiality of the names and addresses of importers, consignees and their shippers upon request. Accordingly, the names and addresses of those who have requested confidentiality will be deleted from the manifest data to be provided.

While not all of the manifests filed with Customs are filed in an automated fashion via AMS, it is envisioned that AMS will eventually contain all vessel manifest data and replace the paper manifest. Because of the amount of data involved, the increased access that the automated format provides, and the anticipated growth of automated systems in all phases of the processing of Customs commercial transactions, Customs believes it appropriate to give notice and an opportunity to comment to those who may be interested in obtaining the information as well as those importers and consignees who may wish to request confidentiality, or are otherwise affected by release to the PAs of data pertaining to all importations arriving at their ports.

DATES: Comments must be received on or before March 15, 1988.

ADDRESS: Comments (preferably in triplicate) may be addressed to the Chief, Regulations Control Branch, U.S. Customs Service, 1301 Constitution Avenue, NW., Room 2324, Washington, DC 20229 (202) 566–8237.

FOR FURTHER INFORMATION CONTACT:

Legal Aspects: B. James Fritz, Chief, Regulations Control and Disclosure Law Branch, (202) 566–8681.

Operational Aspects: Eula D. Walden, Office of Automated Commercial System Operations (202) 566–6012.

SUPPLEMENTARY INFORMATION:

Background

OMB Circular A–130, dated December 12, 1985, 50 FR 52730, directs Federal agencies to inform the public of significant new proposed information dissemination products. Such notice is intended to allow agencies to gauge the impact of such products upon affected segments of the public. Two such products are proposed. The first is automated vessel manifest and cargo release data to PAs via on line access. The second is automated vessel manifest data to the public via magnetic tape.

For more than three years, Customs has been developing the Automated Commercial System. The ultimate goal of the ACS is to automate all phases of the commercial processing of imported merchandise and create a single automated system.

Customs has developed an Automated Manifest System (AMS) as an integral module of the ACS. The manifest module is, in essence, both an imported merchandise inventory control system and a cargo release notification system. By comparing information provided in the manifest with automated Customs entry data and inspection guidelines, Customs is able to make informed decisions with respect to the allocation of resources for the inspection of merchandise.

Automated manifest data may be transmitted to Customs by one of two methods. Carriers may transmit data directly to the AMS with their own compatible automated system. Alternatively, carriers may use the computer facilities of PAs or service centers which have established interface capability with Customs. After receiving and analyzing the data, Customs makes its decision with respect to inspection and release of the merchandise.

Once the merchandise is authorized for release, the carrier, service center or PA which transmitted the data receives a message from the system informing it of that fact. Thus each user will be able to track the status of cargo for which it transmitted data. A more detailed explanation of the data provided is set forth below.

Section 431, Tariff Act of 1930, as amended, (19 U.S.C. 1431), requires that the master of every vessel arriving in the U.S. have on board a manifest which contains, among other things, certain information with respect to the nature of the merchandise on board the vessel. Subsection (c)(1) of section 431 provides that the following information when contained on the manifest shall be made available for public disclosure:

1. The general character of the cargo,
2. The number of packages and gross weight,
3. The name of the vessel or carrier,
4. The port of loading,
5. The port of discharge,
6. The country or origin of the shipment
7. The name and address of each importer or consignee and the name and address of the shipper unless the importer or consignee has requested confidential treatment of such information.

Section 103.14(d), Customs Regulations, (19 CFR 103.14(d)) sets forth the procedures pursuant to which an importer or consignee may request confidential treatment of its name and address and that of its shippers. To date, Customs Headquarters has on file approximately 1,100 requests for confidential treatment.

Section 103.14(c), Customs Regulations, provides that accredited representatives of the press, including newspapers, commercial magazines, trade journals, and similar publications shall be permitted to examine vessel

manifests and to copy therefrom manifest information made public by statute. Members of the general public are not given direct access to the documents but may obtain information from manifests upon request. Importers or agents are permitted to examine manifests in which they have an interest as principal or agent.

At present, Customs compiles a list of those importers and consignees who have requested confidentiality. The list is updated on a weekly basis, and is provided to all Customs offices nationwide. The list is also provided to certain commercial trade publications such as King Publishing Co., the Journal of Commerce and others. These trade publications publish the manifest data, taking steps to make certain that the names and addresses of those who have requested confidentiality are deleted.

Dissemination of Manifest Data to Port Authorities

Background

When ACS was in the planning stages, Customs encouraged various sectors of the international trade community to participate in its development in order to share in the benefits that could accrue through the more efficient processing of commercial transactions. Among those who expressed a significant interest in ACS (particularly in AMS) were PAs. PAs viewed AMS as a means of streamlining their involvement in the processing of cargo as well as attracting new business to their ports.

Customs viewed PAs as a potential conduit for the transmission of AMS data for non-automated carriers who were interested but otherwise lacked the capability to electronically transmit their manifest data. PAs were informed that if they were willing to assume this role they would be eligible to receive all *automated manifest data* for those manifests which Customs receives for vessels calling in their ports regardless of whether the carrier used the PA to transmit its data. The data elements that comprise the manifest file are set forth in Appendix 1 to this document.

In addition to receiving manifest data, eligible PAs would be entitled to receive release data which conveys the status of the cargo which is being processed through their ports. Release data would be provided from the manifest where an automated manifest is filed at the port. In addition, where no automated manifest is filed, PAs would receive release data obtained from entry documents for all formal entries made in the port provided that the entry filer has given his written consent. The data elements pertaining to this release data are set forth in Appendix 2.

Finally, eligible PAs would receive manifest data which is transmitted through AMS with respect to all cargo which moves master in bond to their ports. For example, when a carrier files an automated manifest for cargo from a vessel which calls at Seattle but will move via master in bond procedures to Boston, the Massachusetts Port Authority will receive an extract of the manifest filed at Seattle. This will enable Massport to have a more acurate account of cargo in transit to it.

It is emphasized that the above data to be provided to PAs is to be provided via on-line access. Customs recognizes that the value of the data to the PAs as a basis for cargo release services is tied to its being provided in an expeditious manner. Accordingly, Customs intends to provide this data directly to the PA's automated system as soon as is operationally feasible.

Eligibility Criteria

In order to be eligible to receive automated manifest data, release data, and the master in bond data, a PA must develop the *full technical capacity* to transmit as well as receive AMS data. This means that the PA must demonstrate to Customs satisfaction that it possesses all the necessary facilities to be capable of immediately providing full AMS services for any interested carrier.

Customs recognizes that the development of this capacity does not guarantee that carriers will choose to avail themselves of the PAs services. One difficulty has been the fact that many carriers do not use a unique bill of lading number in their business operations. Such a unique identifier is necessary in order for AMS to operate. It is hoped, however, that a proposed amendment to the Customs Regulations mandating the use of a unique bill of lading identifier will eliminate this obstacle to participation in AMS by carriers. See 52 FR at 46602, dated December 9, 1987.

Customs has not established a minimum number of manifests to be transmitted in order for a PA to be eligible to receive this data. Customs will, however, condition continued access to the information on efforts by the PAs to acquire customers for this service. Should Customs learn that a PA has declined to provide AMS services when requested by a carrier, or has not made efforts to obtain participation by carriers, Customs will reevaluate its decision to provide access.

Providing Automated Manifest Data to the Public

Separate and apart from its decision to provide manifest data to PAs as described above, Customs intends to make available to the public, in the form of a magnetic tape, certain data with respect to all the manifests captured by AMS nationwide. This tape would be available at a price which would reflect the cost of producing it, and would contain the same data elements that are in the manifest file to be provided to the PAs. See Appendix 1 for the precise data elements involved. It is contemplated that the tape will be available on a weekly basis. Persons interested in receiving this tape or in obtaining further information about it may contact the Office of Automated Commercial System Operations at (202) 566–5492.

Confidentiality of Manifest Data

As noted above, the manifest data to be provided to the PAs and to the public will be sanitized by removing the names and addresses of those importers/consignees and that of their shippers when confidentiality has been requested. Customs has developed a computer program which will automatically delete the name and address of these requesters when manifests containing their name are transmitted through AMS. In determining the precise automated system to be employed, Customs was faced with a choice between using an "alpha" system or a "soundex" system. Each system has certain limitations. The alpha system will only delete the name of the importer/consignee when there is an exact match as to spelling and formulation between the way the name has been transmitted by the carrier or service center and the name that the importer has provided to Customs. Thus where abbreviations and incorrect spellings of names are transmitted, the data would not be deleted from the system.

The soundex approach would eliminate from the system not only the exact formulation of the name in question, but also a variety of sound alike names. This approach would be overinclusive, resulting in the deletion of many names and addresses where no request for confidentiality had been made.

In addition, the soundex approach requires a significantly more complex programming effort.

Customs intends to use the alpha approach. In order to safeguard the names and addresses of companies which have requested confidentiality, however, Customs advised each of the requesters of the limitations of the system and invited them to enumerate variations of their name which they believe may be transmitted into AMS. Many importers have responded with these variations and Customs has added them to its database so that confidentiality will be protected whenever a match is made between any of the versions of the name submitted and the version transmitted by the carrier. A copy of the letter to the requesters is provided as Appendix 3 to this document. Customs remains willing to program these additional variations as they are received, as well as new requests for confidentiality. Such requests should be directed to the Regulations Control and Disclosure Law Branch, Customs Headquarters: Attention: Mr. Crowley.

Dissemination of the Entry Number

Among the data elements which will be provided to the port authorities as part of the bill of lading status report is the entry number assigned to the goods once entry has been filed. See Appendix 2 to this document. Providing this entry number is an essential link between the data in the manifest file and entry process.

Customs has identified two potential issues with respect to providing the entry number to the PAs. Each of these issues relates to Customs obligation to protect the identity of the importer or consignee of the merchandise when confidentiality has been requested.

The Bulletin Notice of Liquidation, Customs Form 4333, lists the entry number together with the name of the entry filer. By matching this data with the manifest data being provided, one may determine the identity of the entry filer and the nature of the goods being imported despite the importer's request for confidentiality. In order to resolve this issue, Customs has decided to amend the Bulletin Notice of Liquidation so as to remove any reference to the name of the entry filer. Importers and brokers will be able to identify their entires through the entry number.

[FR Doc. 88-781 Filed 1-14-88; 8:45 am]

BILLING CODE 4820-02-M

Fiscal Service

[Dept. Circ. 570, 1987 Rev., Supp. No. 9]

Surety Companies Acceptable on Federal Bonds; St. Paul Guardian Insurance Co.

A Certificate of Authority as an acceptable surety on Federal bonds is hereby issued to the following company under sections 9304 to 9308, Title 31, of the United States Code. Federal bond approving officers should annotate their reference copies of the Treasury Circular 570, 1987 Revision, on page 24624 to reflect this addition:

St. Paul Guardian Insurance Company. Business Address: 385 Washington Street, St. Paul, Minnesota, 55102. Underwriting Limitation [b]: $1,464,000. Surety Licenses [c]: All except NV, NJ, PA, WY. Incorporated in: Minnesota. Federal Process Agents [d].

Certificates of Authority expire on June 30 each year, unless revoked prior to that date. The Certificates are subject to subsequent annual renewal so long as the companies remain qualified (31 CFR Part 23). A list of qualified companies is published annually as of July 1 in Department Circular 570, with details as to underwriting limitations, areas in which licensed to transact surety business, and other information.

Copies of the Circular may be obtained from the Department of Treasury, Financial Management Service, Finance Division, Surety Bond Branch, Washington, DC, 20227, telephone (202) 287-3921.

Mitchell A. Levine,

Assistant Commissioner, Comptroller, Financial Management Service.

Dated: December 31, 1987.

[FR Doc. 88-718 Filed 1-14-88; 8:45 am]

BILLING CODE 4810-35-M

Internal Revenue Service

Exempt Organization Advisory Group; Open Meeting

The second meeting of the Exempt Organization Advisory Group will be held on Thursday, February 25, 1988, from 2:00 p.m. to 5:30 p.m. and will continue on Friday, February 26, from 9:00 a.m. to noon. The meeting will be held in room 3313 of the Internal Revenue Service National Office Building, 1111 Constitution Avenue NW., Washington, DC.

Among the agenda items for the meeting are a discussion of recently enacted legislation affecting lobbying and political activities of charitable organizations, a continuation of the previous meeting's discussion of section 501(h) and 4911 proposed regulations, and a discussion of unrelated business income tax issues.

The meeting will be open to the public, although seating will be limited. Opportunity for public statements will be provided at the end of the meeting, or at other appropriate intervals, to the extent that time permits.

Brief written comments from members of the public of no more than two double-spaced pages relating to each announced agenda topic will be accepted by the Service for consideration as a discussion item by the Advisory Group. Comments should be sent by January 27, to the Assistant Commissioner (Employee Plans and Exempt Organizations), Attn: EOCAG, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC 20224.

For additional information contact Robert I. Brauer, Assistant Commissioner (Employee Plans and Exempt Organizations), telephone 202-566-3171 (not toll-free).

Lawrence B. Gibbs,

Commissioner.

[FR Doc. 88-796 Filed 1-14-88; 8:45 am]

BILLING CODE 4830-01-M

UNITED STATES INFORMATION AGENCY

United States Advisory Commission on Public Diplomacy; Meeting

A meeting of the U.S. Advisory Commission on Public Diplomacy will be held January 20, 1988, in Room 600, 301 4th Street SW., Washington, DC, from 11:30 a.m. to 12:30 p.m.

The Commission will meet with Mr. Stanton Burnett, Counselor, USIA, for a briefing on Public Diplomacy and the U.S.-Soviet summit.

Please call Gloria Kalamets, (202) 485-2468, if you are interested in attending the meeting since space is limited and entrance to the building is controlled.

Dated: January 11, 1988.

Charles N. Canestro,

Management Analyst, Federal Register Liaison.

[FR Doc. 88-744 Filed 1-14-88; 8:45 am]

BILLING CODE 8230-01-M

Culturally Significant Objects Imported for Exhibition; Determination

Notice is hereby given of the following determination: Pursuant to the authority vested in me by the act of October 19, 1965 (79 Stat. 985, 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978

(43 FR 13359, March 29, 1978), and Delegation Order No. 85–5 of June 27, 1985 (50 FR 27393, July 2, 1985), I hereby determine that the objects to be included in the exhibit, "Sweden: A Royal Treasury 1550–1700," (see list [1]) imported from abroad for the temporary exhibition without profit within the United States are of cultural significance. These objects are imported pursuant to loan agreements with the foreign lenders. I also determine that the temporary exhibition or display of these objects at the National Gallery of Art in Washington, DC, beginning on or about April 13, 1988, to on or about August 14, 1988; at The Minneapolis Institute of Arts in Minneapolis, Minnesota, beginning on or about October 9, 1988, to on or about January 1, 1989, is in the national interest.

Public notice of this determination is ordered to be published in the **Federal Register.**

C. Normand Poirier,

Acting General Counsel.

[FR Doc. 88–782 Filed 1–14–88; 8:45 am]

BILLING CODE 8230–01–M

[1] A copy of this list may be obtained by contacting Mr. John Lindburg of the Office of the General Counsel of USIA. The telephone number is 202–485–8827, and the address is Room 700, U.S. Information Agency, 301 4th Street SW., Washington, DC 20547.

Sunshine Act Meetings

Federal Register
Vol. 53, No. 10
Friday, January 15, 1988

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FEDERAL 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 11:32 a.m. on Wednesday, December 23, 1987, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session, by telephone conference call, to consider: (1) The application of The Haysville State Bank, Haysville, Kansas, an insured State nonmember bank, for consent to merge, under its charter and title, with First Interim Corporation, Wichita, Kansas, a wholly-owned subsidiary of First Bancorp of Kansas, Wichita, Kansas; and (2) a recommendation regarding the Corporation's assistance agreement with 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)(4), (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B)).

Dated: December 23, 1987.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Assistant Executive Secretary (Operations).

[FR Doc. 88-881 Filed 1-13-88; 1:40 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, January 19, 1988, 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.

Reports of actions approved by the standing committees of the Corporation and by officers of the Corporation pursuant to authority delegated by the Board of Directors.

Discussion Agenda:

Memorandum regarding the Corporation's budget for 1988.

Recommendation regarding reserves for losses.

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: January 12, 1988.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 88-882 Filed 1-13-88; 1:40 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, January 19, 1988, 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)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B), of Title 5, United States Code, to consider the following matters:

Summary Agenda: No substantive discussion of the following items is anticipated. These matters will be resolved with a single vote unless a member of the Board of Directors requests that an item be moved to the discussion agenda.

Recommendations with respect to the initiation, termination, or conduct of administrative enforcement proceedings (cease-and-desist proceedings, termination-of-insurance proceedings, suspension or removal proceedings, or assessment of civil money penalties) against certain insured banks or officers, directors, employees, agents or other persons participating in the conduct of the affairs thereof:

Names of persons and names and locations of banks authorized to be exempt from disclosure pursuant to the provisions of subsections (c)(6), (c)(8), and (c)(9)(A)(ii) of the "Government in the Sunshine Act" (5 U.S.C. 552b (c)(6), (c)(8), and (c)(9)(A)(ii).

Note.—Some matters falling within this category may be placed on the discussion agenda without further public notice if it becomes likely that substantive discussion of those matters will occur at the meeting.

Discussion Agenda:

Memoranda regarding the Corporation's corporate activities.

Personnel actions regarding appointments, promotions, administrative pay increases, reassignments, retirements, separations, removals, etc.:

Names of employees authorized to be exempt from disclosure pursuant to the provisions of subsections (c)(2) and (c)(6) of the "Government in the Sunshine Act" (5 U.S.C. 552b (c)(2) and (c)(6)).

Matters relating to the possible closing of certain insured banks:

Names and locations of banks authorized to be exempt from disclosure pursuant to the provisions of subsections (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(8), (c)(9)(A)(ii), and (c)(9)(B)).

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: January 12, 1988.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 88-883 Filed 1-13-88; 1:40 pm]

BILLING CODE 6714-01-M

FEDERAL MARITIME COMMISSION

TIME AND DATE: 10:00 a.m.—January 20, 1988.

PLACE: Hearing Room One—1100 L Street NW., Washington, DC 20573.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Trans-Atlantic Amnesty Program.
2. Procedures for Compromise and Settlement of Civil Penalties.
3. Service Contracts Filed by the Asia North America Eastbound Rate Agreement.

CONTACT PERSON FOR MORE INFORMATION: Joseph C. Polking, Secretary (202) 523–5725.

Joseph C. Polking,

Secretary.

[FR Doc. 88–827 Filed 1–13–88; 10:24 am]

BILLING CODE 6730–01–M

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

January 11, 1988.

Change in Previously Announced Item

TIME AND DATE: 10:00 a.m., Wednesday, January 13, 1988.

PLACE: Room 600, 1730 K Street NW., Washington, DC.

STATUS: Closed [Pursuant to 5 U.S.C. 552b(c)(10)].

MATTERS TO BE CONSIDERED: The following changes are noted for the meeting scheduled for January 13, 1988.

1. Oral argument in *Rushton Mining Company*, Docket No. PENN 86–44–R, etc. has been postponed until February 11, 1988. The Commission will also consider the case at that time.

2. *Harlan L. Thurman v. Queen Ann Coal Company*, Docket No. SE 86–121–D will be considered as previously announced.

It was determined by a unanimous vote of Commissioners that this change be made and no earlier announcement of the change was possible.

CONTACT PERSON FOR MORE INFORMATION: Jean Ellen (202) 653–5629/ (202) 566–2673 for TDD Relay.

Jean H. Ellen,

Agenda Clerk.

[FR Doc. 88–846 Filed 1–13–88; 8:45 am]

BILLING CODE 6735–01–M

FEDERAL RESERVE SYSTEM BOARD OF GOVERNORS

TIME AND DATE: 10:00 a.m., Wednesday, January 20, 1988.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204. You may call (202) 452–3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: January 12, 1988.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 88–869 Filed 1–13–88; 11:49 am]

BILLING CODE 6210–01–M

POSTAL RATE COMMISSION

TIME AND DATE: The Notice published in Vol. 53, No. 5, **Federal Register**, p. 596, January 8, 1988, is amended under "Time and Date" to read: 9:30 a.m. and 2:00 p.m. on January 14, 15, 20, 26, 27 and February 1, 2, 3, and 4; and 9:30 a.m. on January 21 and 28, 1988.

PLACE: Conference Room, 1333 H Street NW., Suite 300, Washington, DC 20268.

STATUS: Closed.

MATTERS TO BE CONSIDERED: The Notice published in Vol. 53, No. 5, **Federal Register**, p. 596, January 8, 1988, is also amended under "Matter To Be Considered" to read: A series of 20 CLOSED meetings to discuss evidence in Docket No. R87–1.

CONTACT PERSON FOR MORE INFORMATION: Charles L. Clapp, Secretary, Postal Rate Commission, Room 300, 1333 H Street NW., Washington, DC 20268–0001, Telephone (202) 789–6840.

Charles L. Clapp,

Secretary.

[FR Doc. 88–828 Filed 1–13–88; 10:24 am]

BILLING CODE 7715–01–M

SECURITIES AND EXCHANGE COMMISSION

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: (53 FR 655 January 11, 1988).

STATUS: Closed meeting.

PLACE: 450 5th Street, NW., Washington, D.C.

DATE PREVIOUSLY ANNOUNCED: Tuesday, January 5, 1988.

CHANGES IN THE MEETING: Additional meeting.

A following item will be considered at a closed meeting scheduled for Thursday, January 14, 1988, following the 10:00 a.m. open meeting.

Report of investigation.

Commissioner Cox, as duty officer, determined that Commission business required the above change.

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: Kevin Fogarty at (202) 272–3195.

Jonathan G. Katz,

Secretary.

January 13, 1988.

[FR Doc. 88–933 Filed 1–13–88; 4:00 pm]

BILLING CODE 8010–01–M

Corrections

Federal Register
Vol. 53, No. 10
Friday, January 15, 1988

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

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 68

Petition for Modification; Terminal Equipment Line Power To Operate Continuity of Output Functions

Correction

In rule document 87-29812 appearing on page 49413 in the issue of Thursday, December 31, 1987, make the following correction:

In the third column, under **SUPPLEMENTARY INFORMATION**, in the second line from the bottom, "to" should read "too".

BILLING CODE 1505-01-D

GENERAL SERVICES ADMINISTRATION

[GSA Bulletin FPMR A-40, Supp. 26]

Federal Travel Regulations

Correction

In notice document 87-29142 beginning on page 48325 in the issue of Monday, December 21, 1987, make the following correction:

On page 48326, in the second column, in paragraph 2-6.2d.(1)(b)(1), in the second line, "prepared" should read "prepaid".

BILLING CODE 1505-01-D

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA-050-4212-13; CA 20077]

Realty Action; Exchange; Public Lands and Private Lands in Butte County, Lake County, Mendocino County, Siskiyou County, Sonoma County, and Tehama County, CA

Correction

In notice document 87-29630 beginning on page 48882 in the issue of Monday, December 28, 1987, make the following corrections:

1. On page 48882, in the second column, under Tract 10 T. 42 N., R. 5 W., the land description should read:
Sec. 18, W½SW¼NE¼NE¼SE¼,
W½NE¼SE¼,
W½SE¼NE¼SE¼;

2. In the same column, under Tract 11 T. 9 N., R. 11 W., after " Sec. 26, S½ NW¼", insert "Containing 386.25 acres more or less."

3. In the same column, in the 21st line from the bottom,"Tract 13 N.," should read "T. 13 N.,".

NOTE: For a Bureau of Land Management correction to this document see the Notices section of this issue.

BILLING CODE 1505-01-D

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 4

[T.D. 87-150]

Customs Regulations Amendments Concerning Reporting Requirements for Small Vessels

Correction

In rule document 87-29181 beginning on page 48194 in the issue of Monday, December 21, 1987, make the following corrections:

1. On page 48195, in the first column, in the 25th line from the bottom, "Operations" should read "Operators".

2. On the same page, in the second column, in the 14th line, "Marine" should read "Marina".

BILLING CODE 1505-01-D

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[T.D. 8166]

Income Tax; Consent Dividends

Correction

In rule document 87-28635 beginning on page 47554 in the issue of Tuesday, December 15, 1987, make the following corrections:

§ 1.565-1T [Corrected]

1. On page 47555, in the first column, in § 1.565-1T(a), in the sixth line, "actual" was misspelled.

2. On the same page, in the third column, in § 1.565-1T(c)(3), in the fourth line, "if filed" should read "is filed".

§ 1.565-2T [Corrected]

3. On page 47556, in the second column, in § 1.565-2T(b)(2), *Example (1)*, in the second line, "high" should read "his".

4. On the same page, in the same column, in § 1.565-2T(b)(2), *Example (2)*, in the second line, "it" should read "its" and in the ninth line, "cash $5,000" should read "cash of $5,000".

BILLING CODE 1505-01-D

federal register

Friday
January 15, 1988

Part II

Department of Housing and Urban Development

Office of the Secretary

24 CFR Parts 215 et al.

Preference in the Provision of Housing for Families Who Are Occupying Substandard Housing, Involuntarily Displaced, or Paying More Than 50 Percent of Family Income for Rent; Final Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Secretary

24 CFR Parts 215, 880, 881, 882, 883, 884, 886, 904, 905, and 960

[Docket No. R-88-1187; FR-1597]

Preference in the Provision of Housing for Families Who Are Occupying Substandard Housing, Involuntarily Displaced, or Paying More Than 50 Percent of Family Income for Rent

AGENCY: Office of the Secretary, HUD.

ACTION: Final rule.

SUMMARY: This final rule implements a statutory directive to give preference in the provision of housing assistance to families eligible for assistance under the Public and Indian Housing, Section 8, or Rent Supplement programs that are living in substandard housing, that are involuntarily displaced, or that are paying more than 50 percent of family income for rent. This rule helps to ensure that housing assistance under these programs is directed to those with greatest housing needs. This rule implements a proposed rule on this subject, published on September 26, 1984 (49 FR 37787).

EFFECTIVE DATE: Under Section 7(o)(3) of the Department of Housing and Urban Development Act (42 U.S.C. 3535(o)(3)), this final rule cannot become effective until after the first period of 30 calendar days of continuous session of Congress which occurs after the date of the rule's publication. HUD will publish a notice of the effective date of this rule following expiration of the 30-session-day waiting period. Whether or not the statutory waiting period has expired, this rule will *not* become effective until HUD's separate notice is published announcing a specific effective date; Public Housing Agencies and owners must implement this rule no later than July 13, 1988.

FOR FURTHER INFORMATION CONTACT: James J. Tahash, Program Planning Division, Room 6182, Department of Housing and Urban Development, telephone (202) 426-3970 (for 24 CFR Parts 215, 880, 881, 884, and 886); Madeline Hastings, Existing Housing Division, Room 6124, Department of Housing and Urban Development, telephone (202) 755-6887 (for 24 CFR Part 882); and Nancy Chisholm, Office of Policy, Room 4118, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410, telephone (202) 755-6713 (for 24 CFR Parts 904, 905, and 960). (These are not toll-free numbers.)

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Statutory Basis

Section 206 of the Housing and Community Development Amendments of 1979 (Pub. L. No. 96-153, section 206, 93 Stat. 1108 (1979)) (the 1979 Act) amended the Public and Indian Housing and Section 8 programs under the United States Housing Act of 1937 (42 U.S.C. 1437 d and f, respectively) (the 1937 Act) to provide that the criteria used by project owners, Public Housing Authorities (PHAs) and Indian Housing Authorities (IHAs) to select applicants for housing assistance must give "preference to families which occupy substandard housing or are involuntarily displaced at the time they are seeking" housing assistance. Section 203 of the Housing and Urban-Rural Recovery Act of 1983 (Pub. L. No. 98-181, section 203, 97 Stat. 1178 (1983)) (the 1983 Act) later amended these authorities to provide that the selection criteria used must give a preference to a third category of families—those that "are paying more than 50 percentum of family income for rent."

Section 203(a)(4) of the 1979 Act also amended section 101 of the Housing and Urban Development Act of 1965 (12 U.S.C. 1701s) (Rent Supplement), by adding a new subsection (k) that provides:

> In making assistance available under this section, the Secretary shall give priority to individuals or families who are occupying substandard housing or are involuntarily displaced at the time they are seeking housing assistance * * *.

In addition, section 203(b)(3) of the 1983 Act amended section 101(e)(1)(B) of the Rent Supplement authority by including substantially identical language for families paying more than 50 percent of income for rent. As amended, section 101(e)(1)(B) reads in relevant part:

> * * * The Secretary shall issue * * * certificates as to * * * (B) whether the individual or family was occupying substandard housing, was paying more than 50 percentum of family income for rent, or was involuntarily displaced at the time it was seeking assistance under this section.

Although the rent burden preference is appropriately included in the Rent Supplement provision, the amendment adding the preference affected section 101(e)(1)(B) only, and not section 101(k), the section that Congress originally had enacted to created the preference for those persons occupying substandard housing or involuntarily displaced. (See section 203(a)(4) of the 1979 Act.) However, this rule extends the rent burden preference to persons who qualify for assistance under the Rent Supplement program. In doing so, the Department believes that the rule carries out the intent of Congress, notwithstanding the failure to include the language in section 101(k) of the Rent Supplement statute.

The amendments to the Public and Indian Housing and Section 8 programs made by section 206 of the 1979 Act provide for a "preference" to certain classes of families. The comparable amendment to the Rent Supplement program in section 203(a)(4) of the 1979 Act provides for a "priority" to the same classes of families. The Department has studied the legislative history to determine whether the Congress intended to impart a meaning to the word "priority" different from that intended by use of the word "preference". Research has shed no light on the legislative intent in this regard. In view of the apparent unified intent of the several amendments (notwithstanding that they affect different programs), the Department has treated the words synonymously. To

avoid ambiguity, the word "preference", and not "priority", is used throughout the rule.

Note.—For ease of reference, this rule refers to the three statutory preferences as the "Federal preferences" or "preferences."

Treatment of Certificates and Vouchers

Section 8(d)(1)(A) of the 1937 Act specifies that the *owner* is responsible for providing the preferences in the Section 8 Existing program—the Certificate, Moderate Rehabilitation, and Loan Management Set-Aside programs. In the Loan Management program, the owner is responsible for the entire tenant selection process, and the final rule requires that the owner give preference as provided in the statute.

In the Certificate and Moderate Rehabilitation program, however, the PHA (and not the private owner) plays the key role in the applicant selection process with respect to applying the preferences. In the Certificate program, the PHA selects those to whom it issues Certificates of Family Participation from its waiting list; the owner determines whether it will rent to the individual Certificate-holder. (See 24 CFR 882.209.) Similarly, the owner of a Section 8 Moderate Rehabilitation project generally determines the suitability of individual applicants that the PHA refers to the owner from its waiting list. (See 24 CFR 882.514(b).) Even in the unusual case where the PHA has no families on its waiting list interested in living in a rehabilitated project, and the owner itself solicits applicants, the owner refers all candidates to the PHA to determine their eligibility, which would include their qualification for a preference, if the families referred exceeded the units available. (See 24 CFR 882.514(c).)

In order to implement the preferences in the Certificate and Moderate Rehabilitation programs in a way that carries out the clear Congressional intent in enacting the preferences and is consistent with the implemention of the preferences in the other covered programs, the rule imposes the preference requirements at the point at which applicants are selected from the pool of applicants: *i.e.*, when the PHA, rather than the private owner, acts in the process.

Section 207 of the 1983 Act amended section 8 of the 1937 Act to establish the Housing Voucher program. Section 8(o)(3) of the 1937 Act requires the use of the three Federal preferences in selecting recipients of Housing Vouchers. The Department has been implementing the Housing Voucher program through Notices of Funding Availability (NOFAs) published in the **Federal Register**. (See 49 FR 28458 (July 12 1984); 50 FR 8196 (February 28, 1985); 50 FR 19475 (May 8, 1985); 51 FR 10932 (March 31, 1986); and 52 FR 5250 (February 19, 1987).) Housing Vouchers have been authorized in these editions on the **Federal Register** for the following uses: the Rental Rehabilitation Program, A Freestanding Housing Voucher Demonstration, a Small PHA/Rural Area Housing Voucher Demonstration, Section 8 "Opt-Out" Projects, Demolition or Disposition of Public Housing Units, and Formula Allocation to HUD Regional Offices. Readers should consult the NOFA of February 19, 1987 (52 FR 5250) for a full description of the current Housing Voucher program.

The Department published a proposed rule on August 14, 1987 (52 FR 30388) that would add a new 24 CFR Part 887 to codify the Housing Voucher program in the Code of Federal Regulations. The proposed rule seeks public comment on the February 19, 1987 NOFA, as modified by the proposed rule. Under the proposed rule, a PHA (to the extent it receives an additional allocation of Housing Vouchers) would have to provide Housing Vouchers or Certificates to lower income families that are displaced from rental rehabilition projects by physical rehabilitation activities. The application of the preferences would otherwise be substantially similar to the implementation of the Section 8 Certificate program, as discussed in this final rule, and the reader wishing to become generally familiar with the preference provisions for the Housing Voucher rule, should review the regulatory text and preamble discussion for the Certificate program. Following consideration of the public comments received on the proposed rule, the Department will publish final Housing Voucher program regulations, including provisions to implement the Federal preferences for that program.

It is important to note one change proposed by the Housing Voucher rule. In the past, a PHA could use the additional Housing Vouchers provided by HUD in connection with the Rental Rehabilitation program (RRP) for eligible families living in RRP projects if, after the rehabilitation, the families would have to pay more than 30 percent of their income for rent. These families could then use the Housing Voucher to remain in the project, or to move. However, the proposed Housing Voucher rule would make a substantial change in the rules under which Housing Vouchers allocated in connection with RRP can be used.

As noted above, the proposed rule would require PHAs to use their additional allocation of Housing Vouchers to provide rental assistance to eligible families that would be displaced from their project because of physical construction activities. These additional Housing Vouchers would no longer be provided to families that are not physically displaced, even if their rent increased. These families may be eligible for Housing Vouchers from a PHA's waiting list and, if their rent exceeds 50 percent of their income, they would qualify for a preference under today's final rule. Accordingly, an eligible family encountering an increased rent burden in its RRP unit, but who is *not* required by rent increases in the project to pay more than 50 percent of income for rent, would not qualify for preferential access to assisted housing under either the Housing Voucher proposed rule or this final rule (unless, of course, the family qualified for a preference on a basis other than rent burden). As discussed in more detail later, however, PHAs would have discretion to adopt local selection preferences to assist RRP families experiencing post-rehabilitation rent increases.

Section 882.209(a)(7) contains a clause not found in the comparable paragraphs for the other affected programs. This clause provides that the PHA's obligation to select a family from the waiting list is subject to any obligation the PHA may have to ensure the availability of a Certificate for a purpose specified in § 882.209(a)(4)(ii)(B). Under the Housing Voucher Program, a PHA immediately may use for general Housing Voucher program purposes (*i.e.*, for families on the Housing Voucher Program waiting list) Housing Vouchers that were allocated for Rental Rehabilitation purposes. See 52 FR 5250, February 19, 1987, the Housing Voucher Program Notice. That notice, in explaining the "immediate use" provision, requires that

> [A] PHA may use housing vouchers for general program purposes *before* they are used for rental rehabilitation projects.
>
> The PHA may use the housing vouchers for families on its Section 8 waiting list, if the PHA determines that it will have an adequate number of housing vouchers or Section 8 certificates available when needed in connection with a rental rehabilitation project. The PHA must develop a written plan to assure this availability. In determining whether this immediate use is feasible, the PHA must consult with the rental rehabilitation grantee.
>
> *Id.* at 5253.

As a condition to immediate use, however, a PHA must develop a plan to ensure the availability of Housing Vouchers *or Certificates* when the rental rehabilitation need arises. The purpose of the clause in § 882.209(a)(7) is to enable the PHA to provide a Certificate to a rental rehabilitation family to meet its obligation created by the previous "immediate use" of the Rental Rehabilitation allocation Housing Vouchers. The Rental Rehabilitation allocation is the only special allocation under either the Certificate Program or the Housing Voucher Program that includes the concept of immediate use for general program purposes, and the concommitant obligation to ensure the availability of Certificates (or Housing Vouchers) when needed for the purpose for which the Certificates [or Housing Voucher were specifically allocated. Nonetheless, the Department has drafted this clause to cover any such situation that may arise in the future.

When the pending Housing Voucher rule is promulgated, it will similarly recognize that, for purposes of ensuring the availability of vouchers allocated for Rental Rehabilitation where those vouchers were subjected to an earlier "immediate use" for other purposes, a PHA may require selection of families for Voucher assistance outside the normal waiting process.

The rent-burden preference is to be granted to a family paying more than 50 percent of its income for rent "at the time [the family] is seeking assistance." See, e.g., section 8(d)(1)(A) of the U.S. Housing Act of 1937. The Department construes this language to mean that the family must be rent-burdened at the point that a family is *offered* assistance for a unit, not only at the time that the family *applies* for assistance.

However, application of the cited statutory language could work a hardship on a family occupying a unit being rehabilitated under the Rental Rehabilitation Program (RRP), by requiring that the family first pay the increased post-rehabilitation rent before qualifying for the rent-burden preference. In HUD's view, such a family should not necessarily have to begin paying the increased rent before its preference status could be recognized. Such a requirement would be an unnecessary formalism—especially since the increased rent would have been occasioned by the improvements to the family's unit funded by RRP—a program administered by HUD.

To observe such formalism would work an intolerable hardship on an RRP family that has continued to occupy a unit during Rental Rehabilitation, anticipating continued occupancy of the same unit without housing assistance. Upon notification of the post-rehabilitation rent and discovery that the rent would exceed 50 percent of family income, the family might well conclude that continued occupancy would only be possible with assistance. Unless this family could apply for a preference based on the *anticipation* of increased rent, the RRP activity would have the effect of requiring the family to pay unaffordable rent for an indefinite period while it awaited qualification for a certificate, voucher, or other assistance.

Also, some eligible RRP families will qualify for a statutory preference by virtue of living in substandard housing. Upon being offered assistance on that basis, this rule's verification procedures would require the family to demonstrate that its unit *continued* to be substandard at the time assistance became available. If rental rehabilitation activity had caused the family's entitlement to the substandard housing preference no longer to be verifiable, it would be harsh to refuse a certificate to such a family when the family, in a short time, was clearly going to qualify for the rent burden preference.

To reduce these impacts on RRP families to the extent possible, the rule creates a limited exception, applicable to the Section 8 Existing Housing Certificate program (Part 882), with respect to the normal application and verification procedures associated with the rent burden preference. This exception, appearing in paragraphs (c) and (f) of § 882.219, provides that RRP families who have been advised that their post-rehabilitation rent for the same unit that they are currently occupying will be increased to more than 50 percent of the family's income will be considered as paying the higher rent from the date the family is offered assistance, as long as the family would become subject to the higher rent within sixty days of the offer of assistance. (When the pending Housing Voucher rule is promulgated, it will similarly treat the subject of the rent burden preference as it relates to Rental Rehabilitation tenants.)

The Department is limiting the period during which this presumptive rent burden preference would be operative to sixty days to be consistent with the requirement in section I.(f)(2)(ii) of Part III of the February 19, 1987 Housing Voucher NOFA (52 FR 5250, 5262) that "housing vouchers * * * must be issued * * * approximately 60 days before the estimated completion date for the rehabilitation work."

The Proposed Rule

On September 26, 1984 (49 FR 37787 (1984)), the Department published a proposed rule to implement the 1979 and 1983 statutory provisions. That rule amended regulations affecting 24 CFR Part 215 (Rent Supplement Payments); Part 880 (Section 8 Housing Assistance Payments Program for New Construction); Part 881 (Section 8 Housing Assistance Payments Program for Substantial Rehabilitation); Part 882 (Section 8 Housing Assistance Payments Program—Existing Housing), Subparts A and B (Section 8 Certificates), D and E (Section 8 Moderate Rehabilitation), and F (Manufactured Home Owners); Part 883 (Section 8 Housing Assistance Payments Program—State Housing Agencies); Part 884 (Section 8 Housing Assistance Program, New Construction Set-Aside for Section 515 Rural Rental Housing Projects); Part 886 (Section 8 Housing Assistance Payments Program—Special Allocations), both Subparts A (Loan Management) and C (Property Disposition); Part 904 (Low Rent Housing Homeownership Opportunities); Part 905 (Indian Housing); and Part 960 (Admission to, and Occupancy of, Public Housing).

The Proposed rule provided for a preference in selection for those applicants who otherwise were qualified for housing assistance under the program involved and who, at the time they were seeking assistance, were involuntarily displaced, living in substandard housing, or paying more than 50 percent of their family income for rent. PHAs and owners were required to inform prospective tenants (including those on the waiting list) of the availability of the preferences, and to give them an opportunity to show that they qualified for preferred status.

The three Federal preferences were given primacy over all local preferences and priorities. Thus, an applicant who qualified for any one of the Federal preferences would have been selected to receive housing assistance before non-preferred applicants, irrespective of their qualification for one or more non-Federal (*i.e.*, locally established) preferences or priorities, or their position on the waiting list. The preferences were coequal, and no ranking or cumulation of the preferences was permitted.

The proposed rule envisaged a two-step approach by which an applicant generally would qualify for a Federal preference. First, the applicant would *certify* that he or she was in one of the three preferred classes when he or she initially applied for housing assistance;

before receipt of assistance, however, the applicant had to provide appropriate documentation to the owner or PHA so that the applicant's status in a preferred class at that time could be *verified.*

The rule set forth definitions for each of the Federal preferences, and described the procedures that PHAs and owners would apply to verify that an applicant qualified for a preference. Verification was to be established principally by documentation supplied by the applicant from third-party sources. While private owners, and PHAs administering Rent Supplement and Section 8 programs (other than 24 CFR Part 882), were bound to follow the definitions and verification procedures set out in the rule, PHAs administering public and Indian housing programs, and the Section 8 Existing and Moderate Rehabilitation programs under Part 882, were given the discretion to adopt their own verification procedures, and, subject to HUD's approval, could apply their own definitions of the Federal preferences.

Public Comments

The Department received over 130 comments on the proposed rule. The majority of these comments was critical of the rule, or of one or more of its provisions. As a result of these comments and the Department's ongoing review of the statutory scheme governing the Federal preferences, the Department has made a number of revisions in the proposed rule, which are incorporated in today's final rule.

These revisions are discussed at length below, along with the Department's treatment of the public comments. Briefly, the significant revisions include the following. The final rule retains the requirement for the Rent Supplement and Section 8 programs (other than the Certificate and Moderate Rehabilitation programs) that Federal preference-holders will always be considered for housing assistance before families without a Federal preference, irrespective of the latter's qualification for one or more non-Federal preferences. Project owners under these programs will, however, have broad discretion (not provided under the proposed rule) to determine the weight to be assigned each of the Federal preferences vis-a-vis the other two. Thus, owners may aggregate or rank the three preferences or their definitional elements (or both), and use State or local preferences as a means of selecting among Federal preference-holders.

PHAs administering the Public and Indian Housing programs and the Section 8 Certificate and Moderate Rehabilitation programs will have the same discretion as project owners to determine the weight to be assigned among the Federal preferences. They will also be permitted, however, to make rental assistance available to families *without* a Federal preference *before* Federal preference-holders, for up to 10 percent of the families initially receiving assistance in any one-year period.

The definition of involuntary displacement has been clarified to include situations in which a landlord has decided not to renew a tenant's lease. Victims of domestic violence may qualify for a preference on grounds of involuntary displacement. Similarly, the definition of substandard housing has been expanded to include "homeless" persons. Finally, the rule adds language providing for administrative review of a decision denying an application for a preference.

For the convenience of the reader and to better organize the Department's responses, the comments are classified according to the general subject matter that they addressed, followed by the Department's response to each category of comments.

I. Application of the Federal Preferences

A. Primacy of the Federal Preferences

In the proposed rule, the Department gave the three preferences primacy over all non-Federal preferences. The Department stated its position as follows:

> * * * in the weighting process, an applicant qualifying for any one of these three preferences would outweigh, and therefore be chosen before, another applicant who does not qualify for one of the three preferences, regardless of the combination or aggregation of other (*i.e.*, State or locally created) preferences enjoyed by the other applicant, and without regard to which applicant applied first, or the length of time the first applicant was on the waiting list. [49 FR 37788–9.]

The Department specifically requested comment on the "effect and propriety of implementing the three preferences" in this manner. 49 FR 37788. This request elicited numerous respones, primarily from PHAs. The overwhelming majority of the commenters expressed strong opposition to the provision, particularly insofar as it had the effect of overriding local preferences for residents of the community in which the assisted housing is located.

One of the grounds for objection to the proposal to make the three preferences preeminent was that such a policy would be contrary to the Congressional intent expressed in the Conference Report accompanying the 1979 Act. H. Rep. No. 706, 96th Cong., 1st Sess. 55 (1979). Commenters emphasized language in that Report to the effect that the preferences are intended to *guide* the PHA in selecting tenants—not to permit HUD to direct the selection of certain tenants. Similarly, commenters argued that nothing in the legislation enacted in 1979 and 1983 creating the three preferences suggests that Congress intended to subordinate local discretion by granting primacy to the three preferences. One commenter contended that making the preferences preeminent would directly contravene the United States Housing Act of 1937, and that there should be no preemption of local priorities without specific direction from the Congress.

Some commenters noted their objection less on legal than on practical grounds. It was argued that preemption would cause an undue burden on the lower income residents of a jurisdiction, since the PHA, which was established to serve the low-income residents of that jurisdiction, would be forced to provide housing for residents of other jurisdictions. A commenter viewed the proposal as significantly reducing a PHA's ability to tailor housing assistance programs to suit local housing conditions. This commenter urged that PHAs be given maximum flexibility to accommodate the three preferences within the pattern of locally established priorities. The commenter stressed that local preferences should not be thought of as exclusionary; instead, argued the commenter, they facilitate the creation of assisted housing opportunities and accomplish the goal of assisting the needy, with strict adherence to affirmative marketing requirements.

Other commenters contended that preemption of local residency preferences would threaten the viability of the public housing program, cause participating communities to withdraw from HUD's housing assistance programs, and discourage non-participating communities from entering the programs. Commenters stated that local preferences are in the nature of a contract: *i.e.*, local communities agree to cooperate in the development of assisted housing in return for the assurance that their needy residents will be served. Commenters believed that the proposed rule violated that agreement. Finally, State Housing Finance Agencies admonished HUD to recall the special arrangement that exists between them and HUD with respect to the level of discretion that they were originally intended to have in carrying out Section 8 programs.

The Department has reviewed its original position on the primacy of the Federal preferences in light of the comments, and has determined that PHAs operating Public and Indian Housing programs and Section 8 Certificate and Moderate Rehabilitation programs may be given some flexibility to devise tenant selection systems that favor applicants without a Federal preference over Federal preference-holders.

As noted above, the statutory text in neither the 1979 nor 1983 Act sheds definitive light on how the preferences should be implemented. The Conference Report on the 1979 Act provides the following guidance:

> The conferees believe that during a period of reduced funding for assisted housing, the programs should be directed toward those families who have the most urgent housing needs. The priority is intended to guide the owner or PHA in determining which potential tenants to select. The priority is not intended nor should it be used to allow the Department to direct an owner or PHA to select certain tenants. It would be unacceptable and clearly not authorized by this provision for the Department to require a PHA or owner to select tenants from a list developed by the Department. This provision is not intended to alter the basic responsibility over tenant selection which, under current law, rests solely with the PHA and owner. It is simply intended to have owners and PHAs give priority to meeting the urgent housing needs of those families living in substandard conditions or being involuntarily displaced. [H. Rep. No. 706, 96th Cong., 1st Sess. 55 (1979).]
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> Note.—The House Report on the 1979 Act contains substantially similar language. See H.R. Rep. No. 154, 96th Cong., 1st Sess. 16 (1979).

The Department does not consider the language of either the statute or the Conference Report as *requiring* that the Federal preferences be implemented in a way that wholly preempts State or local tenant selection preferences. The statute and legislative history require only that "preference" be given to "families" in one of the three preferred categories. Use of the plural, "families," indicates that preference is to be accorded to a *class* of applicants, not to *each* individual applicant. The term "preference" can have a range of meanings—from providing some advantage in the selection process to guaranteeing preferred candidates the next available rental assistance. Providing preference to a class of applicants suggests a general mandate that, unless "preference" is construed in its most preemptive sense, may permit some individual non-preferred applicants to take precedence over preference-holders in the tenant selection process.

Given the commenters' overwhelming opposition to the proposed rule's "primacy of the preferences" approach, and the lack of legislative guidance on how to construe the preference provisions, the Department believes that the term "preference" should not be given such a prescriptive construction. Instead, we believe that the statutory mandate can be satisfied by giving *substantial preference to families in the preferred categories: i.e.*, by ensuring that substantially all preference-holders receive assistance ahead of non-preference-holders, but permitting some non-preference-holders to go before preference-holders. The Department believes that this approach is not only permissible under the statutory language, but also is responsive to the Congressional objective expressed in the Conference Report that HUD's rental assistance programs "should be directed toward those families who have the most urgent housing needs", as expressed by the preferences.

Accordingly, the Department has amended the final rule to permit PHAs operating Public and Indian Housing programs, and Section 8 Certificate and Moderate Rehabilitation programs, to establish tenant selection systems that permit applicants without a Federal preference to receive housing assistance ahead of those with a Federal preference. To ensure compliance with the statute and its legislative intent, however, the rule requires that not more than 10 percent of the families that are initially admitted to assistance in the Public and Indian Housing and Moderate Rehabilitation programs, or that initially receive a Certificate of Family Participation in the Certificate program, may be non-preference-holders that took precedence over families with a Federal preference.

The 10 percent limit applies only where the PHA has one or more applicants with a Federal preference, and permits assistance to be given first to a non-preferred applicant. It is possible, especially for smaller PHAs, that no applicant holding a Federal preference will be available when assistance is to be provided. In this situation, the PHA may make the assistance available to the non-preference-holder, without counting it against the 10 percent cap.

The 10 percent ceiling will be determined for each waiting list that the PHA maintains. This will permit PHAs that have "merged" waiting lists to avoid the administrative burden of ensuring compliance with the 10 percent standard for each program they operate.

Performance under the standard will be measured on an annual basis. Thus, PHAs will be responsible for administering their programs so that at the end of each one-year period, the 10 percent limit is not exceeded. Since some PHAs may not wish to begin the one-year period when the rule is implemented, but may prefer another starting date (such as the beginning of the PHA's fiscal year), the rule permits PHAs to select an initial reference period of less than one year before the start of the first full year under the rule.

Finally, in fashioning its own system, a PHA may employ the 10 percent exception to carry out preference objectives required by State law or those adopted by the PHA itself to advance local policy—for example, a local residency preference. Additionally, there would be no obstacle to a PHA's decision to adopt new local preferences to meet new program objectives. For example, a PHA could provide a local preference for tenants of Rental Rehabilitation projects who encounter increased rent burdens in their Rental Rehabilitation units, but whose rent burden doesn't reach a level to qualify the families for a Federal preference.

The Department wishes to stress that only the *initial* receipt of assistance for a *family* is counted toward the 10 percent limit. Thus, a family that moves from one public housing project to another in the same PHA's jurisdiction, or that moves from a unit assisted under the Certificate program and is given a Certificate for a new unit, is not subject to this rule.

As noted above, the 10 percent exception is only available for PHAs operating certain programs. Owners (including PHAs) participating in the other Section 8 programs must comply with the proposed rule's "primacy of the preferences" approach: *i.e.*, Federal preference-holders must be considered for housing assistance before those who do not qualify for a Federal preference.

The Department has two reasons for adopting this bifurcated approach. First, the vast majority of those who commented on the "primacy of the preferences" feature of the proposed rule were PHAs. Their comments voiced virtually unanimous and heated opposition to this aspect of the rule, especially insofar as this approach could override local residency preferences. As noted in the comment summary above, many PHAs view local residency preferences as an essential part of their programs—even as an implicit "contract" under which local communities agree to cooperate in the development of assisted housing in

return for the assurance that their needy residents will be served first.

In contrast, few owners under the rule's other programs commented on, or objected to, the "primacy of the preferences." Owners in these programs typically do not use local tenant selection preferences, including residency preferences, and, thus, do not have nearly the intense interest in this issue that PHAs do.

Second, PHAs and IHAs have traditionally been given a great deal of discretion in the administration of their local public housing programs. Indeed, one of the major policies of the 1937 Act is "to vest in local public housing agencies the maximum amount of responsibility in the administration of their housing programs * * *" Section 2 of the 1937 Act. Moreover, PHAs and IHAs are public bodies created by State, local, and tribal governments, and traditionally have jurisdiction over a broad area. Giving these entities greater responsibility for administering the preferences serves the goal of minimizing Federal control over matters of local concern that are within the competency of local governments. By contrast, for most purposes, the owners of projects under the other programs are not likely to receive guidance in the management of projects from non-mortgagee agencies of State or local governments.

In addition, the final rule continues the approach taken in the proposed rule of treating PHAs that administer Section 8 projects in the same way as other Section 8 owners. PHAs administering Section 8 projects have traditionally been viewed as project owners. Thus, they are commonly required to fulfill different regulatory requirements for the public housing and Section 8 programs. For example, Section 8 projects are not subject to a cooperation agreement requirement under section 5(e)(2) of the 1937 Act, are not exempt from State and local real and personal taxes under section 6(d) of the Act, are not eligible for operating subsidies under section 9 or for comprehensive improvement assistance under section 14 of the Act, and are not subject to requirements governing the demolition and disposition of housing under section 18 of the Act. Additionally, PHA public housing lease and grievance procedures under 24 CFR Part 966 differ from the termination of tenancy provisions under 24 CFR Chapter VIII that govern FHA-insured Section 8 projects.

For these reasons, the Department has determined that the 10 percent exception approach should only be extended to PHAs, and only the PHAs operating Public and Indian Housing programs and Certificate and Moderate Rehabilitation programs. We believe that this approach adequately responds to the commenters' concern that PHAs be given flexibility to tailor the Federal preferences to locally defined needs and requirements. The 10 percent "safety valve" provides PHAs with significant discretion to fashion their own tenant selection systems, while ensuring achievement of the statutory objective of directing housing assistance to those with the greatest need.

Finally, it should be noted that the position of the Federal statutory preferences under the rule vis-a-vis locally derived preferences may work a limited preemption of local preferences—including those that may have been established by State or local law. The Department believes that this result is a necessary concommitant of the statutory directive and is clearly appropriate under preemption doctrine pronounced by the U.S. Supreme Court in *Hillsborough County, Florida v. Automated Medical Laboratories, Inc.*, 471 U.S. 707 (1985). As the Court stated in that case at 713:

"Even where Congress has not completed displaced state regulation in a specific area, state law is nullified to the extent that it actually conflicts with federal law. Such a conflict arises when compliance with both federal and state regulations is a physical impossibility," *Florida Lime & Avocado Growers, Inc. v. Paul*, 373 U.S. 132, 142–143 (1963), or when state law "stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress," *Hines v. Davidowitz, supra*, at 67.

It is clear that in certain circumstances the Federal preferences may conflict with preferences established by State or local law. For example, the rule may require that assistance be provided to an applicant who holds only a Federal preference before another applicant who does not qualify for a Federal preference, but who holds a veterans' preference created by State law. Since only one candidate can "go first," the two requirements conflict; in the words of the Court, "compliance with both federal and state regulations is a physical impossibility," and "the state law 'stands as an obstacle to the accomplishment and execution of the full purposes and objectives of the Congress * * *' ". In such a situation, the State law must yield to the Federal imperative.

It should be noted, however, that this conclusion does not mean that preferences created by State and local law are wholly preempted, and have no place in the talent selection process. Owners and PHAs may continue to use these preferences in their selection policies. Thus, PHAs and owners may use these preferences to rank Federal preference-holders, as well as to rank applicants who do not qualify for Federal preference. In addition, PHAs that qualify for the 10 percent exception discussed earlier, may favor applicants with State or local preferences over those with Federal preferences, consistent with the standards for using the 10 percent exception and applicable FHEO requirements. Where, however, the State or local preference conflicts with the Federal preferences, the State or local law must yield to the Federal statute implemented by today's final rule.

B. Use of Local Preferences to Select Among Federal Preference-Holders

As noted earlier, the proposed rule provided no role for local preferences to distinguish among applicants that held a Federal preference; the only issue was whether an applicant qualified for a Federal preference and, if so, he or she received consideration for assistance based solely on the *Federal* preference, irrespective of the number or type of *local* preferences that the applicant might hold. The final rule alters this rigid approach by permitting PHAs and owners in all of the programs subject to this rule to use State or local preferences as a means of selecting among Federal preference holders. For example, a PHA or owner could provide that an applicant who was living in substandard housing and had a local residence preference would receive assistance before another who only held a substandard housing preference. Another example of a local preference that a PHA or owner may use to distinquish among Federal preference-holders is a preference to select qualified candidates for a State or local program to move low-income families from welfare to employment and economic and social self-sufficiency.

In addition, according weights could reflect local concerns associated with ongoing housing assistance activity. For example, a PHA could provide that those paying more than 50 percent of family income for rent because their living units had increased in cost after Rental Rehabilitation activity should take precedence over those paying 50 percent of family income for rent where

other factors account for the high rent burden.

It should be noted that this approach is distinct from the 10 percent exception discussed in the previous section. The 10 percent feature permits PHAs to admit to assistance some families that have no Federal preference over those that do. The discretion accorded here enables PHAs and owners to use local preferences as a means of rank-ordering among those applicants that do have preference and, those without a Federal preference can receive assistance before those with such a preference. The Department believes that the ability to use local preferences in this way will augment the latitude given PHAs under the 10 percent exception features. It will also give other owners needed flexibility in administering their programs.

This approach also responds to commenters' concerns that PHAs and owners have the greatest possible flexibility to tailor housing assistance to meet local needs, and to commenters' fears that the rule would force them to accept non-resident Federal preference-holders before residents. As noted above, PHAs and owners may use local residency preferences as a way of ranking Federal preference-holders. Thus, at least among federally preferred applicants and to the extent such preferences do not conflict with applicable fair housing and equal opportunity requirements, PHAs and owners could ensure that local residents come first.

It is at least theoretically possible that a non-resident Federal preference-holder could take precedence over a resident, if no resident applicant held a Federal preference and, in the case of certain PHA programs, the 10 percent exception was unavailable. Although the Department has no data upon which to estimate the incidence of this situation, we do not expect it to occur with any frequency, especially for PHAs and owners that have sizable waiting lists. In any event, however, the Department believes that if the Federal preferences operate to furnish assistance to a non-resident Federal preference-holder before a resident without a Federal preference, this is a necessary concommitment to implementing the statutory mandate.

C. Aggregating and Ranking the Federal Preferences

As noted before, the proposed rule did not permit the Federal preferences to be aggregated or ranked. (See 49 FR 37789.) Thus, with respect to aggregation, a prospective tenant who qualified for two or more of the preferences could not take precedence over another who qualified for only one. With respect to ranking, qualification for a preference could be based on any permissible ground, and once obtained, each preference was coequal with the others: *i.e.*, determinations of the relative weight to be accorded the preferences or their bases for qualification (or both) were not permitted.

Commenters opposed this policy on grounds that it provided no means of determining who has the greatest need for housing assistance—a problem that is exacerbated if, as some commenters argued, qualification for at least one of the preferences would be nearly universal. The Department has reviewed the position taken in the proposed rule, and has decided to permit PHAs and project owners to rank the preferences or their components (or both), and to aggregate the preferences according to the PHA's or owner's determination of the relative need for housing that the preferences represent.

For example, *with respect to aggregating the preferences*, a PHA or owner may decide that a family that is paying more than 50 percent of its income to rent a substandard unit has a greater need for housing than one that is paying more than 50 percent of its income for a standard unit, and provide assistance to the former family before the latter. *With respect to ranking the preferences*, a PHA or owner may provide that those living in substandard housing have a greater need for housing than those paying more than 50 percent of family income for rent and, therefore, may accord the former preference greater weight in the selection process than the latter preference.

With respect to ranking the preferences' definitional elements, a PHA or owner may provide that those living in housing that is dilapidated or that has been declared unfit for habitation by an agency or unit of government have a greater need for housing than those whose housing is substandard only because it does not have a usable bathtub or shower inside the unit for the exclusive use of the family and, therefore, may accord the former circumstance greater weight in the selection process than the latter circumstance. Similarly, a PHA or owner may provide that those living in dilapidated housing or housing that has been declared unfit for habitation by an agency or unit of government have a greater need for housing than those paying more than 50 percent of family income for rent, but that those paying more than 50 percent of income for rent have a greater need for housing than those whose housing is substandard only because it does not have a usable bathtub or shower inside the unit for the exclusive use of the family. In this case, PHAs and owners could accord appropriate weights reflecting these determinations of need.

Since PHAs and owners will meet the statutory requirement that preference be given the three categories of applicants, irrespective of the aggregation or ranking of the preferences chosen, the rule does not impose specific limits on PHA or owner discretion to rank or cumulate the Federal preferences. Paragraph (b) of today's rule contains these provisions.

Note.—This preamble makes a number of references to amendments to specific "paragraphs" of today's rule. Since this proceeding amends several Parts of 24 CFR, but uses essentially the same paragraph designations for each Part amended, this terminology means that the paragraph referred to has been amended in each Part covered by this rule.

D. Fair Housing and Equal Opportunity Considerations

Today's rule contains language in paragraph (b) to ensure that the Federal preferences and any non-Federal preferences and priorities are established and administered in a manner that (1) is consistent with HUD's affirmative fair housing marketing policies (see 24 CFR 200.610) and (if applicable) the owner's HUD-approved Affirmative Fair Housing Marketing Plan, and (2) is not incompatible with Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d; Title VIII of the Civil Rights Act of 1968, 42 U.S.C. 3601–19; Executive Order 11063 on Equal Opportunity in Housing, 27 FR 11527 (1962), *as amended* at 46 FR 1253 (1980); Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. 794; the Age Discrimination Act of 1975, 42 U.S.C. 6101–07; or HUD's regulations and requirements issued under these authorities. These provisions are designed to ensure that the mandates of Title VIII of the Civil Rights Act of 1968, Title VI of the Civil Rights Act of 1964, and related civil rights authorities are met. (Part 905 of the rule contains modifications appropriate to the special status of Indians under civil rights laws.)

E. Advance HUD Approval of Federal Preference Systems

The final rule imposes no new requirements for advance HUD approval of owner or PHA preference systems. These systems, however, are subject to existing approval requirements, such as the requirement in the Section 8 Certificate and Moderate Rehabilitation programs that tenant selection

preferences be incorporated into the PHA's Administrative Plan.

For other programs covered by the rule, owners and PHAs must send HUD a copy of any preference system that proposes to use a local residency preference. This submission requirement does not affect the ability of the owner or PHA to implement the Federal preferences, but reflects the Department's concern that residency preferences be administered in accordance with HUD's fair housing and equal opportunity requirements.

F. Relationship to Other Federal Authorities

Several commenters requested guidance on the relationship between the three preferences and existing Federal preferences or requirements. Specific guidance was requested on the following:

—The requirement that PHAs select families eligible for assistance under the Section 8 Moderate Rehabilitation program that reside in units designated for rehabilitation, without requiring that they be placed on a waiting list. (24 CFR 882.514(b))

—The provision permitting PHAs to give a preference for admission to Independent Group Residences to families that express an interest in residing in such a Residence. (24 CFR 882.209(a)(6))

Preliminarily, it should be noted that the "primacy of the preferences" concept in the proposed rule involved only the relationship between the three Federal preferences and *locally created* (or non-Federal) preferences. The rule itself did not speak to the relationship between the three preferences and other *Federal* preferences or requirements. The preamble, however, contained the following guidance:

> The rule would not preempt those classes of tenants accorded specified preferential treatment under other Federal regulatory or statutory authorities. For example, sections 221(f) and 231(f) of the National Housing Act (NHA), 12 U.S.C. 1715*l*(f), and 1715v(f), respectively, authorize the Secretary to adopt procedures to assure that housing provided under these sections "is available to displaced families" (section 221(f)) or to prescribe procedures to secure for handicapped families "preference or priority of opportunity to rent the living units specially designed for their use and occupancy" (section 231(f)). These statutory requirements are implemented by regulatory provisions at 24 CFR 221.537(c), giving a preference to displacees, and at 24 CFR 231.9, giving a preference to elderly or handicapped persons.
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> * * * * *
>
> The statutory language is unambiguous that these [the Federal] preferences must be given to eligible applicants, but these preferences are not intended to be applied so as to vitiate other regulatory and statutory objectives. For example, 24 CFR 860.204(c) [now § 960.204(c)] makes it clear that tenant selection policies shall be in compliance with, among other things, "the nondiscrimination requirements of Title VI of the Civil Rights Act of 1964." Owners and PHAs are, thus, under a continuing obligation to observe all pertinent Federal regulatory and statutory requirements while giving the preferences to eligible applicants. See also 24 CFR 880.603(d), 881.603(b) and 883.704(b). (49 FR 37789)

The Department believes that this approach is correct, and has amended the proposed rule to make this relationship clearer, by requiring that the three Federal preferences be implemented in a manner that is "consistent with" other applicable Federal requirements. (See paragraph (b) of today's rule.) Because of the variety and complexity of the situations in which the three preferences may interact with other Federal preferences and requirements, and the confusion expressed by the commenters on this point, the Department believes that detailed discussion and guidance on how these authorities interrelate is appropriate.

In the Department view, the basic precept is that the three preferences and other Federal authorities should be read in a way that fully implements each provision to the maximum extent possible. Situations may occur, however, in which there is conflict between the preferences and the other authority: *viz.*: where one provision can be given effect only at the sacrifice of the other. The following guidance is intended primarily to address these situations.

1. *Preferences and Requirements in Federal Statutes*—(a) *Broad Range of Incomes.* Section 6(c)(4)(A) of the 1937 Act requires PHAs administering public housing programs to establish tenant selection criteria that both contain the three preferences and are designed "to assure that, within a reasonable period of time, the project will include families with a broad range of incomes * * *." This provision presents special issues, since the two requirements are coequal elements of the same subparagraph. The Department believes that PHAs are under an obligation to try to satisfy both requirements to the fullest extent possible. For example, each requirement can be met by applying the preferences to the income groups involved. Thus, if a higher income family is needed to satisfy the "broad range of incomes" requirement, a higher income family that qualifies for a preference would be chosen first; if a poorer family is the next to be chosen, a poorer family with a preference would be selected first. Similarly, PHAs may use the "broad range of incomes" requirement as a type of "local preference," by ranking Federal preference-holders according to the income categories involved.

Problems may arise, however, in situations where both the preferences and the "broad range of incomes" requirements cannot be satisfied, as for example, where the "broad range of incomes" policy requires a higher income family, but only poorer families hold a preference. In this situation, PHAs could satisfy the "broad range of incomes" requirement by using the 10 percent exception authority to admit to tenancy the non-preferred candidate ahead of the federally preferred applicant: in the example, the non-preferred higher income applicant before the preferred lower income applicant.

If, however, the 10 percent authority is not available, the Department believes that the preferences generally take precedence. In the example, the poorer family with the preference must be considered for assistance before the non-preferred, higher income applicant.

The Department believes that this conclusion is amply supported by the statute and its legislative history. As noted above, the preference portion of section 6(c)(4)(A) is categorical in its mandate: the PHA's tenant selection criteria "shall give preference." The legislative history referred to earlier is equally categorical. On the other hand, the portion of the statute dealing with range of incomes is far less categorical. Thus, the statute requires that the PHAs actions be designed to achieve the "broad range of incomes within a reasonable period of time." In implementing this authority, § 960.205(c) and (c)(8) require PHAs to establish selection criteria that (1) are "reasonably related to achieving the basic objective" and (2) "by preference or otherwise" will be "reasonably calculated to obtain the basic objective."

Since the preference language is expressed in far more direct and immediate terms, the Department believes that the preferences take precedence over the "broad range of incomes" requirement, where both of the requirements cannot be satisfied in a given instance.

(b) *Other Statutory Requirements.* Examples of other statutory provisions that contain preference and other requirements include the following National Housing Act authorities: section 221(f) (preference for displaced families—defines "displaced families"

more narrowly than "involuntary displacement" under the final rule); sections 231(a)(1) and (f) (not less than 50 percent of insured units must be specially designed for the use and occupancy of elderly persons, and preference for handicapped persons, respectively); section 250(c)(2) (priority for prospective section 8 tenants with the lowest income, where section 8 assistance is provided to forestall prepayment of insured, subsidized project mortgages); and section 207(b)(2) (prohibition of discrimination against families with children). Section 3(b)(3) of the 1937 Act gives preference in admission to assisted housing to elderly, handicapped, or displaced single persons before other single persons who are not in one of those categories.

Consistent with the basic precept described above, the three preferences and these provisions should be implemented so as to achieve the objectives of both the preferences and these authorities. For example, among applicants for Section 8 units in section 231 projects who qualify for one of the three preferences, elderly or handicapped applicants would be taken first. Where a conflict arises—such as if no elderly or handicapped applicants in the example hold a preference—*the program-specific requirement would prevail.* Thus, in the example, elderly or handicapped applicants without a preference would take precedence over other applicants with a preference. The rationale for this result is that where Congress has provided competing authorities, the more specific should take precedence. In the example, the section 231 preference prevails, since that preference inheres in the nature of the project itself, whereas the three preferences apply to Section 8 assistance generally.

2. *Preferences and Requirements in Regulatory Authorities*—(a) *No Apparent Conflict.* There are a number of regulatory authorities that provide for preferences or impose other requirements that can clearly be given full effect together with the three preferences. These authorities include:

—Fair housing and equal opportunity requirements, such as those contained in §§ 880.210, 882.111, and 960.203; and

—§ 882.209(a)(6), which allows a PHA to establish a preference for selecting an eligible applicant who has indicated a desire to reside in an Independent Group Residence, when a current Section 8 participant in an IGR moves.

Fair housing and equal opportunity requirements apply to the selection of all applicants for assisted housing, irrespective of whether they hold a Federal preference. Thus, these requirements do not conflict with the preferences.

In the Part 882 example, PHAs can satisfy the Federal preferences by offering Certificates first to those who are Federal preference-holders. The fact that no preference-holders wish to take advantage of these opportunities, or that there may not be a family on the waiting list that qualifies for a Federal preference, does not create a conflict under these regulatory provisions: the PHA has discharged its responsibilities by making the Certificates first available to Federal preference-holders on the waiting list.

(b) *Apparent conflict.* There are, however, several regulatory authorities that have the potential for conflict with the Federal preferences. For example, § 882.514(b) requires PHAs to select eligible families living in a project to be rehabilitated under the Section 8 Moderate Rehabilitation program "without requiring that these Families be placed on a waiting list." Subparts A (Loan Management) and C (Property Disposition) of Part 886 provide Section 8 assistance to otherwise eligible tenants who are occupying assisted projects when the Section 8 contract is executed. Section 882.209(a)(4)(ii)(B) provides for Certificates for eligible families living in:

(i) HUD-owned multifamily projects, when HUD decides to sell the project or to vacate units in the project;

(ii) HUD-held multifamily projects, when HUD forecloses, and a party other than HUD acquires the project at foreclosure; and

(iii) Section 8-assisted projects, in which the owner elects not to renew a Section 8 contract.

Each of these authorities can have the effect of targetting Section 8 Certificates to those who are eligible for Section 8 assistance, but who do not qualify for any of the Federal preferences. The Department has concluded, however, that the preference requirements should not be implemented in a way that vitiates these special Section 8 authorities.

Moderate Rehabilitation. The purpose of the Section 8 Moderate Rehabilitation program is "upgrading and thereby preserving the Nation's housing stock." (Section 8(e)(2) of the 1937 Act, 42 U.S.C. 1437f(e)(2)). The subsidy involves a 15-year Section 8 Housing Assistance Payments (HAP) contract that is attached to the structure. The Department does not believe that Congress intended that the program and the Federal preferences interact in a way that could result in the displacement of Section 8-eligible families from Moderate Rehabilitation projects, only to fill the vacancies created with other Section 8-eligible families.

In addition, in HUD's appropriation Acts, the Congress routinely approves the use of Section 8 authority for Moderate Rehabilitation. See, for example, the table of gross reservations for fiscal years 1984 and 1985 (H.R. Rep. No. 867, 98th Cong., 2d Sess. 9, 11 (1984)), fiscal year 1986 (H.R. Rep. No. 363, 99th Cong., 1st Sess. 6 (1985)), and fiscal year 1987 (H.R. Rep. No. 977, 99th Cong., 2d Sess. (1986)). The Department believes that this Congressional approval indicates clear Congressional intent that the Moderate Rehabilitation program continue, despite the fact that some of the tenants initially receiving Section 8 assistance may not qualify for a Federal preference. Thus, it is permissible to direct Section 8 Moderate Rehabilitation assistance to existing occupants who qualify under the program.

Loan Management/Property Disposition. The primary purpose of Part 886, Subpart A (Loan Management), is to reduce claims on the Department's insurance fund by aiding those FHA-insured or HUD-held projects with immediately or potentially serious financial difficulties. (§ 886.101(c)). The purposes of Part 886, Subpart C (Property Disposition), are to increase and maintain the amount of decent, safe, and sanitary housing affordable by lower income families; minimize displacement of tenants; preserve and revitalize residential neighborhoods; and dispose of projects in a manner consistent with HUD's disposition objectives. (§ 886.301.) The subsidy involves five- and 15-year, respectively, Section 8 HAP contracts that are attached to the structure.

As in the case of Moderate Rehabilitation, Congress regularly approves the use of Section 8 authority for Loan Management and Property Disposition. See, for example, the tables of gross reservations referred to above for fiscal years 1984 and 1985, fiscal year 1986, and fiscal year 1987. The Department believes that this legislative history provides adequate sanction for the use of Loan Management and Property Disposition authority for tenants in place when the Section 8 contract is executed, without regard to whether they qualify for a Federal preference at that time. In addition, to the extent that rents for these tenants were subsidized before their receipt of Section 8 assistance, they would not be considered to be "seeking assistance" as contemplated by the preference statute, but rather to be transferring directly

from one form of rental subsidy to another—an event that the Department believes is outside the purview of the preference authority.

HUD-owned/Held Multifamily Projects. Sections 882.209(a)(4)(B)(*2*) and (*3*) require that if HUD makes Section 8 Certificates available to a PHA for use in connection with (1) a HUD-owned multifamily project that HUD decides to sell or in which HUD wishes to vacate units, or (2) a HUD-held multifamily project that is acquired at foreclosure by a party other than HUD, and PHA must use them for these purposes. These uses of Certificates provide an alternative to the project-based subsidy approach for supporting HUD's Property Disposition program that is contemplated by Part 886, Subpart C.

Since these Certificates are funded from authority made available for Property Disposition, the same considerations mentioned above with respect to Congressional approval in appropriation Acts pertain to their use. In addition, as noted above, provision of Section 8 assistance to a tenant whose rent was subsidized before receipt of a Certificate is not subject to the preference provision.

Section 8 "Opt-outs." Certain project-based Section 8 contracts provide for an initial term not to exceed five years, and are renewable at the sole option of the owner for additional terms of up to five years, not to exceed a specified period. (See 24 CFR 880.109 (1979) and 24 CFR Part 1273, App. II (1975).) The regulatory scheme under § 882.209(a)(4)(B) (*4*) calls for PHAs to make Section 8 assistance available for eligible families residing in projects when the owner elects not to renew the contract for an additional term. Since provision of Section 8 assistance in these circumstances simply substitutes one form of rental assistance for another, the preference provisions are, as noted above, inapplicable.

Demolition/Disposition of Public Housing. Congress has regularly approved HUD's request to make Section 8 Housing Vouchers available to tenants of public and Indian projects that are to be demolished or disposed of. See, for example, the tables of gross reservations referred to above for fiscal years 1986 and 1987. Since receipt of a Voucher in these circumstances simply substitutes one form of assistance for another, the preference provisions are inapplicable.

3. *FH&EO Administrative and Judicial Remedies.* Where HUD makes a finding of discrimination in accordance with procedures under applicable civil rights law, and imposes a race-conscious remedy, imposition of the remedy takes precedence over the Federal preferences. That is, if the remedy calls for the next tenant to be a minority family and no minority families qualify for a preference, a non-preferred minority family would be selected for the unit over a non-minority family with a preference. Similarly, court-decreed civil rights remedies take precedence over the preferences. These types of remedies are necessary to redress specific instances of discrimination, and the Department does not believe the Congress intended the preferences to override them.

II. Discretion Accorded PHAs

The proposed rule permitted PHAs (including IHAs) operating public and Indian housing programs, and the Section 8 Existing and Moderate Rehabilitation programs under Part 882, to develop their own definitions for the three preferred categories (subject to HUD approval), and to devise their own verification procedures. (See the proposed rule's amendments to 24 CFR Parts 904 and 905 and §§ 882.209a(a), 882.514a(a), and 960.204a(a).) That rule required owners under all other programs (including PHAs and IHAs, where they own projects under those programs) to adopt the definitions and verification procedures prescribed in the rule. A commenter objected to this bifurcated approach on grounds that since applicants may apply for assistance under several of the programs covered by this rulemaking, it will be confusing to an applicant who has applied for assistance under both "PHA" and "owner" programs to find his or her eligibility not being defined or determined (or both) in a uniform manner.

As noted earlier, this bifurcated approach is amply justified by the statutory and programmatic differences between "PHA programs" and "project owner programs." In addition, the Department believes that any confusion that may be occasioned by this approach can be minimized by providing necessary information and instructions to prospective tenants—as required in paragraph (a) of the rule. Accordingly, the Department has retained the bifurcated approach in today's rule.

III. Definitions of the Federal Preferences

The definitions of the preferences used in the proposed rule elicited numerous comments and requests for clarification. The following summarizes the public comments, and gives HUD's responses, for each of the preference categories.

Before discussing this material, the Department wishes to emphasize two general points. First, the Department has attempted to draft the rule's difinitions broadly enough to ensure that those with the most urgent housing needs will be covered, yet narrowly enough that qualification for the preferences will not be so widespread as to dilute their effect. Second, as discussed above, the final rules governing the Public and Indian Housing programs (24 CFR Parts 904, 905, and 960), and the Section 8 Certificate and Moderate Rehabilitation programs (24 CFR Part 882, Subparts A and B, D and E, and F), differ from the rules for the other programs in serveral respects, including PHA (and IHA) discretion (subject to HUD approval) to develop their own definitions of the preferred categories. HUD's disposition of the public comments in based solely upon the definitions contained in the proposed rule, and does not address alternative definitions that PHAs or IHAs may propose.

A. *Involuntary Displacement*

One commenter asked whether a family that is evicted for non-payment of rent would be considered "involuntarily displaced," if the failure to pay the rent resulted from the loss of employment of a family member. Since paragraphs (d)(3) (A) and (B) of the proposed rule required the owner's action causing the displacement to be "beyond an applicant's ability to control or prevent" and to occur "despite an applicant's having met all previously imposed conditions of occupancy," respectively, the proposed rule did not consider a tenant displaced by eviction—irrespective of the reason—as "involuntarily displaced." The Department limited the definition in this manner to avoid imposing the further burden of PHAs and owners of having to determine why an applicant was evicted. The Department continues to believe that it is inappropriate to require PHAs and owners to assume this additional burden, and no change is made in this rule in this respect. It should be noted, however, that a family suffering a loss of income due to the unemployment of a wage earner may qualify for one or both of the other two preferences.

Paragraph (c)(1)(i) of the proposed rule provided that an applicant would qualify for the preference if "the applicant has been involuntarily displaced and is not living in standard replacement housing." Paragraph (c)(5) defined "standard replacement housing" as, among other things, "adequate for the family size." One commenter asked

what is to be considered "adequate for family size." Given the greater discretion accorded them under the rule, PHAs have discretion to fashion their own definition for the Public and Indian Housing programs, and for the Section 8 Certificate and Moderate Rehabilitation programs; the Department expects PHAs and project owners in the other programs to use the applicable occupancy standards contained in HUD Handbooks. Accordingly, the final rule does not contain a definition of this phrase.

Several commenters objected to the provision in paragraph (d) of the proposed rule that excluded from the definition of "involuntary displacement" a landlord's decision not to renew a lease or occupancy agreement. They argued that a tenant whose tenancy is terminated against his or her will is just as "involuntarily displaced" as tenants who are displaced because of other owner actions that meet the proposed rule's definition. They also argued that since landlords can use "laspe of time evictions" to terminate tenancy in lieu of giving notice of other owner actions that qualify under the definition, excluding such "evictions" from the definition could deprive tenants of the documentation necessary to qualify for a preference.

The Department agrees with these commenters, and has removed that limitation from the final rule. The Department notes, however, in response to other comments, that recognizing an owner's decision not to renew a lease as a possible ground for "involuntary displacement" would not lead to preferential treatment of "undesirable" tenants whose landlords opted to let their leases expire rather than pursue an eviction. Project owners and PHAs administering Public and Indian Housing projects remain obliged to determine whether prospective tenants' habits or practices make them unsuitable for tenancy in assisted projects; this rule in no way affects that responsibility.

One commenter thought it "unfair that a deserving family" would not get a preference on the basis that it was involuntarily displaced, if it was involuntarily displaced at one time, but it is living in standard replacement housing when its qualification for a preference is verified. The proposed rule excluded such a family because, as the comment itself states, the family is living in *standard* housing, and (assuming that the family is not paying more than 50 percent of its income for rent) no longer has the urgent need for housing assistance that the preferences are designed to address. Stated differently, the family has achieved the very state—occupancy of standard housing—that the granting of a preference would have helped them achieve. The final rule is unchanged on that point.

One commenter suggested that the preference for involuntary displacement should be limited to 30 days on either side of the displacing event. The Department does not agree with this suggestion. Paragraph (c)(1)(i) of the proposed rule conferred the involuntary displacement preference if the applicant had been involuntarily displaced and was not living in standard, replacement housing, or would have been involuntarily displaced within six months of certification or verification as to qualification for the preference. The Department does not believe that it makes sense to impose a time period after the displacement occurs: the only relevant inquiry at that point is whether the applicant is living in standard, replacement housing. Imposition of a 30-day limit for prospective displacements is too short a period, and would disqualify too many applicants that the statute—if given any reasonable interpretation—was intended to reach. Indeed, the intake process for housing assistance applications may itself take more than the 30 days suggested.

The Department rejects the comment that the preference for substandard housing and involuntarily displaced families should be limited to situations where a family's property is condemned—and then only if the condemned property complied with the applicable code when the applicant claiming a preference first occupied it. The Department believes that the standard suggested is far too narrow, and would inappropriately exclude many of the situations that a fair reading of the term "involuntary displacement" and Congressional intent would cover. In addition, limiting the preference to situations in which the property met code standards at initial occupancy would impose a unnecessary (and frequently impossible) administrative burden on prospective tenants, as well as on PHAs and owners.

One commenter recommended that where modernization of a project results in affected tenants being temporarily relocated, the tenants should be given an additional priority on the waiting list. Such tenants, insofar as this rule is concerned, would not be considered involuntarily displaced. They would not be "applicants for housing" to which the preferences apply, but tenants holding the right to reoccupy their units after rehabilitation, without any reference to a waiting list.

A commenter suggested that only government agencies whose functions involve public improvement and development should be authorized to verify that a family has been involuntarily displaced. This commenter argued that permitting verification of involuntary displacement on the basis of previous landlords' representations would encourage landlords to lie in order to use the availability of the preferences as a way of getting rid of "problem tenants."

This suggestion is impracticable, in the Department's view, because some jurisdictions may not have such agencies, or if they do, the agencies may not have the competency or resources to furnish the verification required. The Department believes that the proposed rule's approach of also permitting the previous landlord or agent to provide written notice of a prospective tenant's reason for displacement strikes an appropriate balance between protecting project owners and PHAs from "problem tenants" and ensuring tenants' access to reasonable means of verifying their qualification for a preference.

The Department does not believe, as a commenter argued, that private action is too broad and vague to serve as a ground for according a preference, or that verification of private action is excessively difficult. The Department has reviewed the legislative history surrounding enactment of the "involuntary displacement" basis for awarding a preference, and can find nothing to suggest that the term should be limited to displacement caused by governmental action. On the contrary, the solicitude in the legislative history that housing assistance be directed to those with the most urgent housing needs argues strongly for including both public and private displacement, since one's status of having been "involuntarily displaced" and need for housing turn on the *fact* of displacement, not the *nature* of the displacing action. In addition, HUD believes that the type of private action that is cognizable under the rule is clearly delineated and circumscribed, and that verification would generally be no more difficult than would be required for public action.

Paragraph (d) of the proposed rule contained an illustrative listing of occurrences that may constitute "involuntary displacement." Most of the examples on the list dealt with the project owner's withdrawal of the structure or the family's unit from the rental market. One commenter

recommended that this listing be deleted, because (in the commenter's view) it produces confusion and implies a narrower construction than the rest of the definition requires. The Department notes that the listing is only illustrative and is not intended (nor would it have the effect) of narrowing the types of displacements that may be cognizable under paragraph (d)(3). The final rule is unchanged on that point.

The final rule adds a provision including the victims of domestic violence among those who may qualify for a preference on grounds of involuntary displacement. (See paragraph (d)(2) of the rule.) The Department believes that according a preference for the victims of domestic violence recognizes their pressing need for a safe home environment for themselves and their families, and is entirely consonant with the preferences' objective of directing housing assistance to those with the greatest housing needs. Specifically, an applicant for housing assistance would be considered involuntarily displaced if the applicant leaves his or her dwelling as a result of actual or threatened physical violence directed against the applicant or a member of the applicant's family by his or her spouse or other member of the applicant's household. The Department does not believe that actual violence against the applicant should be a condition precedent to qualifying for the preference: the threat of violence against the applicant, or actual or threatened violence against the applicant's family, has the same effect of destroying the peaceful enjoyment of the family abode.

The final rule also considers as involuntarily displaced an applicant who lives in a unit with a spouse or other member of the applicant's household who engages in this type of violence. The Department does not believe that an applicant should be forced physically to vacate the unit before qualifying for the preference. Such a position would be wholly insensitive to the difficult and complex situation in which the victims of domestic violence often find themselves, and may result in additional, unnecessary physical and emotional damage to the applicant and his or her family.

The final rule amends paragraph (e) of the proposed rule to specify that a domestic violence situation is to be verified through written confirmation from the local police department, social services agency, or court of competent jurisdiction, or a clergyman, physician, or public or private facility that provides shelter or counseling to the victims of domestic violence. Although the final rule generally focuses on verification by objective arms of government to reduce the administrative burdens on PHAs and owners, the Department believes that reference to clergymen, physicians, and private operators of facilities for victims of domestic violence is appropriate, since many genuine instances of domestic violence may only be shared with private counselors and doctors, and may never come to the attention of government authorities. The final rule also provides that the instances of violence must be recent or of a continuing nature. This requirement is designed to ensure that a preference claim is based upon a current domestic violence condition. Paragraph (c)(5) of the rule contains a conforming change to make clear that in the domestic violence situation, "standard, replacement housing" does not include the dwelling shared by the victim and the assailant, or temporary shelters for the victims of domestic violence.

The Department wishes to emphasize that identification of victims of domestic violence (and, as noted later, "homeless families") among the types of applicants covered by the statutory preferences does not abrogate the responsibility of the PHA or owner to assure, on a case-by-case basis, that all potential tenants are able and willing to live up to the obligation imposed by the dwelling lease. In addition, the fact that these classes of individuals may have preferred status does not allow PHAs and owners to divert housing resources to purposes not contemplated by the statute, such as leasing assisted housing to entities other than income-eligible families, or for the purpose of providing transient housing facilities or temporary shelter.

The final rule also amends paragraph (c)(5) of the proposed rule to require that "standard, replacement housing" be "permanent" and occupied pursuant to a lease or occupancy agreement. This is a technical change to make clear that the type of replacement housing that can divest an applicant of the involuntary displacement preference must not be temporary in nature.

Paragraph (d)(2) of the proposed rule has been revised to add code enforcement as a potential public displacement action. This is a minor change to make clear that public displacement actions can include code enforcement actions that are not part of a public improvement or development program. (See paragraph (d)(1)(ii).)

Finally, the final rule amends paragraph (d)(3) to specify that an applicant who vacates a unit as a result of actions taken because of his or her refusal to comply with the applicable program occupancy policies and procedures with respect to the occupancy of underoccupied and overcrowded units is not to be considered "involuntarily displaced." (For examples of regulations containing these policies and procedures, see §§ 215.65, 880.605, 881.605, 882.213, 882.509, 883.706, 884.219, 886.125, and 886.325.) This is a minor amendment designed to prevent an applicant who refuses to follow HUD's requirements for ensuring that assisted tenants are not overhoused from benefiting from the noncompliance, by attempting to establish qualification for a preference after any resulting displacement.

B. Substandard Housing

A commenter suggested that, to avoid PHA inspection of units, a "substandard" unit should be defined as one that does not meet the Section 8 Housing Quality Standards (HQS). The rule does not require PHAs or project owners to inspect applicants' units. Paragraph (g) of the proposed rule provided that verification of substandard housing would consist of a written statement or notice from a local government agency or from the applicant's present landlord as to the unit's condition. Since, as noted above, PHAs in some programs would have discretion to develop and use their own verification procedures, they may *elect* to inspect the unit involved as part of these procedures, but the rule does not *require* them to do so.

In addition, the Department does not believe that PHAs and project owners should have to use the Section 8 HQS to determine whether a housing unit is substandard. The HQS are designed to set minimum standards for determining whether a unit is eligible for Section 8 assistance, and are more prescriptive than the definition of "substandard housing" contained in paragraph (g). While the HQS are appropriate for determining minimum standards for federally assisted housing, the Department believes that the purpose of the Federal preferences—to target housing assistance to those with the greatest housing need—is better served by the approach taken in the proposed rule, of generally focusing the definition of substandardness on more serious indicators of inadequate housing quality. Thus, the final rule is unchanged on that point.

A housing authority recommended that a preference for living in substandard housing should only be given if the unit is so bad that (i) it is

actually condemned under the local housing code or (ii) repeated attempts to bring it into compliance with the code have failed. The Department does not believe that the rule should require use of such a narrow definition of "substandard." This definition would exclude from preferred treatment many applicants for housing assistance that have urgent housing needs and, thus, fit squarely within the class of individuals whom Congress intended to assist. In addition, the suggested definition would impose heavy administrative burdens on PHAs, owners, and applicants for tenancy in determining compliance with code requirements both before and after efforts to correct the deficiencies, and would force applicants to endure substandard conditions for perhaps lengthy periods, while any number of attempts to bring the unit up to code standards are made. The Department does not believe that the rule should mandate such a definition.

Another commenter suggested that verification of substandardness should require proof of an official inspection, rather than allowing the landlord to do it. This commenter contended that the landlord can certify to the presence or absence of certain basics, such as operable indoor plumbing or electricity, but not to their adequacy or safety.

The Department agrees that landlords may not possess the credentials necessary to make a professional determination that a housing unit is unsafe or inadequate. The Department believes, however, that landlord verification should be retained, even in cases requiring judgment as to the unit's condition.

The terms used in the regulation—such as the adequacy and safety of electrical service or heat, and whether the unit's condition endangers the health, safety, or well-being of the tenant's family—are not technical, and are readily comprehensible to the layman. Indeed, to the extent that the commenter fears that a landlord's judgment will err on the side of substandardness, the Department believes that the incentive runs the other way, since landlords will be inclined to characterize their units as substandard only when they in fact are. Depriving an applicant for housing assistance of this mode of verification, however, could impose additional delay and expense on the applicant, and in cases where there is no governmental unit qualified to provide the verification required, would render qualification for a preference on this ground impossible. The Department notes that under the rule, PHAs and owners could insist on a recitation of the facts underlying the alleged substandard condition of the unit to give them an adequate basis to make an informed judgment. In addition, as noted above, PHAs in certain programs (but not owners) would be free to propose their own means of verifying qualification for a preference on this ground.

Another commenter argued that the verification process should require a certain lapse of time to determine whether the landlord is willing to bring the unit into compliance with the applicable code, rather than using the unit's condition at a single given moment as the basis for the preference. This commenter stated that if the goal is to keep decent low-income housing stock on the market, there should be some pressure on the landlord to upgrade the unit and that tenants should not be encouraged to abandon the unit because of a preference system.

Preliminarily, it should be noted that the goal of this rule making is not to pressure landlords to bring their units up to code standard, but to target assistance to prospective tenants who have the greatest need for housing assistance. Requiring a period of time within which a housing owner can try to bring a unit up to standard would entail a considerable administrative burden on the PHA or project owner in monitoring and inspecting repair efforts, and could result in excessive delays during which tenants would be forced to live in substandard housing. Moreover, as a practical matter, the modes of verification contemplated by the rule would be unlikely to support a preference based on a single point in time: verification based on notice of substandard condition from a government agency would consume some time during which a unit can be repaired (if the landlord so intends) and the landlord would be unlikely to characterize the unit as substandard, unless he or she had decided not to make the needed repairs. The final rule is unchanged on that point.

Another commenter believed that the definition of "substandard" should be rooted in local housing codes, where available, rather than HUD regulations, because of the large differences among localities and regions of the country. For example, the commenter stated that in some jurisdictions, outdoor toilet facilities are commonplace and acceptable under local codes. In the commenter's view, to make all families without indoor toilets eligible for a preference would "wreak havoc" on the resources of PHAs in these areas.

The Department does not believe that this comment requires a change in the rule. As noted earlier, PHAs in certain programs may submit their own definitions of the preferences to make them more compatible with local codes. In addition, the final rule permits both PHAs and project owners to rank the preferences or their definitional elements (or both). Thus, for example, in areas where privies are common and accepted, the weight assigned a preference for this condition could be small. In any event, these factors ensure that implementation of the rule would not have the catastrophic effects suggested by the comments.

One commenter proposed that the definition of "substandard housing" should be changed, because it includes as substandard Single Room Occupancy (SRO) units that HUD subsidizes under the Section 8 program. These units are defined as units that contain no sanitary or food preparation facilities, or that contain one but not both types of facilities, and that are suitable for occupancy by a single individual who is capable of independent living. The Department agrees with the commenter, and has added language to paragraph (f) of the final rule to make clear that SRO housing is not substandard solely because it does not contain either or both of these facilities.

One commenter thought that the rule should first provide for an evaluation of the relative merits of similarly situated families living in substandard housing before it is determined which families should get the preference, because a family may choose to live in a substandard dwelling for personal reasons (*e.g.*, to live near an infirm relative, or emotional attachment to a particular neighborhood). The Department sees no need to require such an evaluation. To the extent that a family occupies a substandard dwelling for a particular personal reason, that family will not, presumably, apply for assisted housing, since it may entail relocating. More importantly, interposing evaluative criteria in the rule would add a significant administrative burden on PHAs and project owners in ferreting out the motives of applicants for assistance. (If, however, a PHA under 24 CFR Chapter IX or Part 882 wished to distinguish among applicants on this basis, the rule does not prohibit it from doing so.)

The final rule amends paragraph (f) to specify that "homeless" families are considered to be living in substandard housing for purposes of qualifying for a preference. This is a technical change to make clear that those whose need for

housing assistance is more pressing—those who have no permanent home at all—are living in "substandard" housing, and may qualify for preferred status. A "homeless family" is defined to include any person or family that:

(i) Lacks a fixed, regular, and adequate nighttime residence; and

(ii) Has a primary nighttime residence that is:

(A) A supervised publicly or privately operated shelter designed to provide temporary living accommodations (including welfare hotels, congregate shelters, and transitional housing for the mentally ill);

(B) An institution that provides a temporary residence for individuals intended to be institutionalized; or

(C) A public or private place not designed for, or ordinarily used as, a regular sleeping accommodation for human beings. A "homeless family" does not include any individual imprisoned or otherwise detained pursuant to an Act of the Congress or a State law.

This definition is taken from section 103 of the Steward B. McKinney Homeless Assistance Act (Pub. L. 100-77, approved July 22, 1987). Use of this definition will enable the Department to target its housing assistance resources to the same general class of families and individuals that are eligible for the many housing and other initiatives contained in the McKinney Act. This coordinated approach brings the greatest amount of resources to bear on the homeless, and is clearly the most effective way of providing assistance to these individuals and families.

The Department again wishes to emphasize that identification of the homeless among the types of applicants covered by the statutory preferences does not abrogate the responsibility of the PHA or owner to assure, on a case-by-case basis, that all potential tenants are able and willing to live up to the obligation imposed by the dwelling lease. In addition, the fact that these classes of individuals may have preferred status does not allow PHAs and owners to divert housing resources to purposes not contemplated by the statute, such as leasing assisted housing to entities other than income-eligible families or for the purpose of providing transient housing facilities or temporary shelter. The final rule also amends paragraph (g) to specify that verification of homelessness consists of written confirmation of this status from a public or private facility that provides shelter for these individuals, or from the local police department or social services agency.

C. Fifty Percent of Income for Rent

The proposed rule provided a preference for those paying more than 50 percent of their income for rent. Paragraph (i) defined "rent" to include actual utility payments in the case of tenant-furnished utilities. Some commenters contended that inclusion of actual utility costs would encourage profligacy in energy consumption, rather than conservation, and would penalize the family that conserves energy, thereby paying less than 50 percent of its income for rent. It is unlikely, a commenter said, that Congress intended that the profligate family should get a preference at the expense of an energy-conservative family. Another commenter recommended that the utility allowance for the Section 8 Existing program be used in calculating "rent," with allowance for the use of actual utility bills in special circumstances.

The Department does not believe that the commenters' concern—that including actual utility expenses will encourage energy waste—is well-founded. It is the unusual family that will be wasteful in its use of energy and, thus, its disposable income in the hope of getting a preference. HUD believes that such premeditation is unlikely. The Department believes, however, that use of a utility allowance concept, except where the applicant prefers to use actual utility bills, is a good suggestion, and has amended the final rule accordingly. For PHAs and IHAs administering programs under 24 CFR Chapter IX, the allowance would represent the PHA's or IHA's estimate of the cost of utilities. For the other programs covered by this rule, the allowance would be the Section 8 Existing utility allowance. This change should relieve some of the administrative burdens on PHAs and project owners of verifying actual utility payments, while at the same time ensuring that the full amount of tenant-purchased utility costs are counted, where they exceed the utility allowance.

One commenter suggested that the rule be amended to exclude from "rent" amounts received by or on behalf of a family to help defray utility expenses. The commenter believed that the rent-burden determination should take into account only amounts actually paid by the family for shelter costs. The Department agrees with this comment, and has amended paragraph (i) to make clear that the utility component of "rent" is to be reduced by the amount of the subsidy under any energy assistance program, to the extent that this amount is not included in the family's income.

One commenter suggested that the rule be amended to permit third-party verification of an applicant's present rental and utility payments, for purposes of determining qualification for the rent burden preference. The commenter contended that third-party verification is more accurate and reduces the incidence of fraud. The Department agrees with this comment, and has amended the final rule specifically to permit owners and PHAs to verify present rental payments with applicants' present landlords and to obtain the required utility expense information directly from the utility provider. This form of direct verification also would make clear PHAs' and project owners' authority to fill in gaps in applicants' records of the required documentation.

One commenter asserted that by including utility costs in the definition or rent, higher income persons will qualify under the rent-burden preference. The Department is unsure of the point of this comment, but to the extent it questions inclusion of tenant-purchased utilities in the definition of rent, the Department rejects it. This treatment of tenant-supplied utilities is a long-standing departmental policy, reflecting the fact that utility costs are part of overall shelter costs and that tenants should not be treated differently based on whether their utility costs are included in the rent paid to the landlord or are paid separately.

One commenter suggested that in an effort to minimize collusion, the rent-burden preference should not be available where the tenant and the landlord are friends or are related. The Department rejects this suggestion, because it may unfairly exclude honest applicants by establishing an irrebuttable presumption of dishonesty based on consanguinity or friendship. Instead, the Department will depend on its investigative and enforcement efforts and those of PHAs and owners to disclose collusive acts intended to qualify an applicant for a preference improperly.

The second part of this comment argued that to qualify for the rent-burden preference, the rule should provide that the applicant must hold a lease with a term of 12 months or longer, and that the lease must have been entered into before the claim for a preference on this basis was made. The Department is not persuaded that the commenter's position should be adopted because in many instances, for reasons unrelated to attempts to qualify for a preference, applicants do not have 12-month leases. Thus, if this requirement were written into the rule, many qualified applicants would be unfairly

excluded from consideration for the grant of the rent-burden preference.

One commenter suggested that the defintion of "rent" be expanded to include payments to amortize the purchase of a manufactured home, where the family owns the home but rents the space on which it is located. The Department agrees with this comment. Although the rent-burden preference literally covers only "rental" situations, treating a manufactured homeowner who rents the home's pad as a "renter" is consistent with the existing coverage under section 8(j) of the 1937 Act. In addition, the final rule has been amended to make clear that members of a cooperative housing regime are "renters" for purposes of qualifying for the rent-burden preference. Like owners of manufactured homes who rent their pads, cooperative members are considered renters under the Section 8 program. (See section 8(f)(2).) Paragraph (i) of the rule contains these changes.

The final rule also expands the types of documentation that may be used to verify a tenant's rental payments, to include cancelled checks or money order receipts. This is a minor change designed to ease applicants' verification burdens while at the same time preserving the documentary nature of acceptable evidence of qualification for a preference.

Finally, the final rule adds a new paragraph (c)(6), specifying that an applicant may not qualify for a rent-burden preference if the applicant is paying more than 50 percent of family income to rent a unit because the applicant's housing assistance with respect to that unit has been terminated as a result of his or her refusal to comply with applicable program policies and procedures regarding the occupancy of underoccupied and over-crowded units. This provision is analogous to the amendment discussed earlier, prohibiting an applicant that refuses to follow these policies and procedures from claiming that any resulting displacement confers a preference on grounds of involuntary displacement

IV. Treatment of Waiting Lists

As noted earlier, the proposed rule envisioned a two-step process for awarding a Federal preference. (See paragraph (c).) Under this approach, applicants could claim a preference when they applied for housing assistance, simply by certifying that they met the required standards. Later, when they were to be offered housing assistance, their actual qualification for a preference at that time would be verified by appropriate documentation Under this system, it is possible for an applicant that qualified for a preference at the time of application to lose preferred status at the verification stage.

One commenter argued that it is unfair to take preferred status away from an applicant that qualifies for a preference while on the waiting list, but loses the preference at the time assistance is to be provided. The commenter believed that applicants would have difficulty understanding this situation, and that they are entitled to expect some degree of certainty with respect to their positions on the waiting list. The commenter recommended that verification be at the time of application to ensure that "cheaters" do not go to the top of the list. The commenter stated that because there is usually a long time between application and offer of assistance, "cheaters" may in fact be able to qualify for a preference before the verification stage.

The statute requires that preference be given to applicants who are in one of the three preferred categories "at the time they are seeking assistance." The Department believes that an applicant is "seeking assistance" during the entire period from application to receipt of assistance. To hold otherwise, would, in the Department view, undermine the statutory objective of directing housing assistance to those with the most urgent housing need, since (as in the commenter's example) the applicant does not qualify for a preference (and, thus, by definition, does not have an urgent need for housing assistance) at the time a unit is offered. Therefore, the Department believes that the statute does not permit, as the commenter urges, an applicant to retain a preference claimed at the time it applies for assistance, irrespective of later changes in the applicant's circumstances.

Further, the Department believes that any confusion that this two-step approach may cause should be minimized, if PHAs and project owners provide the information about how the preferences work that paragraph (a) of the final rule contemplates. Finally, the Department does not believe that the commenter's concern about "cheaters" abusing the two-step process justifies imposition of full-scale verification at both the application and offer of assistance stages. It should be noted, however, that paragraph (c)(2) of the rule specifically permits PHAs and owners to provide for such verification, at their option. It should be noted also that the paragraph (c)(2) permits applicants to claim a Federal preference at any time while they are on a waiting list. This is intended to ensure that applicants may claim preferred status at any point in the process, and should help assuage the commenter's fears that "cheaters" will falsely certify to qualification for a preference and gain an unfair advantage over *bona fide* applicants.

One commenter asked whether conventional public housing waiting lists still are to be arranged within a given priority by incoming rent ranges. As noted above, section 6(c)(4)(A) of the 1937 Act requires PHAs operating public housing programs to implement both the preferences and the "broad range of incomes" requirement. PHAs are expected to use whatever techniques are needed to meet the two requirements, including appropriate arrangement of waiting lists. Where both requirements cannot be satisfied, however, PHAs must give the preferences precedence.

A commenter suggested that the rule should allow PHAs to waive notification to applicants on the waiting list whose position is not affected by the adoption of the three Federal preferences. This suggestion raises serious issues of fairness, since PHAs and project owners may not know which families qualify for a preference without giving each family on the waiting list notice of the availability of the preferences and an opportunity to demonstrate the family's qualification for a preference. Without this information, PHAs and owners may not be able to guage the effect of implementation of the rule on individual families on the waiting list. On the other hand, where a waiting list is very long, notification of *all* applicants on the list could be prohibitively expensive and could hold little, if any, genuine benefit for many applicants, particularly those at the bottom of the list.

The Department has revised the final rule to give PHAs and owners some flexibility in implementing the notification requirement, while protecting the legitimate interests of applicants who may qualify for a Federal preference. The amendment reiterates the requirement that all applicants (including those on waiting lists at or after implementation of the rule) be notified of the availability of the Federal preferences and be given an opportunity to demonstrate their qualification for them. It permits, however, PHAs and owners to give notice to fewer than all applicants on a waiting list *at any given time*, where the PHA or owner determines that universal notice would be impracticable because of the list's length. The PHA or owner would instead be required to notify a sufficient number of applicants at any given time to ensure that, based on the

number of preference-holders already on the list and the expected availability of assistance, (1) there is an adequate pool of applicants on the waiting list who are likely to qualify for a Federal preference and (2) it is unlikely that, on the basis of the PHA's or owner's system for applying the preferences and the preferences claimed by applicants already on the waiting list, any applicant who has not been notified would qualify for assistance before other applicants whom the PHA or owner has notified.

The Department believes that this approach is responsive to the concerns raised by the commenter, as well as the interests of applicants. It should be noted that the degree of relief that this amendment will afford PHAs and owners will vary inversely with the complexity and number of gradations in the preference heirarchy they adopt. As noted earlier, PHAs and owners may use local preferences as a way of distinguishing among Federal preference-holders, and may aggregate or rank the preferences or their components. The higher the pyramid of preferences under these authorities, the less confidence a PHA or owner would have in reaching the required conclusion that it is unlikely that any applicant preference-holders who has not been notified would receive assistance before preference-holders who have been.

One commenter urged HUD to consider grandfathering all those on current waiting lists from the rule's implementation. The commenter urged that this be done in the interest of fairness to applicants that have been waiting for housing for a long time. In the Department's review of the statute and its legislative history, it has found no indication of Congressional intent to grandfather those on the waiting lists. Indeed, the Congressional solicitude for directing assistance to those most in need of housing assistance seems to cut the other way: implementation should not await the exhaustion of current waiting lists.

It should be noted, however, as stated in the preamble to the proposed rule (49 FR 37788), that the Department is delaying the rule's implementation date for 180 days after publication. This time is needed to permit PHAs and owners to take steps necessary for full implementation of the rule (including appropriate notice to those on waiting lists) and to give applicants on waiting lists who are notified an opportunity to gather material necessary to demonstrate their qualification for a preference. As a practical matter, the six-month delayed effective date has the effect of grandfathering many who are currently on waiting lists.

A commenter viewed the rule's provision for notification to applicants on waiting lists as leading to confusion about how their status is affected, because (in the commenter's view) it carries the implication that (a) their qualification is somehow now open to doubt, (b) they must take further steps to obtain verification or risk loss of their status, and (c) taking steps to obtain new verification will obtain for them a better position on the waiting list. The commenter viewed this last point as "most insidious," since, in the commenter's view, qualification for a preference will be almost universal.

The Department agrees that implementation of the preferences may cause applicants some confusion and concern over the effect of the preferences on their chances of receiving housing assistance. This is an inevitable consequence of implementing the statutory mandate. However, PHAs and project owners can minimize applicant concern and confusion by providing clear and complete information on the nature of the preferences, their effect, and how they may be obtained. As stated below, the Department does not believe that qualification for the preferences would be universal.

One commenter feared that implementation of the preferences would adversely affect individuals who need emergency housing. The Department believes that this fear is unfounded, since the preferences do not affect the provision of temporary, emergency housing and, in any event, most families in need of emergency housing would also qualify for one or more of the preferences, with whatever weight within the preference system PHAs and owners chose to give such housing.

Finally, a commenter argued that implementation of this rule would create public distrust of waiting lists and erode hard-earned public credibility for the assisted housing delivery system. The Department does not believe that the rule will have this effect, provided that it is implemented fairly and in a way that is comprehensible to applicants for assistance—results that are largely within the control of the PHAs and owners responsible for administering the preferences.

V. Degree of Targeting

A number of commenters asserted that the preference rule would have marginal impact, since virtually all very low-income applicants for housing assistance would qualify for at least one of the preferences. The Department does not agree with this assertion.

Based on 1983 American Housing Survey (AHS) data, the Department estimates that approximately 55 percent of very low-income families unserved by a housing assistance program may qualify for a preference, either because they are living in substandard housing or paying more than 50 percent of their income for rent. Very low-income families that may qualify for a preference solely because they are involuntarily displaced would be expected to constitute a very small percentage of preference-holders on currently unserved by housing assistance programs. While the percentage of prefrence-holders on current waiting lists may vary, it is clear that, on an overall basis, the preferences are responsive to the statutory objective of directing housing assistance to those unserved, very low-income families that have the most urgent housing needs. It should also be noted that use of the discretion accorded PHAs and project owners in today's rule to aggregate or rank the preferences and their definitional components would have the effect of further targeting assistance to the most needy *among* those who hold a preference. The Department intends to monitor carefully the incidence of preference qualification generally, as well as individual PHA and owner implementation of the preferences, to determine whether any additional statutory or regulatory changes are needed to ensure that the preferences carry out their intended targeting objective.

VI. Social Effects of the Federal Preferences

A number of commenters expressed concern about the effect that the Federal preferences would have on assisted housing projects and the assisted tenant populations. Some commenters stated that those paying more than 50 percent of their income for rent would always be welfare recipients. They believed that by giving the rent-burden preference, the working poor would be penalized. If the rule goes into effect, these commenters emphasized, projects would end up with welfare clients only. This would defeat PHAs' attempts to house a social and economic cross-section of tenants, and would result in management and maintenance problems. Other commenters saw the regulations as providing primarily minorities with a preference, thus assuring that public housing would become predominantly minority-occupied and "ghettoized." This would result, they argued, in

further burdens on housing authorities and city governments.

Another commenter stated that projects historically work best with a social and economic mix of all races, and that once projects become 50 percent minority-occupied, it is impossible to "turn them around." This commenter stated that most families that would qualify for a preference are minority, and a large percentage are on welfare and will stay there, "as long as HUD and Congress give them preferential treatment."

The Department takes issue with these comments. Analysis of American Housing Survey data suggests that, nationwide, neither black nor welfare households are likely to predominate as a result of the implementation of the rent-burden preference. For example, only 21 percent of the very low-income, unsubsidized households paying at least 50 percent of their income for rent are black. This is nearly equal to blacks' representation among all very low-income households (22 percent). The proportion (29 percent) of welfare households among all high rent-to-income households (family and elderly) is slightly greater than their overall proportion (24 percent) among very low-income households. However, neither the relative nor absolute share of welfare households is dominant.

It is possible that in different areas there would be different impacts as a result of the implementation of the preferences. Nonetheless, families that qualify for preferred status will receive a preference in the selection of tenants—without regard to race or source of income. Indeed, any system that attempted to discriminate on either of these grounds would raise grave legal and public issues.

Some commenters also specifically cited the rent-burden preference as destructive of a sound policy of housing a cross-section of income ranges. A tenant mix reflective of the surrounding neighborhood is vital, argued a commenter, to keep public housing desirable. These commenters thought that the rule would be a disincentive to the working poor, and would result in the working poor not being housed. Congress, the comments said, is reneging on an important aspect—income mix—that is necessary to eliminate pockets of poverty and reduce crime and vandalism.

As noted earlier, PHAs are required to implement both the preference provisions and the "broad range of incomes" requirement in section 6(c)(4)(A) of the 1937 Act, and must subordinate the range of incomes to the preferences only where both provisions cannot be satisfied. The Department does not believe that implementation of this rule would have the effects that the commenters fear.

VII. Tenant Mobility

Some commenters criticized the proposed rule on grounds that it would discourage residents or assisted housing from moving from one jurisdiction to another, since, as long as they lived in assisted housing, they would be unable to qualify for a preference and, therefore, would have to move to substandard housing or pay more than 50 percent of their income in rent in order to have a realistic chance of receiving housing assistance again. The commenter believed that this result conflicted with the goal of promoting housing choice and HUD's commitment to interjurisdictional transfers using Section 8 Existing assistance (the "portability" concept under the Housing Voucher program). Another commenter raised the same issue with respect to intrajurisdictional moves—for example, where an assisted family wants to move closer to a job, but remains within its current PHA's jurisdiction.

Some moves—both inter- and intra-jurisdictional—are not subject to this rule. An assisted family that moves within the same program administered by a PHA (such as from one public housing unit to another or from one unit to another with a Certificate, within the same PHA's jurisdiction), or within a project (one or more buildings managed as a single project) controlled by a private owner, generally is not subject to meeting the preference requirements, because the assisted family moves without losing its assisted status. The Department considers this type of move to be internal to the PHA or to the project owner's operation, and not to be an event that requires reapplication for assistance.

An assisted family that moves outside the program administered by a PHA may or may not be subject to the preference requirements, depending on the circumstances and as discussed below. As one commenter point out, the Department strongly encourages the interjurisdictional transfer (or "portability") of Section 8 Certificates and Housing Vouchers. Indeed, the Housing Voucher program requires "portability" between jurisdictions operating Housing Voucher programs, and encourages portability of Vouchers between Certificate and Housing Voucher jurisdictions. In addition, there are in place many voluntary mobility programs around the country. In all of these cases, when the assisted family actually brings the assistance with it, as is provided in the required Housing Voucher portability program, or as is provided in many of the voluntary mobility programs in which the PHAs exchange Certificates or Housing Vouchers, there is no reapplication for assistance; the assisted family is not subject to the preference rule.

However, in any case where the assisted family is placed on the waiting list (even though it may be at the bottom), the family is considered to be reapplying for assistance, and, therefore, is subject to the preference rule. As some of the commenters stated, application of the preferences to assisted tenants could severely restrict their ability to move among jurisdictions and housing programs, since assisted tenants, by definition, generally cannot qualify for a Federal preference. Commenters felt that, in many cases, literal application of the preference rule would impose a significant impediment to mobility that is not present in the current system.

The Department shares the concerns expressed by the commenters. Indeed, as a commenter noted, HUD has been a long and ardent advocate of mobility for assisted tenants.

On the other hand, most tenants receiving housing assistance under the programs subject to the rule have by definition achieved the very state that the preferences are intended to produce: residence in a standard unit with affordable rent. Providing these tenants a preference if they wish to move could place them ahead of other preferred tenants who must endure the conditions that qualified them for a preference for a longer period, before assistance can be made available for them. Arguably, this result is neither fair as a policy matter, nor significantly faithful to the Congressional concern that housing assistance be directed to those with the most pressing housing needs.

The Department believes that the issues involved in "mobility" for assisted tenants under the final rule are best addressed after a notice and comment rulemaking. Therefore, the Department will issue a proposed rule dealing with the interrelationship between the Federal preferences and assisted tenants whose admission to another program or project involves placement on a waiting list. The Department will attempt to make this rulemaking effective at or shortly after this final rule's implementation—180 days after publication. However, if the rule does not take effect until after implementation of this final rule, assisted tenants who wish to move to another project or program, but are first

placed on a waiting list, must demonstrate their qualification for a preference in the same way as unassisted applicants.

VIII. Potential for Fraud and Abuse in Qualifying for a Federal Preference

A general criticism of the proposed rule was that it would encourage families to create situations that would give them a preference and lead to manipulation and abuse to the disadvantage of the honest applicant. A further criticism was that the rule would encourage collusion between landlords and tenants since, by allowing the landlord to provide verification as to an applicant's status, the rule would put the landlord in a position to falsify facts to get rid of, or to help, individual tenants. It also was claimed that the rule would have the effect of encouraging applicants that live in substandard housing to remain there, so that they may gain a better position on the waiting list.

The Department agrees that there are those—both landlords and tenants—who may resort to fraud and abuse to further their own interests: no program is immune from such practices. With respect to this rule, however, the Department has had to balance fraud and abuse considerations along with a number of other factors, including the administrative costs to HUD, as well as to PHAs and project owners, of imposing more stringent verification and investigatory requirements, and the ability of applicants for assistance to demonstrate their qualification for a preference without unnecessary burdens or restrictions. The Department has reviewed the approach taken in the proposed rule in light of the public comments, and continues to believe that this approach strikes an appropriate balance among the considerations involved.

The Department has drafted the verification provisions of the rule to minimize the incidence of fraud and abuse. These provisions focus on objectively verifiable, independent sources to establish qualification for a preference. Thus, paragraphs (e) and (g) of this rule include, as appropriate means of verification, written notice from governmental entities as to claims of involuntary displacement or residence in substandard housing. Paragraph (j) requires PHAs and owners to verify a family's income in accordance with well-known, existing procedures for HUD's assistance programs, which (among other things) provide for the use of release and consent forms to assist verification. Paragraph (j) also provides for verification of an applicant's rent by production of pertinent lease documents or direct contact with the applicant's current landlord, and verification of an applicant's utility expenses, either by reference to a utility allowance concept in lieu of actual utility bills, or (where the applicant elects to use actual utility expenses) actual utility consumption data furnished by the applicant or by the utility provider.

It is true that landlords are permitted to provide verification for claims of displacement stemming from the landlord's actions or from the substandard nature of the dwelling. In addition, verification of involuntary displacement based on domestic violence may come from clergymen or physicians, and verification of domestic violence and homelessness could come from private shelters and other facilities. The Department believes that, in some cases, these types of verification may be the only timely and, perhaps the only, available means of verification. To disallow these means of verification because they may be subject to abuse could have the effect of denying applicants reasonable access to demonstrate qualification for a preference. Moreover, each of these forms of verification must be in writing, thereby creating a record that should both deter abuse and assist in prosecution in those instances in which abuse is found.

On the other hand, the Department does not believe that it would be cost-effective to impose additional verification requirements on PHAs and owners, and through them, on prospective tenants. For example, a number of the commenters argued that verification should include a finding as to an applicant's motivation for a given decision, such as a decision to move to (or to remain in) a substandard unit. Even though this inquiry might expose some cases of abuse, the Department does not believe that requiring such a staff-intensive effort is cost-effective. It is adequate, in the Department's view, simply to demonstrate the fact of substandard housing and to grant the preference upon that basis.

The Department intends to be sensitive to indications of fraud, waste, and abuse under this rule in the course of established, on-site monitoring reviews, and will take whatever regulatory or other action is appropriate in light of this experience. Finally, it should be noted that PHAs operating programs under 24 CFR Parts 882, 904, 905, or 960 are free to establish their own verification standards and procedures (which can be more stringent than those prescribed in this rule), at the PHAs' option.

IX. Administrative Burdens

A number of commenters expressed concern that conversion to, and maintenance of, a system for administering the preferences would impose on PHAs and owners considerable administrative and legal burdens for which HUD will not compensate them. Some considered the two-step certification/verification process to be wasteful, since they believed that it would, in effect, create a "revolving door," in which the same applicant would repeatedly make preference claims that are later denied. One commenter proposed an alternative system under which qualification for the preferences would be determined only at the point at which assistance is to be offered. Under this approach, families on the waiting list would be screened for qualification for a preference, with those not qualifying returned to the waiting list.

Others found the requirement that applicants for housing assistance (including those currently on waiting lists) be notified of the availability of the preferences to be excessively costly, and recommended alternatives, such as posting notice of the preferences in PHAs' offices. Still others found the PHA's or project owner's verification responsibilities to be onerous. Specifically, some indicated a belief that the proposed rule would require PHAs to make "home visits" to determine whether the unit is substandard; some believed that verification when assistance is offered would require verification of an applicant's status not only at that point, but also when the applicant originally certified to his or her qualification for a preference.

The Department recognizes that PHAs and owners have to carry out additional administrative tasks to implement and maintain the preference system. The rule has been drafted, however, to keep these burdens to the absolute minimum necessary to carry out the statutory mandate. Specifically, the Department continues to believe that the two-step certification/verification process contained in the proposed rule is the clearest and least burdensome way of administering the preferences. It focuses the verification of preference claims at the only time that verification is needed—when assistance is to be offered the applicant—and, through initial certification, narrows the pool of applicants that PHAs and owners must review at the verification stage. The Department believes that omission of

the certification stage in the alternative proposed by a commenter would often lead to a more burdensome procedure than that contemplated by the final rule, since a PHA or owner may have to contact and process a number of applicants before it even reaches an applicant claiming a preference.

It is true that some PHAs and project owners may incur some costs in contacting applicants currently on waiting lists. Since the Department believes that the statute was intended to cover those on waiting lists, there is no alternative to requiring individual notice. As discussed earlier, however, the Department has modified the proposed rule to permit notification of less than all applicants on the waiting list at any given time. This revision should enable PHAs and project owners to avoid the costs and administrative burdens associated with mass notifications. In any event, these costs are one-time, start-up expenses, and will not recur once the preference system is in place. Although the rule requires PHAs and owners to notify future applicants of the availability of the Federal preferences, this can be done in the same way that tenants are given notice of other tenant selection standards.

The Department has specifically drafted the verification procedures contained in today's rule to minimize administrative costs. As noted earlier, the rule relies on written documentation from agencies of government to the extent feasible. These documents should be readily verifiable, without the need for further investigation. Verification from other sources (such as landlords) must also be in writing, but may require further verification. As mentioned before, the Department believes that use of this form of verification is necessary to provide applicants a reasonable opportunity to show that they qualify for a preference.

With respect to the specific points raised in the comments, the rule does not require PHAs to make "home visits" to determine whether a unit is substandard. Only written verification from the local government or the applicant's present landlord is required. At the verification stage, the only inquiry is whether the applicant qualifies for a preference at that time. Neither this rule nor its predecessor contemplates a determination as to whether the applicant's earlier certification as to qualification for a preference was correct. The rule also makes clear that the applicant bears the burden of producing the required documentation, except in those cases where third-party verification is needed.

Finally, the Department believes that administrative costs associated with establishing and maintaining the preference system—including one-time, start-up costs—should be absorbed by the PHAs and project owners. The Department does not believe that administering the preferences will involve significant costs over the long term. Moreover, in a number of instances, PHAs and owners should be able to apply established procedures to their administration of the preferences. For example, paragraph (j) of the final rule specifically provides that owners and PHAs should verify "income" for purposes of the rent-burden preference in the same way as they do for initial determinations of eligibility and annual reexaminations of income under the program involved. Use of existing procedures should help to minimize PHA and owner administrative costs. Further, a number of PHAs already provide preferences analogous to those required under this rule, without (to the Department's knowledge) the kinds of excessive burdens that the commenters suggested. Thus, the Department does not anticipate a need to provide additional funding to enable PHAs and owners to administer the preferences.

X. Informal Review of Federal Preference Denials

Several commenters expressed uncertainty as to whether the proposed rule contemplated some form of informal review of the decision of a PHA or project owner to deny an applicant's qualification for a preference. In response to these comments, this rule contains a new paragraph (k) to make clear that the owner or PHA must provide prompt, written notice to the applicant of a determination denying a preference (including a brief statement of the reasons for the determination), and give the applicant an opportunity to meet with the PHA or owner (or its representative) to review the denial.

The Department believes that this "notice and opportunity for meeting" approach strikes an appropriate balance among the competing interests involved in the denial of a preference. On the one hand, this approach recognizes the importance of qualification for a preference in securing housing assistance at the earliest time, by establishing a mandatory mechanism for the prompt resolution of factual issues and concerns. On the other hand, use of this degree of informal procedure reflects the Department's belief that the denial of a preference—which has the effect of prolonging an applicant's wait for housing assistance—is not of such magnitude as to justify imposition of the administrative burdens on PHAs and project owners that are inherent in a more formal process.

The new paragraph (k) provides that the meeting is to be conducted by any person or persons designated by the owner or PHA, including an officer or employee of the PHA or project owner, or the person who denied or reviewed the denial of a preference, or his or her subordinate. The Department believes that permitting the individual who denied or reviewed the denial of a preference to conduct the meeting amply supports the fairness of the process, given the essentially factual focus of the inquiry, the effect on the applicant of a preference denial, and the need to minimize the administrative burdens on PHAs and project owners, particularly PHAs and owners with limited staff resources. The rule contains a provision found in the informal review provisions of the existing housing assistance regulations, stating that the availability of informal process for denial of a preference does not affect other rights that the applicant may have regarding discrimination on the basis of race, color, creed, religion, sex, national origin, age, or handicap. This provision makes clear an applicant's existing right to protection from unlawful discrimination. The final rule also amends the informal review procedures in the existing regulations to make clear that the special provisions contained in paragraph (k) apply in the case of preference denials.

Finally, the Department wishes to stress that the administrative review requirements contained in this rule apply only to the issue of whether the applicant meets the criteria for receiving a preference. They do not apply to matters such as the propriety of the PHA's or owner's system for applying the preferences or alternate definitions of the preference categories that PHAs in certain programs may establish. These matters reflect policy choices that are committed to the discretion of PHAs and project owners, consistent with HUD's requirements. The Department does not believe that the informal meeting contemplated by this rule is an appropriate forum for considering challenges to PHAs' or project owners' overall policies.

XI. Miscellaneous

A commenter asserted that there is currently no HUD handbook for State Housing Finance Agencies (HFAs). This led the commenter to inquire whether HUD intended that HFAs comply with

Handbook 4350.3, *Occupancy Requirements of Subsidized Multifamily Housing Program*, in light of the reference in paragraph (j)(1) of the rule that verification of income be in accordance with existing procedures.

HFAs are subject to Handbook 4350.3. This was explicitly stated in the Handbook revisions issued as Change–1 on March 7, 1985, and later clarified in a memorandum to State Agency Directors on April 17, 1985. Paragraph 1–6.b. of Handbook 4350.3 CHG–1 states that HFAs may enforce State requirements, in addition to the Handbook requirements, if the State requirements do not conflict with the Handbook or with HUD regulations. Paragraph 1–6.b.(2) further states that, if any HFA policies conflict with the Handbook, the Agency must certify that the policies do not conflict with applicable statutes and regulations.

One commenter recommended that language similar to §§ 880.603(b)(2), 881.603(b)(2), and 883.704(b)(2) of the proposed rule be added in Parts 882, 884, and 886. These sections of the proposed rule provided that, if a family is entitled to a preference, the owner must accept the family's application and place the family on the waiting list, notwithstanding that there already exists a 12-month waiting period for all or some applicants. This was an exception to the existing provision that states:

> If the waiting list is so long that the applicant would not be likely to be admitted for the next 12 months, the owner may advise the applicant that no additional applications are being accepted for that reason.

The Department agrees with this comment, and has extended the provisions of the proposed rule (with some modifications) to all the Parts covered by this rule making. Specifically, this rule provides that, notwithstanding the fact that a project owner or PHA is not accepting applications because of the length of the waiting list, it may not refuse to accept an application from an applicant who claims qualification for a preference or to place the applicant (if otherwise eligible) on the waiting list, unless it determines, on the basis of the number of applicants who are already on the waiting list and claim a preference, and the anticipated turn-over of assistance, that: (1) There is an adequate pool of applicants on the list who are likely to qualify for a Federal preference and (2) it is unlikely that, on the basis of the PHA's or owner's system for applying the programs, the preference the applicant claims, and the preferences claimed by applicants already on the waiting list, the applicant would qualify for assistance before those who are on the waiting list. This provision is designed to ensure that there is an ample supply of preferred applicants on the waiting list, despite the fact that the waiting list may be closed to those who do not claim a preference. The Department recognizes that maintaining a waiting list that is heavily weighted towards applicants with a preference may operate effectively to preclude applicants without a Federal preference from assisted housing, especially where housing resources are severely limited; however, in the Department's view, this possibility is an unavoidable result of the statute.

The Department has also amended the proposed rule to make clear that the preferences apply to the selection of tenants to receive assistance under the Rent Supplement and Section 8 programs, rather than the selection for admission to a project assisted under these programs. This is a technical change, to reflect the fact that projects under these programs may be partially subsidized and that the preferences apply to the selection of tenants to receive rental assistance, not to the admission of tenants to units without such assistance. (This issue does not arise in the Section 8 Certificate or public housing programs, since there are no "partially subsidized" projects under these authorities.)

The Department also wishes to note the following regarding partially subsidized Rent Supplement and Section 8 New Construction and Substantial Rehabilitation projects. Under current practice, a family that is seeking rental assistance and that qualifies for a preference may, because of the unavailability of subsidy, move into a partially assisted project without rental assistance, with the express understanding that the family will receive a subsidy when it becomes available. If the housing owner verifies that the family qualifies for a Federal preference when it is admitted to the project, the Department believes that the owner may honor this understanding, without requiring the family to demonstrate independent qualification for a preference when the rental assistance is in fact offered. The Department views the admission without subsidy in these circumstances as an interim measure, and does not believe the admission should have the potential effect of divesting the family of the preferred status for which it has qualified.

As a related matter under the Section 8 and Rent Supplement programs, a tenant's eligibility for assistance continues until the rent payable by the tenant equals the full market rent for the unit. The termination of eligibility at this point does not "preclude the resumption of payments as a result of later changes in income, rents or other relevant circumstances during the term of the contract." (See §§ 215.55(c), 880.603(c)(3), 881.603(c)(3), 882.212(c), 882.515(e), 883.704(c)(3), 886.124(c), and 886.324(c).) The Department believes that resumption of payments in these circumstances occurs without regard to whether the tenant qualifies for a preference at the time of resumption. A tenant who once establishes eligibility for rental assistance does not lose his or her right to receive assistance solely because the actual receipt of assistance may be interrupted.

Finally, the final rule contains a number of technical modifications to the proposed rule. Chief among these are the following. The proposed rule would have made only a few conforming changes to the existing regulatory framework. The final rule is fully woven into the existing regulations. In addition, the proposed amendment to 24 CFR Part 905 (Indian Housing) only covered the Mutual Help Homeownership Opportunity program. This rule extends the applicability of the preferences to all of Part 905, as contemplated by the preference statute and the original proposed rule.

Findings and Certifications

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations in 24 CFR Part 50, which implement Section 102(2)(C) of the National Environmental Policy Act of 1969, 42 U.S.C. 4332. The Finding of No Significant Impact is available for public inspection during regular business hours in the Office of the Rules Docket Clerk, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410.

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.

Under 5 U.S.C. 605(b) (the Regulatory Flexibility Act), the Undersigned hereby certifies that this rule does not have a significant economic impact on a substantial number of small entities. As noted in detail in the earlier discussion on "Administrative Burdens", the Department has taken great care to minimize the rule's burdens on all PHAs and project owners (including small entities), and does not believe that administering the preferences would involve significant costs over the long term.

The information collection requirements contained in this rule have been submitted to the Office of Management and Budget for review under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501–3520). No person may be subjected to a penalty for failure to comply with these information collection requirements until they have been approved and assigned an OMB control number. The assigned OMB control number will be announced by separate Notice in the **Federal Register.**

This rule was listed as sequence number 985 under the Office of Housing, in the Department's Semiannual Agenda of Regulations published on October 26, 1987 (52 FR 40358, 40381) in accordance with Executive Order 12291 and the Regulatory Flexibility Act.

The Catalog of Federal Domestic Assistance program numbers are 14.103, 14.105, 14.149, and 14.156.

List of Subjects

24 CFR Part 215

Grant programs: Housing and community development, Rent subsidies.

24 CFR Part 880

Grant programs: Housing and community development, Rent subsidies, Low and moderate income housing.

24 CFR Part 881

Grant programs: Housing and community development, Rent subsidies, Low and moderate income housing.

24 CFR Part 882

Grant programs: Housing and community development, Housing, Manufactured homes, Rent subsidies.

24 CFR Part 883

Grant programs: Housing and community development, Rent subsidies, New construction and substantial rehabilitation.

24 CFR Part 884

Grant programs: Housing and community development, Rent subsidies, Rural areas, Low and moderate income housing.

24 CFR Part 886

Grant programs: Housing and community development, Low and moderate income housing, Rent subsidies.

24 CFR Parts 904, 905, 960

Public housing.

Accordingly, the Department amends 24 CFR Parts 215, 880, 881, 882, 883, 884, 886, 904, 905, and 960 as follows:

PART 215—RENT SUPPLEMENT PAYMENTS

1. The authority citation for 24 CFR Part 215 continues to read as follows:

Authority: Sec. 101(g), Housing and Urban Development Act of 1965 (12 U.S.C. 1701s); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

2. In Part 215, a new § 215.22 is added, to read as follows:

§ 215.22 Federal selection preferences.

(a) *General.* (1) In selecting applicants for assistance under this part, housing owners must give preference to applicants who are otherwise qualified for assistance and who, at the time they are seeking housing assistance, are involuntarily displaced, living in substandard housing, or paying more than 50 percent of family income for rent. Only qualified tenants, as defined in § 215.20, are eligible to receive a preference.

(2)(i) The housing owner must inform all applicants for assistance under this part of the availability of the Federal preferences, and must give all applicants an opportunity to show that they qualify for a preference. For purposes of this paragraph (a)(2)(i), applicants include those on any waiting list maintained by the owner for the project when this section is implemented or thereafter.

(ii) If the housing owner determines that the notification to all applicants on a waiting list required by paragraph (a)(2)(i) of this section is impracticable because of the length of the list, the owner may provide this notification to fewer than all applicants on the list at any given time. The owner must, however, have notified a sufficient number of applicants at any given time that, on the basis of the owner's determination of the number of applicants on the waiting list who already claim a Federal preference, and the anticipated number of admissions to the project:

(A) There is an adequate pool of applicants who are likely to qualify for a Federal preference; and

(B) It is unlikely that, on the basis of the owner's framework for applying the preferences under paragraph (b) and the preferences claimed by those already on the waiting list, any applicant who has not been so notified would qualify for admission to the project before those who have received notification.

(3) For purposes of this section, the term "Federal preference" means a tenant selection preference provided under this section. The term "preference" means a Federal preference, unless the context indicates otherwise.

(b) *Applying the Federal preferences.* (1) Each housing owner must include the Federal preferences in its tenant selection policies. The owner must apply the Federal preferences in a manner that is consistent with the provisions of this section and other applicable requirements (including applicable limitations on the use of local residency requirements and preferences).

(2) The housing owner must establish a system for applying the preferences that provides that an applicant who qualifies for any of the Federal preferences is to receive assistance under this part before any other applicant who is not so qualified, without regard to the other applicant's qualification for one or more preferences or priorities that are not provided by Federal law, place on any waiting list, or the time of submission of his or her application for assistance. In applying the preferences under this paragraph (b)(2), the owner may determine the relative weight to be accorded the Federal preferences, through means such as:

(i) Applying non-Federal preferences or priorities (such as local residency preferences) as a way of ranking applicants who qualify (or claim qualification) for a Federal preference;

(ii) Aggregating the Federal preferences (*i.e.*, two Federal preferences outweigh one and three outweigh two);

(iii) Ranking the Federal preferences (*e.g.*, provide that an applicant living in substandard housing has greater need for housing than (and, therefore, would be considered for assistance before) an applicant paying more than 50 percent of income for rent); or

(iv) Ranking the Federal preferences' definitional elements (*e.g.*, provide that those living in housing that is dilapidated or has been declared unfit

for habitation by an agency or unit of government have a greater need for housing than, and take precedence over, those whose housing is substandard only because it does not have a usable bathtub or shower inside the unit for the exclusive use of the family).

(3) Any selection preferences or priorities under this section or otherwise that are used by a housing owner must be established and administered in a manner that is not incompatible with Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d; Title VIII of the Civil Rights Act of 1968, 42 U.S.C. 3601–19; Executive Order 11063 on Equal Opportunity in Housing, 27 FR 11527 (1962), *as amended*, 46 FR 1253 (1980); Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. 794; the Age Discrimination Act of 1975, 42 U.S.C. 6101–07; or HUD's regulations and requirements issued under these authorities. Such preferences and priorities must also be consistent with HUD's affirmative fair housing objectives and (if applicable) the owner's HUD-approved Affirmative Fair Housing Marketing Plan.

(4) The owner must submit to HUD any selection preference system that uses a local residency preference, for review for consistency with the requirements of paragraph (b)(3), but HUD approval is not required before the owner may implement the system.

(5) Local residency requirements are prohibited. Local residency preferences may be applied in selecting tenants only to the extent that they are not inconsistent with HUD's affirmative fair housing objectives and (if applicable) the owner's HUD-approved Affirmative Fair Housing Marketing Plan. With respect to any residency preference, persons expected to reside in the community as a result of current or planned employment must be treated as residents.

(c) *Qualifying for a Federal preference.* (1) An applicant qualifies for a Federal preference if—

(i) The applicant has been involuntarily displaced and is not living in standard, permanent replacement housing or, within no more than six months from the date of certification under paragraph (c)(2) of this section, or verification under paragraph (c)(3) of this section (as appropriate), the applicant will be involuntarily displaced;

(ii) The applicant is living in substandard housing; or

(iii) The applicant is paying more than 50 percent of family income for rent.

(2) Applicants may claim qualification for a Federal preference when they apply for assistance under this part (or thereafter until the time that they are offered assistance) by certifying to the owner that they qualify for preferred status under paragraph (c)(1) of this section. An owner must accept this certification, unless the owner verifies that the applicant is not qualified for preferred status.

(3) Before executing a lease or occupancy agreement with an applicant who has been offered assistance on the basis of a Federal preference, the owner must require the applicant to provide verification that he or she qualifies for a Federal preference under paragraph (c)(1) of this section by virtue of the applicant's current status. The applicant's current status must be determined without regard to whether there has been a change in the applicant's qualification for a Federal preference between the certification under paragraph (c)(2) of this section and execution of an occupancy agreement, including a change for one Federal preference category to another.

(4) If an applicant's qualification for a Federal preference under paragraph (c)(1) of this section has once been verified, the owner need not require the applicant to verify such qualification again, unless, as determined by the owner, such a long time has elapsed since verification as to make reverification desirable, or the owner has reasonable grounds to believe that the applicant no longer qualifies for a Federal preference.

(5) For purposes of this paragraph (c), "standard, permanent replacement housing" is housing—

(i) That is decent, safe, and sanitary;

(ii) That is adequate for the family size; and

(iii) that the family is occupying pursuant to a lease or occupancy agreement.

Such housing does not include transient facilities, such as motels, hotels, or temporary shelters for victims of domestic violence or homeless families, and in the case of domestic violence referred to in paragraph (d)(2) of this section, does not include the housing unit in which the applicant and the applicant's spouse or other member of the household who engages in such violence live.

(6) An applicant may qualify for a Federal preference under paragraph (c)(1)(iii) of this section if the applicant is paying more than 50 percent of family income to rent a unit because the applicant's housing assistance under the United States Housing Act of 1937 or under this part with respect to the unit has been terminated as a result of the applicant's refusal to comply with applicable program policies and procedures with respect to the occupancy of underoccupied units. (For examples of these policies and procedures, see §§ 215.65, 880.605, 881.605, 882.213, 882.509, 883.706, 884.219, 886.125, and 886.325.)

(d) *Definition of involuntary displacement.* (1) An applicant is or will be involuntarily displaced if the applicant has vacated or will have to vacate his or her housing unit as a result of one or more of the following actions:

(i) A disaster, such as a fire or flood, that results in the uninhabitability of an applicant's unit;

(ii) Activity carried on by an agency of the United States or by any State or local governmental body or agency in connection with code enforcement or a public improvement or development program; or

(iii) Action by a housing owner that results in an applicant's having to vacate his or her unit, where:

(A) The reason for the owner's action is beyond an applicant's ability to control or prevent;

(B) The action occurs despite an applicant's having met all previously imposed conditions of occupancy; and

(C) The action taken is other than a rent increase.

(2) An applicant is also involuntarily displaced if—

(i) The applicant has vacated his or her housing unit as a result of actual or threatened physical violence directed against the applicant or one or more members of the applicant's family by a spouse or other member of the applicant's household; or

(ii) The applicant lives in a housing unit with such an individual who engages in such violence.

For purposes of this paragraph (d)(2), the actual or threatened violence must, as determined by the housing owner in accordance with HUD's administrative instructions, have occurred recently or be of a continuing nature.

(3) For purposes of paragraph (d)(1)(iii) of this section, reasons for an applicant's having to vacate a housing unit include, but are not limited to, conversion of an applicant's housing unit to non-rental or non-residential use; closure of an applicant's housing unit for rehabilitation or for any other reason; notice to an applicant that he or she must vacate a unit because the owner wants the unit for the owner's personal or family use or occupancy; sale of a housing unit in which an applicant resides under an agreement that the unit must be vacant when possession is transferred; or any other legally authorized act that results or will result

in the withdrawal by the owner of the unit or structure from the rental market. Such reasons do not include the vacating of a unit by a tenant as a result of actions taken because of the tenant's refusal—

(i) To comply with applicable program policies and procedures under this title with respect to the occupancy of underoccupied and overcrowded units or

(ii) To accept a transfer to another housing unit in accordance with a court decree or in accordance with such policies and procedures under a HUD-approved desegregation plan.

(e) *Verification procedures for applicants involuntarily displaced.* Verification of an applicant's involuntary displacement is established by the following documentation:

(1) Certification, in a form prescribed by the Secretary, from a unit or agency of government that an applicant has been or will be displaced as a result of a disaster, as defined in paragraph (d)(1)(i) of this section;

(2) Certification, in a form prescribed by the Secretary, from a unit or agency of government that an applicant has been or will be displaced by government action, as defined in paragraph (d)(1)(ii) of this section;

(3) Certification, in a form prescribed by the Secretary, from an owner or owner's agent that an applicant had to, or will have to, vacate a unit by a date certain because of an owner action referred to in paragraph (d)(1)(iii) of this section; or

(4) Certification, in a form prescribed by the Secretary, of displacement because of the domestic violence referred to in paragraph (d)(2) of this section, from the local police department, social services agency, or court of competent jurisdiction, or a clergyman, physician, or public or private facility that provides shelter or counseling to the victims of domestic violence.

(f) *Definition of substandard housing.* (1) A unit is substandard if it:

(i) Is dilapidated;

(ii) Does not have operable indoor plumbing;

(iii) Does not have a usable flush toilet inside the unit for the exclusive use of a family;

(iv) Does not have a usable bathtub or shower inside the unit for the exclusive use of a family;

(v) Does not have electricity, or has inadequate or unsafe electrical service;

(vi) Does not have a safe or adequate source of heat;

(vii) Should, but does not, have a kitchen; or

(viii) Has been declared unfit for habitation by an agency or unit of government.

(2) For purposes of paragraph (f)(1) of this section, a housing unit is dilapidated if it does not provide safe and adequate shelter, and in its present condition endangers the health, safety, or well-being of a family, or it has one or more critical defects, or a combination of intermediate defects in sufficient number or extent to require considerable repair or rebuilding. The defects may involve original construction, or they may result from continued neglect or lack of repair or from serious damage to the structure.

(3) For purposes of this paragraph (f), an applicant who is a "homeless family" is living in substandard housing. For purposes of the preceding sentence, a "homeless family" includes any individual or famly who:

(i) Lacks a fixed, regular, and adequate nighttime residence; and

(ii) Has a primary nighttime residence that is:

(A) A supervised publicly or privately operated shelter designed to provide temporary living accommodations (including welfare hotels, congregate shelters, and transitional housing for the mentally ill);

(B) An institution that provides a temporary residence for individuals intended to be institutionalized; or

(C) A public or private place not designed for, or ordinarily used as, a regular sleeping accommodation for human beings. A "homeless family" does not include any individual imprisoned or otherwise detained pursuant to an Act of the Congress or a State law.

(4) For purposes of paragraph (f)(1) of this section, Single Room Occupancy (SRO) Housing (as defined in 24 CFR 882.102) is not substandard solely because it does not contain sanitary or food preparation facilitites (or both).

(g) *Verification procedures for applicants living in substandard housing.* Verification that an applicant is living in substandard housing consists of certification, in a form prescribed by the Secretary, from a unit or agency of government or from an applicant's present landlord that the applicant's unit has one or more of the deficiencies listed in, or the unit's condition is as described in, paragraph (f)(1) or (2) of this section. In the case of a "homeless family" (as described in paragraph (f)(3) of this section), verification consists of certification, in a form prescribed by the Secretary, of this status from a public or private facility that provides shelter for such individuals, or from the local police department or social services agency.

(h) *Definition of family income.* For purposes of this section, family income is one twelfth of Annual Income, as determined in accordance with § 215.21.

(i) *Definition of rent.* (1) For purposes of this section, rent is defined as:

(i) The actual amount due, calculated on a monthly basis, under a lease or occupancy agreement between a family and the family's current landlord; and

(ii) In the case of utilities purchased directly by tenants from utility providers,

(A) The utility allowance (if any) determined for the Section 8 Existing Housing program under 24 CFR Part 882, Subparts A and B, for tenant-purchased utilities (except telephone) and the other housing services that are normally included in rent; or

(B) If the family chooses, the avarage monthly payments that it actually made for these utilities and services for the most recent 12-month period or, if information is not obtainable for the entire period, for an appropriate recent period.

(2) For purposes of calculating rent under this paragraph (i), amounts paid to or on behalf of a family under any energy assistance program must be subtracted from the otherwise applicable rental amount, to the extent that they are not included in the family's income.

(3) In the case of an applicant who owns a manufactured home, but who rents the space upon which it is located, rent under this paragraph (i) includes the monthly payment to amortize the purchase price of the home, calculated in accordance with HUD's requirements.

(4) In the case of an applicant who resides within the jurisdiction of an Indian Housing Authority that is not administering a Section 8 Existing Housing program, the applicable utility allowance for purposes of calculating rent under paragraph (i)(1)(ii)(A) of this section will be determined under 24 CFR Part 965, Subpart E.

(5) In the case of members of a cooperative, rent under this paragraph (i) means the charges under the occupancy agreement between the members and the cooperative.

(j) *Verification of an applicant's income, rent, and utilities payments.* The owner must verify that an applicant is paying more than 50 percent of family income for rent, as follows:

(1) The owner must verify the family's income in accordance with the provisions of this part and applicable HUD handbook provisions.

(2)(i) The owner must verify the amount due to the family's landlord (or

cooperative) under the lease or occupancy agreement—

(A) By requiring the family to furnish copies of its most recent rental (or cooperative charges) receipts (which may include cancelled checks or money order receipts) or a copy of the family's current lease or occupancy agreement, or

(B) By contacting the landlord (or cooperative) or its agent directly.

(ii) The owner must verify the amount paid to amortize the purchase price of a manufactured home—

(A) By requiring the family to furnish copies of its most recent payment receipts (which may include cancelled checks or money order receipts) or a copy of the family's current purchase agreement, or

(B) By contacting the lienholder directly.

(3) To verify the actual amount a family paid for utilities and other housing services, the owner must require the family to provide copies of the appropriate bills or receipts, or must obtain the information directly from the utility or service supplier.

(k) *Notice and opportunity for a meeting where Federal preference is denied.* If the owner determines that an applicant does not meet the criteria for receiving a Federal preference, the owner must promptly provide the applicant with written notice of the determination. The notice must contain a brief statement of the reasons for the determination, and state that the applicant has the right to meet with the owner or the owner's designee to review it. If requested, the meeting must be conducted by a person or persons designated by the owner. Those designated may be an officer or employee of the owner, including the person who made or reviewed the determination, or his or her subordinate. The procedures specified in this paragraph (k) must be carried out in accordance with HUD's administrative instructions. The applicant may exercise other rights if the applicant believes that he or she has been discriminated against on the basis of race, color, religion, sex, national origin, age, or handicap.

(l) *Closure of waiting list.* Notwithstanding the fact that the housing owner may not be accepting additional applications for assistance under this part because of the length of any waiting list, the owner may not refuse to place an applicant on the waiting list if the applicant is otherwise eligible for assistance under this part and claims that he or she qualifies for a Federal preference as provided in paragraph (c)(2) of this section, unless the owner determines, on the basis of the number of applicants who are already on the waiting list and who claim a Federal preference, and the anticipated number of admissions to the project, that—

(1) There is an adequate pool of applicants on the list who are likely to qualify for a Federal preference and

(2) It is unlikely that, on the basis of the owner's system for applying the Federal preferences, the preference or preferences that the applicant claims, and the preferences claimed by applicants on the waiting list, the applicant would qualify for assistance before other applicants on the waiting list.

(m) *Additional verification for applicants receiving Rent Supplement payments.* An owner may request the Secretary (or in the case of a State Agency Project the Secretary's designee) to issue a certificate that a family qualifies for a Federal preference under this section. HUD will issue this certificate only if the owner requests it.

(n) *Effective date.* Housing owners must implement the provisions of this section no later than July 13, 1988.

PART 880—SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAM FOR NEW CONSTRUCTION

3. The authority citation for 24 CFR Part 880 continues to read as follows:

Authority: Secs. 3, 5, and 8, United States Housing Act of 1937 (42 U.S.C. 1437a, 1437c, and 1437f); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

4. In § 880.601, paragraph (b) is revised to read as follows:

§ 880.601 Responsibilities of owner.

* * * * *

(b) *Management and maintenance.* The owner is responsible for all management functions (including provision of Federal selection preferences in accordance with § 880.613, selection of tenants, reexamination of family income, evictions and other terminations of tenancy, and collection of rents) and all repair and maintenance functions (including ordinary and extraordinary maintenance and replacement of capital items). All these functions must be performed in compliance with applicable Equal Opportunity requirements.

* * * * *

5. In § 880.603, the introductory text of paragraph (b), and paragraphs (b)(2) and (b)(3) are revised to read as follows:

§ 880.603 Selection and admission of assisted tenants.

* * * * *

(b) *Determination of eligibility and selection of tenants.* The owner is responsible for determining whether the applicant is eligible, in accordance with Parts 812 and 813 of this chapter. The owner is also responsible for the selection of families, including giving a Federal selection preference in accordance with §880.613.

* * * * *

(2) If the owner determines that the family is eligible and is otherwise acceptable and units are available, the owner will assign the family a unit of the appropriate size in accordance with HUD standards. If no suitable unit is available, the owner will place the family on a waiting list for the project and notify the family of when a suitable unit may become available. If the waiting list is so long that the applicant would not be likely to be admitted for the next 12 months, the owner may advise the applicant that no additional applications are being accepted for that reason, except that the owner may not refuse to place an applicant on the waiting list if the applicant is otherwise eligible for assistance and claims that he or she qualifies for a Federal preference as provided in § 880.613(c)(2), unless the owner determines, on the basis of the number of applicants who are already on the waiting list and who claim a Federal preference, and the anticipated number of admissions to the project, that—

(i) There is an adequate pool of applicants who are likely to qualify for a Federal preference and

(ii) It is unlikely that, on the basis of the owner's system for applying the Federal preferences, the preference or preferences that the applicant claims, and the preferences claimed by applicants on the waiting list, the applicant would qualify for admission to the project before other applicants on the waiting list.

(3) If the owner determines that an applicant is ineligible on the basis of income or family composition, or that the owner is not selecting the applicant for other reasons, the owner will promptly notify the applicant in writing of the determination and its reasons, and that the applicant has the right to meet with the owner or managing agent in accordance with HUD requirements. Where the owner is a PHA, the applicant may request an informal hearing. If the PHA determines that the applicant is not eligible, the PHA will notify the applicant and inform the applicant that he or she has the right to

request HUD review of the PHA's determination. The applicant may also exercise other rights if the applicant believes that he or she is being discriminated against on the basis of race, color, religion, sex, or national origin. The informal review provisions for the denial of a Federal preference under § 880.613 are contained in paragraph (k) of that section.

* * * * *

6. In Part 880, a new § 880.613 is added, to read as follows:

§ 880.613 Federal selection preferences.

(a) *General.* (1) In selecting applicants for assistance under this part, housing owners must give preference to applicants who are otherwise eligible for assistance and who, at the time they are seeking housing assistance, are involuntarily displaced, living in substandard housing, or paying more than 50 percent of family income for rent.

(2)(i) The owner must inform all applicants for assistance under this part of the availability of the Federal preferences, and must give all applicants an opportunity to show that they qualify for a preference. For purposes of this paragraph (a)(2)(i), applicants include families on any waiting list maintained by the owner for the project when this section is implemented or thereafter.

(ii) If the owner determines that the notification to all applicants on a waiting list required by paragraph (a)(2)(i) of this section is impracticable because of the length of the list, the owner may provide this notification to fewer than all applicants on the list at any given time. The owner must, however, have notified a sufficient number of applicants at any given time that, on the basis of the owner's determination of the number of applicants on the waiting list who already claim a Federal preference, and the anticipated number of admissions to the project:

(A) There is an adequate pool of applicants who are likely to qualify for a Federal preference; and

(B) It is unlikely that, on the basis of the owner's framework for applying the preferences under paragraph (b) of this section and the preferences claimed by those already on the waiting list, any applicant who has not been so notified would be admitted to the project before those who have received notification.

(3) For purposes of this section, the term "Federal preference" means a tenant selection preference provided under this section. The term "preference" means a Federal preference, unless the context indicates otherwise.

(b) *Applying the Federal preferences.* (1) Each housing owner must include the Federal preferences in its tenant selection standards. The owner must apply the Federal preferences in a manner consistent with the provisions of this section, the equal opportunity and other requirements of §§ 880.210, 880.601 and 880.603 (including limitations on the use of local residency requirements and preferences contained in § 880.603(b)(1)), and other applicable requirements.

(2) The housing owner must establish a system for applying the preferences that provides that an applicant who qualifies for any of the Federal preferences is to receive assistance under this part before any other applicant who is not so qualified, without regard to the other applicant's qualification for one or more preferences or priorities that are not provided by Federal law, place on any waiting list, or the time of submission of his or her application for assistance. In applying the preferences under this paragraph (b)(2), the owner may determine the relative weight to be accorded the Federal preferences, through means such as:

(i) Applying non-Federal preferences or priorities (such as local residency preferences) as a way of ranking applicants who qualify (or claim qualification) for a Federal preference, as provided by paragraph (c)(2) of this section;

(ii) Aggregating the Federal preferences (*i.e.*, two Federal preferences outweigh one and three outweigh two);

(iii) Ranking the Federal preferences (*e.g.*, provide that an applicant living in substandard housing has greater need for housing than (and, therefore, would be considered for assistance before) an applicant paying more than 50 percent of income for rent); or

(iv) Ranking the Federal preferences' definitional elements (*e.g.*, provide that those living in housing that is dilapidated or has been declared unfit for habitation by an agency or unit of government have a greater need for housing than, and take precedence over, those whose housing is substandard only because it does not have a usable bathtub or shower inside the unit for the exclusive use of the family).

(3) Any selection preferences or priorities under this section or otherwise that are used by a housing owner must be established and administered in a manner that is not incompatible with Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d; Title VIII of the Civil Rights Act of 1968, 42 U.S.C. 3601–19; Executive Order 11063 on Equal Opportunity in Housing, 27 FR 11527 (1962), *as amended*, 46 FR 1253 (1980); Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. 794; the Age Discrimination Act of 1975, 42 U.S.C. 6101–07; or HUD's regulations and requirements issued under these authorities. Such preferences and priorities must also be consistent with HUD's affirmative fair housing objectives and (if applicable) the owner's HUD-approved Affirmative Fair Housing Marketing Plan.

(4) The owner must submit to HUD any selection preference system that uses a local residency preference, for review for consistency with the requirements of paragraph (b)(3) of this section, but HUD approval is not required before the owner may implement the system.

(c) *Qualifying for a Federal preference.* (1) An applicant qualifies for a Federal preference if—

(i) The applicant has been involuntarily displaced and is not living in standard, permanent replacement housing or, within no more than six months from the date of certification under paragraph (c)(2) of this section or verification under paragraph (c)(3) of this section (as appropriate), the applicant will be involuntary displaced;

(ii) The applicant is living in substandard housing; or

(iii) The applicant is paying more than 50 percent of family income for rent.

(2) Applicants may claim qualification for a Federal preference when they apply for assistance under this part (or thereafter until the time that they are offered assistance) by certifying to the owner that they qualify for a preference under paragraph (c)(1) of this section. An owner must accept this certification, unless the owner verifies that the applicant is not qualified for a Federal preference.

(3) Before executing a lease or occupancy agreement with an applicant who has been offered assistance on the basis of a Federal preference, the owner must require the applicant to provide verification that he or she qualifies for a Federal preference under paragraph (c)(1) of this section by virtue of the applicant's current status. The applicant's current status must be determined without regard to whether there has been a change in the applicant's qualification for a preference between the certification under paragraph (c)(2) of this section and execution of an occupancy agreement, including a change from one Federal preference category to another.

(4) If an applicant's qualification for a Federal preference under paragraph

(c)(1) of this section has once been verified, an owner need not require the applicant to verify such qualification again, unless, as determined by the owner, such a long time has elapsed since verification as to make reverification desirable, or the owner has reasonable grounds to believe that the applicant no longer qualifies for a Federal preference.

(5) For purposes of this paragraph (c), "standard, permanent replacement housing" is housing—

(i) That is decent, safe, and sanitary;

(ii) That is adequate for the family size; and

(iii) That the family is occupying pursuant to a lease or occupancy agreement.

Such housing does not include transient facilities, such as motels, hotels, or temporary shelters for victims of domestic violence or homeless families, and in the case of domestic violence referred to in paragraph (d)(2) of this section, does not include the housing unit in which the applicant and the applicant's spouse or other member of the household who engages in such violence live.

(6) An applicant may not qualify for a Federal preference under paragraph (c)(1)(iii) of this section if the applicant is paying more than 50 percent of family income to rent a unit because the applicant's housing assistance under the United States Housing Act of 1937 or section 101 of the Housing and Urban Development Act of 1965 with respect to that unit has been terminated as a result of the applicant's refusal to comply with applicable program policies and procedures with respect to the occupancy of underoccupied and overcrowded units. (For examples of these policies and procedures, see §§ 215.65, 880.605, 881.605, 882.213, 882.509, 883.706, 884.219, 886.125, and 886.325.)

(d) *Definition of involuntary displacement.* (1) An applicant is or will be involuntarily displaced if the applicant has vacated or will have to vacate his or her housing unit as a result of one or more of the following actions:

(i) A disaster, such as a fire or flood, that results in the uninhabitability of an applicant's unit;

(ii) Activity carried on by an agency of the United States or by any State or local governmental body or agency in connection with code enforcement or a public improvement or development program; or

(iii) Action by a housing owner that results in an applicant's having to vacate his or her unit, where:

(A) The reason for the owner's action is beyond an applicant's ability to control or prevent;

(B) The action occurs despite an applicant's having met all previously imposed conditions of occupancy; and

(C) The action taken is other than a rent increase.

(2) An applicant is also involuntarily displaced if—

(i) The applicant has vacated his or her housing unit as a result of actual or threatened physical violence directed against the applicant or one or more members of the applicant's family by a spouse or other member of the applicant's household; or

(ii) The applicant lives in a housing unit with such an individual who engages in such violence.

For purposes of this paragraph (d)(2), the actual or threatened violence must, as determined by the housing owner in accordance with HUD's administrative instructions, have occurred recently or be of a continuing nature.

(3) For purposes of paragraph (d)(1)(iii) of this section, reasons for an applicant's having to vacate a housing unit include, but are not limited to, conversion of an applicant's housing unit to non-rental or non-residential use; closure of an applicant's housing unit for rehabilitation or for any other reason; notice to an applicant that he or she must vacate a unit because the owner wants the unit for the owner's personal or family use or occupancy; sale of a housing unit in which an applicant resides under an agreement that the unit must be vacant when possession is transferred; or any other legally authorized act that results or will result in the withdrawal by the owner of the unit or structure from the rental market. Such reasons do not include the vacating of a unit by a tenant as a result of actions taken because of the tenant's refusal—

(i) To comply with applicable program policies and procedures under this title with respect to the occupancy of underoccupied and overcrowded units; or

(ii) To accept a transfer to another housing unit in accordance with a court decree or in accordance with such policies and procedures under a HUD-approved desegregation plan.

(e) *Verification procedures for applicants involuntarily displaced.* Verification of an applicant's involuntary displacement is established by the following documentation:

(1) Certification, in a form prescribed by the Secretary, from a unit or agency of government that an applicant has been or will be displaced as a result of a disaster, as defined in paragraph (d)(1)(i) of this section;

(2) Certification, in a form prescribed by the Secretary, from a unit or agency of government that an applicant has been or will be displaced by government action, as defined in paragraph (d)(1)(ii) of this section;

(3) Certification, in a form prescribed by the Secretary, from an owner or owner's agent that an applicant had to, or will have to, vacate a unit by a date certain because of an owner action referred to in paragraph (d)(1)(iii) of this section; or

(4) Certification, in a form prescribed by the Secretary, of displacement because of the domestic violence referred to in paragraph (d)(2) of this section, from the local police department, social services agency, or court of competent jurisdiction, or a clergyman, physician, or public or private facility that provides shelter or counseling to the victims of domestic violence.

(f) *Definition of substandard housing.* (1) A unit is substandard if it:

(i) Is dilapidated;

(ii) Does not have operable indoor plumbing;

(iii) Does not have a usable flush toilet inside the unit for the exclusive use of a family;

(iv) Does not have a usable bathtub or shower inside the unit for the exclusive use of a family;

(v) Does not have electricity, or has inadequate or unsafe electrical service;

(vi) Does not have a safe or adequate source of heat;

(vii) Should, but does not, have a kitchen; or

(viii) Has been declared unfit for habitation by an agency or unit of government.

(2) For purposes of paragraph (f)(1) of this section, a housing unit is dilapidated if it does not provide safe and adequate shelter, and in its present condition endangers the health, safety, or well-being of a family, or it has one or more critical defects, or a combination of intermediate defects in sufficient number or extent to require considerable repair or rebuilding. The defects may involve original construction, or they may result from continued neglect or lack of repair or from serious damage to the structure.

(3) For purposes of this paragraph (f), an applicant who is a "homeless family" in living is substandard housing. For purposes of the preceding sentence, a "homeless family" includes any individual or family who:

(i) Lacks a fixed, regular, and adequate nighttime residence; and

(ii) Has a primary nighttime residence that is:

(A) A supervised publicly or privately operated shelter designed to provide temporary living accommodations (including welfare hotels, congregate shelters, and transitional housing for the mentally ill);

(B) An institution that provides a temporary residence for individuals intended to be institutionalized; or

(C) A public or private place not designed for, or ordinarily used as, a regular sleeping accommodation for human beings. A "homeless family" does not include any individual imprisoned or otherwise detained pursuant to an Act of the Congress or a State law.

(4) For purposes of paragraph (f)(1) of this section, Single Room Occupancy (SRO) Housing (as defined in 24 CFR 882.102) is not substandard solely because it does not contain sanitary or food preparation facilities (or both).

(g) *Verification procedures for applicants living in substandard housing.* Verification that an applicant is living in substandard housing consists of certification, in a form prescribed by the Secretary, from a unit or agency of government or from an applicant's present landlord that the applicant's unit has one or more of the deficiencies listed in, or the unit's condition is as described in, paragraph (f) (1) or (2) of this section. In the case of a "homeless family" (as described in paragraph (f)(3) of this section), verification consists of certification, in a form prescribed by the Secretary, of this status from a public or private facility that provides shelter for such individuals, or from the local police department or social services agency.

(h) *Definition of family income.* For purposes of this section, family income is Monthly Income, as defined in 24 CFR 813.102.

(i) *Definition of rent.* (1) For purposes of this section, rent is defined as:

(i) The actual amount due, calculated on a monthly basis, under a lease or occupancy agreement between a family and the family's current landlord; and

(ii) In the case of utilities purchased directly by tenants from utility providers,

(A) The utility allowance (if any) determined for the Section 8 Existing Housing program under 24 CFR Part 882, Subparts A and B, for tenant-purchased utilities (except telephone) and the other housing services that are normally included in rent; or

(B) If the family chooses, the average monthly payments that it actually made for these utilities and services for the most recent 12-month period or, if information is not obtainable for the entire period, for an appropriate recent period.

(2) For purposes of calculating rent under this paragraph (i), amounts paid to or on behalf of a family under any energy assistance program must be subtacted from the otherwise applicable rental amount, to the extent that they are not included in the family's income.

(3) In the case of an applicant who owns a manufactured home, but who rents the space upon which it is located, rent under this paragraph (i) includes the monthly payment to amortize the purchase price of the home, calculated in accordance with HUD's requirements.

(4) In the case of an applicant who resides within the jurisdiction of an Indian Housing Authority (IHA) that is not administering a Section 8 Existing Housing program, the applicable utility allowance for purposes of calculating rent under paragraph (i)(1)(ii)(A) of this section, will be determined under 24 CFR Part 965, Subpart E.

(5) In the case of members of a cooperative, rent under this paragraph (i) means the charges under the occupancy agreement between the members and the cooperative.

(j) *Verification of an applicant's income, rent, and utilities payment.* The owner must verify that an applicant is paying more than 50 percent of family income for rent, as follows:

(1) The owner must verify the family's income in accordance with the standards and procedures that it uses to verify income for purposes of determining applicant eligibility and Total Tenant Payment under 24 CFR Part 813.

(2)(i) The owner must verify the amount due to the family's landlord (or cooperative) under the lease or occupancy agreement—

(A) By requiring the family to furnish copies of its most recent rental (or cooperative charges) receipts (which may include cancelled checks or money order receipts) or a copy of the family's current lease or occupancy agreement, or

(B) By contacting the landlord (or cooperative) or its agent directly.

(ii) The owner must verify the amount paid to amortize the purchase price of a manufactured home—

(A) By requiring the family to furnish copies of its most recent payment receipts (which may include cancelled checks or money order receipts) or a copy of the family's current purchase agreement, or

(B) By contacting the lienhold directly.

(3) To verify the actual amount that a family paid for utilities and other housing services, the owner must require the family to provide copies of the appropriate bills or receipts, or must obtain the information directly from the utility or service supplier.

(k) *Notice and opportunity for a meeting where Federal preference is denied.* If the owner determines that an applicant does not meet the criteria for receiving a Federal preference, the owner must promptly provide the applicant with written notice of the determination. The notice must contain a brief statement of the reasons for the determination, and state that the applicant has the right to meet with the owner or the owner's designee to review it. If requested, the meeting must be conducted by any person or persons designated by the owner. Those designated may be an officer or employee of the owner, including the person who made or reviewed the determination, or his or her subordinate. The procedures specified in this paragraph (k) must be carried out in accordance with HUD's requirements. The applicant may exercise other rights if the applicant believes that he or she has been discriminated against on the basis of race, color, religion, sex, national origin, age, or handicap.

(l) *Effective date.* Housing owners must implement the provisions of this section no later than July 13, 1988.

PART 881—SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAM FOR SUBSTANTIAL REHABILITATION

7. The authority citation for 24 CFR Part 881 continues to read as follows:

Authority: Secs. 3, 5, and 8, United States Housing Act of 1937 (42 U.S.C. 1437a, 1437c, and 1437f); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

8. In § 881.601, paragraph (b) is revised to read as follows:

§ 881.601 Responsibilities of owner.

* * * * *

(b) *Management and maintenance.* The owner is responsible for all management functions (including provision of Federal selection preferences in accordance with § 881.613, selection of tenants, reexamination of family incomes, evictions and other terminations of tenancy, and collection of rents) and all repair and maintenance functions (including ordinary and extraordinary maintenance and replacement of capital items). All these functions must be performed in compliance with applicable Equal Opportunity requirements.

* * * * *

9. In § 881.603, the introductory text of paragraph (b), and paragraphs (b)(2) and (b)(3) are revised to read as follows:

§ 881.603 Selection and admission of assisted tenants.

* * * * *

(b) *Determination of eligibility and selection of tenants.* The owner is responsible for determining whether the applicant is eligible, in accordance with Parts 812 and 813 of this chapter. The owner is also responsible for the selection of families, including giving a Federal selection preference in accordance with § 881.613.

* * * * *

(2) If the owner determines that the family is eligible and is otherwise acceptable and units are available, the owner will assign the family a unit of the appropriate size in accordance with HUD standards. If no suitable unit is available, the owner will place the family on a waiting list for the project and notify the family of when a suitable unit may become available. If the waiting list is so long that the applicant would not be likely to be admitted for the next 12 months, the owner may advise the applicant that no additional applications are being accepted for that reason, except that the owner may not refuse to place an applicant on the waiting list if the applicant is otherwise eligible for assistance and claims that he or she qualifies for a Federal preference as provided in § 881.613(c)(2), unless the owner determines, on the basis of the number of applicants who are already on the waiting list and who claim a Federal preference, and the anticipated number of admissions to the project, that—

(i) There is an adequate pool of applicants who are likely to qualify for a Federal preference and,

(ii) It is unlikely that, on the basis of the owner's system for applying the Federal preferences, the preference or preferences that the applicant claims, and the preferences claimed by applicants on the waiting list, the applicant would qualify for admission before other applicants on the waiting list.

(3) If the owner determines that an applicant is ineligible on the basis of income or family composition, or that the owner is not selecting the applicant for other reasons, the owner will promptly notify the applicant in writing of the determination and its reasons, and that the applicant has the right to meet with the owner or managing agent in accordance with HUD requirements. Where the owner is a PHA, the applicant may request an informal hearing. If the PHA determines that the applicant is not eligible, the PHA will notify the applicant and inform the applicant that he or she has the right to request HUD review of the PHA's determination. The applicant may also exercise other rights if the applicant believes that he or she is being discriminated against on the basis of race, color, creed, religion, sex or national origin. The informal review provisions for the denial of a tenant selection preference under § 881.613 are contained in paragraph (k) of that section.

* * * * *

10. In Part 881, a new § 881.613 is added, to read as follows:

§ 881.613 Federal selection preferences.

(a) *General.* (1) In selecting applicants for assistance under this part, housing owners must give preference to applicants who are otherwise eligible for assistance and who, at the time they are seeking housing assistance, are involuntarily displaced, living in substandard housing, or paying more than 50 percent of family income for rent.

(2)(i) The owner must inform all applicants for assistance under this part of the availability of the Federal preferences, and must give all applicants an opportunity to show that they qualify for a preference. For purposes of this paragraph (a)(2)(i), applicants include families on any waiting list maintained by the owner for the project when this section is implemented or thereafter.

(ii) If the owner determines that the notification to all applicants on a waiting list required by paragraph (a)(2)(i) of this section is impracticable because of the length of the list, the owner may provide this notification to fewer than all applicants on the list at any given time. The owner must, however, have notified a sufficient number of applicants at any given time that, on the basis of the owner's determination of the number of applicants on the waiting list who already claim a Federal preference, and the anticipated number of admissions to the project:

(A) There is an adequate pool of applicants who are likely to qualify for a Federal preference; and

(B) It is unlikely that, on the basis of the owner's framework for applying the preferences under paragraph (b) of this section and the preferences claimed by those already on the waiting list, any applicant who has not been so notified would be admitted to the project before those who have received notification.

(3) For purposes of this section, the term "Federal preference" means a tenant selection preference provided under this section. The term "preference" means a Federal preference, unless the context indicates otherwise.

(b) *Applying the Federal preferences.* (1) Each housing owner must include the Federal preference in its tenant selection standards. The owner must apply the Federal preferences in a manner that is consistent with the provisions of this section, the equal opportunity and other requirements of §§ 881.210, 881.601, and 881.603 (including limitations on the use of local residency requirements and preferences contained in § 881.603(b)(1)), and other applicable requirements.

(2) The housing owner must establish a system for applying the preferences that provides that an applicant who qualifies for any of the Federal preferences is to receive assistance under this part before any other applicant who is not so qualified, without regard to the other applicant's qualification for one or more preferences or priorities that are not provided by Federal law, placed on any waiting list, or the time of submission of his or her application for admission to an assisted project. In applying the preferences under this paragraph (b)(2), the owner may determine the relative weight to be accorded the Federal preferences, through means such as:

(i) Applying non-Federal preferences or priorities (such as local residency preferences) as a way of ranking applicants who qualify or claim qualification for a Federal preference;

(ii) Aggregating the Federal preferences (*i.e.*, two Federal preferences outweigh one and three outweigh two);

(iii) Ranking the Federal preferences (*e.g.*, provide that an applicant living in substandard housing has greater need for housing than (and, therefore, would be considered for assistance before) an applicant paying more than 50 percent of income for rent); or

(iv) Ranking the Federal preferences' definitional elements (*e.g.*, provide that those living in housing that is dilapidated or has been declared unfit for habitation by an agency or unit of government have a greater need for housing than, and take precedence over, those whose housing is substandard only because it does not have a usable bathtub or shower inside the unit for the exclusive use of the family).

(3) Any selection preferences or priorities under this section or otherwise that are used by a housing owner must be established and administered in a manner that is not incompatible with Title VI of the Civil Rights Act of 1964,

42 U.S.C. 2000d; Title VIII of the Civil Rights Act of 1968, 42 U.S.C. 3601–19; Executive Order 11063 on Equal Opportunity in Housing, 27 FR 11527 (1962), *as amended*, 46 1253 (1980); Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. 794; the Age Discrimination Act of 1975, 42 U.S.C. 6101–07; or HUD's regulations and requirements issued under these authorities. Such preferences and priorities must also be consistent with HUD's affirmative fair housing objectives and (if applicable) the owner's Affirmative Fair Housing Marketing Plan.

(4) The owner must submit to HUD any selection preference system that uses a local residency preference, for review for consistency with the requirements of paragraph (b)(3), but HUD approval is not required before the owner may implement the system.

(c) *Qualifying for a Federal preference.* (1) An applicant qualifies for a Federal preference if—

(i) The applicant has been involuntarily displaced and is not living in standard, permanent replacement housing or, within no more than six months from the date of certification under paragraph (c)(2) of this section or verification under paragraph (c)(3) of this section (as appropriate), the applicant will be involuntarily displaced;

(ii) The applicant is living in substandard housing; or

(iii) The applicant is paying more than 50 percent of family income for rent.

(2) Applicants may claim qualification for a Federal preference when they apply for assistance under this part (or thereafter until the time that they are offered assistance) by certifying to the owner that they qualify for preferred status under paragraph (c)(1) of this section. An owner must accept this certification, unless the owner verifies that the applicant is not qualified for a Federal preference.

(3) Before executing a lease or occupancy agreement with an applicant who has been offered assistance on the basis of a Federal preference, the owner must require the applicant to provide verification that he or she qualifies for a Federal preference under paragraph (c)(1) of this section by virtue of the applicant's current status. The applicant's current status must be determined without regard to whether there has been a change in the applicant's qualification for a preference between the certification under paragraph (c)(2) of this section and execution of an occupancy agreement, including a change from one Federal preference category to another.

(4) If an applicant's qualification for a Federal preference under paragraph (c)(1) of this section has once been verified, an owner need not require the applicant to verify such qualification again, unless, as determined by the owner, such a long time has elapsed since verification as to make reverification desirable, or the owner has reasonable grounds to believe that the applicant no longer qualifies for a Federal preference.

(5) For purposes of this paragraph (c), "standard, permanent replacement housing" is housing—

(i) That is decent, safe, and sanitary;

(ii) That is adequate for the family size; and

(iii) That the family is occupying pursuant to a lease or occupancy agreement.

Such housing does not include transient facilities, such as motels, hotels, or temporary shelters for victims of domestic violence or homeless families, and in the case of domestic violence referred to in paragraph (d)(2) of this section, does not include the housing unit in which the applicant and the applicant's spouse or other member of the household who engages in such violence live.

(6) An applicant may not qualify for a Federal preference under paragraph (c)(1)(iii) of this section if the applicant is paying more than 50 percent of family income to rent a unit because the applicant's housing assistance under the United States Housing Act of 1937 or section 101 of the Housing and Urban Development Act of 1965 with respect to that unit has been terminated as a result of the applicant's refusal to comply with applicable program policies and procedures with respect to the occupancy of underoccupied and overcrowded units. (For examples of these policies and procedures, see §§ 215.65, 880.605, 881.605, 882.213, 882.509, 883.706, 884.219, 886.125, and 886.325.)

(d) *Definition of involuntary displacement.* (1) An applicant is or will be involuntarily displaced if the applicant has vacated or will have to vacate his or her housing unit as a result of one or more of the following actions:

(i) A disater, such as a fire or flood, that results in the uninhabitability of an applicant's unit;

(ii) Activity carried on by an agency of the United States or by any State or local governmental body or agency in connection with code enforcement or a public improvement or development program; or

(iii) Action by a housing owner that results in an applicant's having to vacate his or her unit, where;

(A) The reason for the owner's action is beyond an applicant's ability to control or prevent;

(B) The action occurs despite an applicant's having met all previously imposed conditions of occupancy; and

(C) The action taken is other than a rent increase.

(2) An applicant is also involuntarily displaced if—

(i) The applicant has vacated his or her housing unit as a result of actual or threatened physical violence directed against the applicant or one or more members of the applicant's family by a spouse or other member of the applicant's houshold; or

(ii) The applicant lives in a housing unit with such an individual who engages in such violence.

For purposes of this paragraph (d)(2), the actual or threatened violenece must, as determined by the housing owner in accordance with HUD's administrative instructions, have occurred recently or be of a continuing nature.

(3) For purposes of paragraph (d)(1)(iii) of this section, reasons for an applicant's having to vacate a housing unit include, but are not limited to, conversion of an applicant's housing unit to non-rental or non-residential use; closure of an applicant's housing unit for rehabilitation or for any other reason; notice to an applicant that he or she must vacate a unit because the owner wants the unit for the owner's personal or family use or occupancy; sale of a housing unit in which an applicant resides under an agreement that the unit must be vacant when possession is transferred; or any other legally authorized act that results or will result in the withdrawal by the owner of the unit or structure from the rental market. Such reasons do not include the vacating of a unit by a tenant as a result of actions taken because of the tenant's refusal—

(i) To comply with applicable program policies and procedures under this title with respect to the occupancy of underoccupied and overcrowded units or

(ii) To accept a transfer to another housing unit in accordance with a court decree or in accordance with such policies and procedures under a HUD-approved desegregation plan.

(e) *Verification procedures for applicants involuntarily displaced.* Verification of an applicant's involuntary displacement is established by the following documentation:

(1) Certification, in a form prescribed by the Secretary, from a unit or agency of government that an applicant has been or will be displaced as a result of a disaster, as defined in paragraph (d)(1)(i) of this section;

(2) Certification, in a form prescribed by the Secretary, from a unit or agency of government that an applicant has been or will be displaced by government action, as defined in paragraph (d)(1)(ii) of this section;

(3) Certification, in a form prescribed by the Secretary, from an owner or owner's agent that an applicant had to, or will have to, vacate a unit by a date certain because of an owner action referred to in paragraph (d)(1)(iii) of this section; or

(4) Certification, in a form prescribed by the Secretary, of displacement because of the domestic violence referred to in paragraph (d)(2), from the local police department, social services agency, or court of competent jurisdiction, or a clergyman, physician, or public or private facility that provides shelter or counseling to the victims of domestic violence.

(f) *Definition of substandard housing.* (1) A unit is substandard if it:

(i) Is dilapidated;

(ii) Does not have operable indoor plumbing;

(iii) Does not have a usable flush toilet inside the unit for the exclusive use of a family;

(iv) Does not have a usable bathtub or shower inside the unit for the exclusive use of a family;

(v) Does not have electricity, or has inadequate or unsafe electrical service;

(vi) Does not have a safe or adequate source of heat;

(vii) Should, but does not, have a kitchen; or

(viii) Has been declared unfit for habitation by an agency or unit of government.

(2) For purposes of paragraph (f)(1) of this section, a housing unit is dilapidated if it does not provide safe and adequate shelter, and in its present condition endangers the health, safety, or well-being of a family, or it has one or more critical defects, or a combination of intermediate defects in sufficient number or extent to require considerable repair or rebuilding. The defects may involve original construction, or they may result from continued neglect or lack of repair or from serious damage to the structure.

(3) For purposes of this paragraph (f), an applicant who is a "homeless family" is living in substandard housing. For purposes of the preceding sentence, a "homeless family" includes any individual or family who:

(i) Lacks a fixed, regular, and adequate nighttime residence; and

(ii) Has a primary nighttime residence that is:

(A) A supervised publicly or privately operated shelter designed to provide temporary living accommodations (including welfare hotels, congregate shelters, and transitional housing for the mentally ill);

(B) An institution that provides a temporary residence for individuals intended to be institutionalized; or

(C) A public or private place not designed for, or ordinarily used as, a regular sleeping accommodation for human beings. A "homeless family" does not include any individual imprisoned or otherwise detained pursuant to an Act of the Congress or a State law.

(4) For purposes of paragraph (f)(1) of this section, Single Room Occupancy (SRO) Housing (as defined in 24 CFR 882.102) is not substandard solely because it does not contain sanitary or food preparation facilities (or both).

(g) *Verification procedures for applicants living in substandard housing.* Verification that an applicant is living in substandard housing consists of certification, in a form prescribed by the Secretary, from a unit or agency of government or from an applicant's present landlord that the applicant's unit has one or more of the deficiencies listed in, or the unit's condition is as described in, paragraph (f)(1) or (2) of this section. In the case of a "homeless family" (as described in paragraph (f)(3) of this section), verification consists of certification, in a form prescribed by the Secretary, of this status from a public or private facility that provides shelter for such individuals, or from the local police department or social services agency.

(h) *Definition of family income.* For purposes of this section, family income is Monthly Income, as defined in 24 CFR 813.102.

(i) *Definition of rent.* (1) For purposes of this section, rent is defined as:

(i) The actual amount due, calculated on a monthly basis, under a lease or occupancy agreement between a family and the family's current landlord; and

(ii) In the case of utilities purchased directly by tenants from utility providers:

(A) The utility allowance (if any) determined for the Section 8 Existing Housing program under 24 CFR Part 882, Subparts A and B, for tenant-purchased utilities (except telephone) and the other housing services that are normally included in rent; or

(B) If the family chooses, the average monthly payments that it actually made for these utilities and services for the most recent 12-month period or, if information is not obtainable for the entire period, for an appropriate recent period.

(2) For purposes of calculating rent under this paragraph (i), amounts paid to or on behalf of a family under any energy assistance program must be subtracted from the otherwise applicable rental amount, to the extent that they are not included in the family's income.

(3) In the case of an applicant who owns a manufactured home, but who rents the space upon which it is located, rent under this paragraph (i) includes the monthly payment to amortize the purchase price of the home, calculated in accordance with HUD's requirements.

(4) In the case of an applicant who resides within the jurisdiction of an Indian Housing Authority (IHA) that is not administering a Section 8 Existing Housing program, the applicable utility allowance for purposes of calculating rent under paragraph (i)(1)(ii)(A) of this section, will be determined under 24 CFR Part 965, Subpart E.

(5) In the case of members of a cooperative, rent under this paragraph (i) means the charges under the occupancy agreement between the members and the cooperative.

(j) *Verification of an applicant's income, rent, and utilities payments.* The owner must verify that an applicant is paying more than 50 percent of family income for rent, as follows:

(1) The owner must verify the family's income in accordance with the standards and procedures that it uses to verify income for purposes of determining applicant eligibility and Total Tenant Payment under 24 CFR Part 813.

(2)(i) The owner must verify the amount due to the family's landlord (or cooperative) under the lease or occupancy agreement—

(A) By requiring the family to furnish copies of its most recent rental (or cooperative charges) receipts (which may include cancelled checks or money order receipts) or a copy of the family's current lease or occupancy agreement, or

(B) By contacting the landlord (or cooperative) or its agent directly.

(ii) The owner must verify the amount paid to amortize the purchase price of a manufactured home—

(A) By requiring the family to furnish copies of its most recent payment receipts (which may include cancelled checks or money order receipts) or a copy of the family's current purchase agreement, or

(B) By contacting the lienholder directly.

(3) To verify the actual amount that a family paid for utilities and other housing services, the owner must require the family to provide copies of the appropriate bills or receipts, or must obtain the information directly from the utility or service supplier.

(k) *Notice and opportunity for a meeting where Federal preference is denied.* If the owner determines that an applicant does not meet the criteria for receiving a Federal preference, the owner must promptly provide the applicant with written notice of the determination. The notice must contain a brief statement of the reasons for the determination, and state that the applicant has the right to meet with the owner or the owner's designee to review it. If requested, the meeting must be conducted by a person or persons designated by the owner. Those designated may be an officer or employee of the owner, incluing the person who made or reviewed the determination or his or her subordinate. The procedures specified in this paragraph (k) must be carried out in accordance with HUD's requirements. The applicant may exercise other rights if the applicant believes that he or she has been discriminated against on the basis of race, color, religion, sex, national origin, age, or handicap.

(l) *Effective date.* Housing owners must implement the provisions of this section no later than July 13, 1988.

PART 882—SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAM—EXISTING HOUSING

11. The authority citation for 24 CFR Part 882 continues to read as follows:

Authority: Secs. 3, 5, and 8, United States Housing Act of 1937 (42 U.S.C. 1437a, 1437c, and 1437f); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

12. In § 882.116, paragraph (c) is revised to read as follows:

§ 882.116 Responsibilities of the PHA.

* * * * *

(c) Receipt and review of applications for Certificates of Family Participation, provision of a Federal preference in selecting applicants for participation in accordance with § 882.219, verification of family income and other factors relating to eligibility and amount of assistance, and maintenance of a waiting list in accordance with this part;

* * * * *

13. In § 882.209, paragraphs (a)(2) and (a)(7) are revised to read as folows:

§ 882.209 Selection and participation.

(a) * * *

(2) The PHA shall determine whether an applicant for participation qualifies as a Family, and is income-eligible. The PHA shall also give a preference in selecting applicants for participation (in accordance with § 882.219) to eligible Families that, at the time they are seeking housing assistance, are involuntarily displaced, living in substandard housing, or paying more than 50 percent of family income for rent.

* * * * *

(7) The PHA shall maintain a waiting list of income-eligible Families that have applied for participation in the PHA's Section 8 program. Subject to any obligation to use Certificates to ensure the availability of assistance under one of the uses prescribed in paragraph (a)(4)(ii)(B) of this section, the PHA shall select applicants for participation from the waiting list in accordance with policies and procedures (including any Federal preferences under § 882.219) stated in the administrative plan or equal opportunity housing plan. Notwithstanding the fact that the PHA may not be accepting additional applications for participation because of the length of the waiting list, the PHA may not refuse to place an applicant on the waiting list if the applicant is otherwise eligible for participation and claims that he or she qualfies for a Federal preference as provided in § 882.219(c)(2), unless the PHA determines, on the basis of the number of applicants who are already on the waiting list and who claim a Federal preference, and the anticipated number of Certificates to be issued, that—

(i) There is an adequate pool of applicants who are likely to qualify for a Federal preference and,

(ii) It is unlikely that, on the basis of the PHA's system for applying the Federal preferences, the preference or preferences that the applicant claims, and the preferences claimed by applicants on the waiting list, the applicant would qualify for assistance before other applicants on the waiting list.

* * * * *

14. In §882.216, a new paragraph (a)(4) is added, to read as follows:

§ 882.216 Informal review or hearing.

(a) * * *

(4) The informal review provisions for the denial of a Federal preference under § 882.219 are contained in paragraph (k) of that section.

* * * * *

15. In Part 882, a new § 882.219 is added, to read as follows:

§ 882.219 Federal selection preferences.

(a) *General.* (1) In selecting applicants for a Certificate of Family Participation under § 882.209, a PHA must give preference to families that are otherwise eligible for assistance and that, at the time they are seeking housing assistance, are involuntarily displaced, living in substandard housing, or paying more than 50 percent of family income for rent.

(2)(i) The PHA must inform all applicants for a Certificate of Family Participation of the availability of the Federal preferences, and must give all applicants an opportunity to show that they qualify for a preference. For purposes of this paragraph (a)(2)(i), applicants include families on any waiting list for a Certificate of Family Participation maintained by the PHA when this section is implemented or thereafter.

(ii) If the PHA determines that the notification to all applicants on a waiting list required by paragraph (a)(2)(i) of this section is impracticable because of the length of the list, the PHA may provide this notification to fewer than all applicants on the list at any given time. The PHA must, however, have notified a sufficient number of applicants at any given time that, on the basis of the PHA's determination of the number of applicants on the waiting list who already claim a Federal preference, and the anticipated number of Certificates to be issued:

(A) There is an adequate pool of applicants who are likely to qualify for a Federal preference; and

(B) It is unlikely that, on the basis of the PHA's framework for applying the preferences under paragraph (b) of this section and the preferences claimed by those already on the waiting list, any applicant who has not been so notified would be issued a Certificate before those who have received notification.

(3) PHAs must apply the definitions of "standard, permanent replacement housing"; "involuntary displacement"; "substandard housing"; "homeless family"; "family income"; and "rent" set forth in paragraphs (c)(5), (d), (f), (h), and (i), respectively of this section, unless the PHA submits alternative definitions for HUD's review and approval. PHAs may apply the verification procedures contained in paragraphs (e), (g), and (j) of this section or they may, in their own discretion and without HUD approval, adopt verification procedures of their own.

(4) For purposes of this section, the term "Federal preference" means a tenant selection preference provided under this section. The term "preference" means a Federal preference, unless the context indicates otherwise.

(b) *Applying the Federal preferences.* (1) Each PHA must include the Federal preferences in its policies and procedures for selecting applicants for participation under § 882.209. The PHA must apply the Federal preferences in a manner that is consistent with the provisions of this section, the nondiscrimination requirements of § 882.111, the selection and participation provisions of § 882.209 (including limitations on the use of local residency requirements and preferences contained in § 882.209(a)(4)(i)), and other applicable requirements.

(2)(i) Except as provided in paragraph (b)(2)(ii) of this section, the PHA must establish a system for applying the Federal preferences that provides that an applicant who qualifies for any of the Federal preferences is to be issued a Certificate of Family Participation before any other applicant who is not so qualified, without regard to the other applicant's qualification for one or more preferences or priorities that are not provided by Federal law, place on the waiting list, or the time of submission of an application for a Certificate.

(ii) The PHA's system for applying the Federal preferences may provide for circumstances in which applicants who do not qualify for a Federal preference are issued a Certificate of Family Participation before other applicants who are so qualified. Not more than 10 percent of the applicants who are initially issued a Certification of Family Participation in any one-year period (or such shorter period selected by the PHA before the beginning of its first full year under this paragraph (b)(2)(ii)) may be applicants referred to in the preceding sentence.

(iii) In applying the preferences under this paragraph (b)(2), the PHA may determine the relative weight to be accorded the Federal preferences, through means such as:

(A) Applying non-Federal preferences or priorities as a way of ranking applicants who qualify for a Federal preference (*e.g.*, provide that applicants who qualify for a Federal preference and a local residency preference take precedence over non-resident Federal preference-holders; or provide that applicants whose rents were increased beyond 50 percent of their incomes after completion of Rental Rehabilitation activities are ranked higher than those who meet the rent burden standard because of other reasons);

(B) Aggregating the Federal preferences (*i.e.*, two Federal preferences outweigh one and three outweigh two);

(C) Ranking the Federal preferences (*e.g.*, provide that an applicant living in substandard housing has greater need for housing than (and, therefore, would be considered for assistance before) an applicant paying more than 50 percent of income for rent); or

(D) Ranking the Federal preferences' definitional elements (*e.g.*, provide that those living in housing that is dilapidated or has been declared unfit for habitation by an agency or unit of government have a greater need for housing than, and take precedence over, those whose housing is substandard only because it does not have a usable bathtub or shower inside the unit for the exclusive use of the family).

(3) Any selection preferences or priorities under this section or otherwise that are used by a PHA must be established and administered in a manner that is not incompatible with Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d; Title VIII of the Civil Rights Act of 1968, 42 U.S.C. 3601–19; Executive Order 11063 on Equal Opportunity in Housing, 27 FR11527 (1962), *as amended*, 46 FR 1253 (1980); Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. 794; the Age Discrimination Act of 1975, 42 U.S.C. 6101–07; or HUD's regulations and requirements issued under these authorities. Such preferences and priorities must also be consistent with HUD's affirmative fair housing objectives.

(4) In the case of an applicant who resides within the jurisdiction of an Indian Housing Authority (IHA) that is not administering a Section 8 Existing Housing program, the applicable utility allowancy for purposes of calculating rent under paragraph (i)(1)(ii)(A) of this section, will be determined under 24 CFR Part 965, Subpart E.

(c) *Qualifying for a Federal preference.* (1) An applicant qualifies for a Federal preference if—

(i) The applicant has been involuntarily displaced and is not living in standard, permanent replacement housing or, within no more than six months from the date of certification under paragraph (c)(2) of this section or verification under paragraph (c)(3) of this section (as appropriate), the applicant will be involuntarily displaced;

(ii) The applicant is living in substandard housing; or (iii) the applicant is paying more than 50 percent of family income for rent.

In the case of an applicant occupying a unit that has been or is being rehabilitated under the Rental Rehabilitation Program (see 24 CFR Part 511), the applicant will be considered as paying more than 50 percent of its income for rent if the applicant has been notified that following completion of rehabilitation its rent will be increased, and the applicant in fact would be required, no later than 60 days from the date the applicant is issued a Certificate of Family Participation assistance under this part, to pay more than 50 percent of its income to continue renting the rehabilitation unit.

(2) Applicants may claim qualification for a Federal preference when they apply for a Certificate of Family Participation (or thereafter until a Certificate is issued) by certifying to the PHA that they qualify for preferred status under paragraph (c)(1) of this section. The PHA must accept this certification, unless it verifies that the applicant is not qualified for preferred status.

(3) Before issuing a Certificate of Family Participation to an applicant who qualifies for one on the basis of a Federal preference, the PHA must require the applicant to provide verification that he or she qualifies for Federal preference under paragraph (c)(1) of this section by virtue of the applicant's current status. The applicant's current status must be determined without regard to whether there has been a change in the applicant's qualification for a Federal preference between the certification under paragraph (c)(2) of this section and the issuance of a Certificate, including a change from one Federal preference category to another.

(4) If an applicant's qualification for a Federal preference under paragraph (c)(1) of this section has once been verified, the PHA need not require the applicant to verify such qualification again, unless, as determined by the PHA, such a long time has elapsed since verification as to make reverification desirable, or the PHA has reasonable grounds to believe that the applicant no longer qualifies for a Federal preference.

(5) For purposes of this paragraph (c), "standard, permanent replacement housing" is housing—

(i) That is decent, safe, and sanitary;

(ii) That is adequate for the family size; and

(iii) That the family is occupying pursuant to a lease or occupancy agreement.

Such housing does not include transient facilities, such as motels, hotels, or temporary shelters for victims of domestic violence or homeless families, and in the case of domestic violence referred to in paragraph (d)(2) of this section, does not include the housing unit in which the applicant and the applicant's spouse or other member of the household who engages in such violence live.

(6) An applicant may not qualify for a Federal preference under paragraph (c)(1)(iii) of this section if the applicant is paying more than 50 percent of family income to rent a unit because the applicant's housing assistance under the United States Housing Act of 1937 or section 101 of the Housing and Urban Development Act of 1965 with respect to that unit has been terminated as a result of its refusal to comply with applicable program policies and procedures with respect to the occupancy of underoccupied and overcrowded units. (For examples of these policies and procedures, see §§ 215.65, 880.605, 881.605, 882.213, 882.509, 883.706, 884.219, 886.125, and 886.325.)

(d) *Definition of involuntary displacement.* (1) An applicant is or will be involuntarily displaced if the applicant has vacated or will have to vacate his or her housing unit as a result of one or more of the following actions:

(i) A disaster, such as a fire or flood, that results in the uninhabitability of an applicant's unit;

(ii) Activity carried on by an agency of the United States or by any State or local governmental body or agency in connection with code enforcement or a public improvement or development program; or

(iii) Action by a housing owner that results in an applicant's having to vacate his or her unit, where:

(A) The reason for the owner's action is beyond an applicant's ability to control or prevent;

(B) The action occurs despite an applicant's having met all previously imposed conditions of occupancy; and

(C) The action taken is other than a rent increase.

(2) An applicant is also involuntarily displaced if—

(i) The applicant has vacated his or her housing unit as a result of actual or threatened physical violence directed against the applicant or one or more members of the applicant's family by a spouse or other member of the applicant's household; or

(ii) The applicant lives in a housing unit with such an individual who engages in such violence.

For purposes of this paragraph, the actual or threatened violence must, as determined by the PHA in accordance with HUD's administrative instructions, have occurred recently or be of a continuing nature.

(3) For purposes of paragraph (d)(1)(iii) of this section, reasons for an applicant's having to vacate a housing unit include, but are not limited to, conversion of an applicant's housing unit to non-rental or non-residential use; closure of an applicant's housing unit for rehabilitation or for any other reason; notice to an applicant that he or she must vacate a unit because the owner wants the unit for the owner's personal or family use or occupancy; sale of a housing unit in which an applicant resides under an agreement that the unit must be vacant when possession is transferred; or any other legally authorized act that results or will result in the withdrawal by the owner of the unit or structure from the rental market. Such reasons do not include the vacating of a unit by a tenant as a result of actions taken because of the tenant's refusal—

(i) To comply with applicable program policies and procedures under this title with respect to the occupancy of underoccupied and overcrowded units; or

(ii) To accept a transfer to another housing unit in accordance with a court decree or in accordance with such policies and procedures under a HUD-approved desegregation plan.

(e) *Verification procedures for applicants involuntarily displaced.* Verification of an applicant's involuntary displacement is established by the following documentation:

(1) Certification, in a form prescribed by the Secretary, from a unit or agency of government that an applicant has been or will be displaced as a result of a disaster, as defined in paragraph (d)(1)(i) of this section;

(2) Certification, in a form prescribed by the Secretary, from a unit or agency of government that an applicant has been or will be displaced by government action, as defined in paragraph (d)(1)(ii) of this section;

(3) Certification, in a form prescribed by the Secretary, from an owner or owner's agent that an applicant had to, or will have to, vacate a unit by a date certain because of an owner action referred to in paragraph (d)(1)(iii) of this section; or

(4) Certification, in a form prescribed by the Secretary, of displacement because of the domestic violence referred to in paragraph (d)(2) of this section, from the local police department, social services agency, or court of competent jurisdiction, or a clergyman, physician, or public or private facility that provides shelter or counseling to the victims of domestic violence.

(f) *Definition of substandard housing.* (1) A unit is substandard if it:

(i) Is dilapidated;

(ii) Does not have operable indoor plumbing;

(iii) Does not have a usable flush toilet inside the unit for the exclusive use of a family;

(iv) Does not have a usable bathtub or shower inside the unit for the exclusive use of a family;

(v) Does not have electricity, or has inadequate or unsafe electrical service;

(vi) Does not have a safe or adequate source of heat;

(vii) Should, but does not, have a kitchen; or

(viii) Has been declared unfit for habitation by an agency or unit or government.

(2) For purposes of paragraph (f)(1) of this section, a housing unit is dilapidated if it does not provide safe and adequate shelter, and in its present condition endangers the health, safety, or well-being of a family, or it has one or more critical defects, or a combination of intermediate defects in sufficient number or extent to require considerable repair or rebuilding. The defects may involve original construction, or they may result from continued neglect or lack of repair or from serious damage to the structure.

(3) For purposes of this paragraph (f), an applicant who is a "homeless family" is living in substandard housing. For purposes of the preceding sentence, a "homeless family" includes any individual or family who:

(i) Lacks a fixed, regular, and adequate nighttime residence; and

(ii) Has a primary nighttime residence that is:

(A) A supervised publicly or privately operated shelter designed to provide temporary living accommodations (including welfare hotels, congregate shelters, and transitional housing for the mentally ill);

(B) An institution that provides a temporary residence for individuals intended to be institutionalized; or

(C) A public or private place not designed for, or ordinarily used as, a regular sleeping accommodation for human beings.

A "homeless family" does not include any individual imprisoned or otherwise detained pursuant to an Act of the Congress or a State law.

(4) For purposes of paragraph (f)(1) of this section, Single Room Occupancy (SRO) Housing (as defined in § 882.102) is not substandard solely because it

does not contain sanitary or food preparation facilities (or both).

(g) *Verification procedures for applicants living in substandard housing.* Verification that an applicant is living in substandard housing consists of certification, in a form prescribed by the Secretary, from a unit or agency of government or from an applicant's present landlord that the applicant's unit has one or more of the deficiencies listed in, or the unit's condition is as described in, paragraph (f) (1) or (2) of this section. In the case of a "homeless family" (as described in paragraph (f)(3) of this section), verification consists of certification, in a form prescribed by the Secretary, of this status from a public or private facility that provides shelter for such individuals, or from the local police department or social services agency.

(h) *Definition of family income.* For purposes of this section, family income is Monthly Income, as defined in 24 CFR 813.102.

(i) *Definition of rent.* (1) For purposes of this section, rent is defined as:

(i) The actual amount due, calculated on a monthly basis, under a lease or occupancy agreement between a family and the family's current landlord; and

(ii) In the case of utilities purchased directly by tenants from utility providers:

(A) The utility allowance (if any) determined for the Section 8 Existing Housing program under 24 CFR Part 882, Subparts A and B, for tenant-purchased utilities (except telephone) and the other housing services that are normally included in rent; or

(B) If the family chooses, the average monthly payments that it actually made for these utilities and services for the most recent 12-month period, or if information is not obtainable for the entire period, for an appropriate recent period.

(2) For purposes of calculating rent under this paragraph (i), amounts paid to or on behalf of a family under any energy assistance program must be subtracted from the otherwise applicable rental amount, to the extent that they are not included in the family's income.

(3) In the case of an applicant who owns a manufactured home, but who rents the space upon which it is located, rent under this paragraph (i) includes the monthly payment to amortize the purchase price of the home, calculated in accordance with HUD's requirements.

(4) In the case of an applicant who resides within the jurisdiction of an Indian Housing Authority (IHA) that is not administering a Section 8 Existing Housing program, the applicable utility allowance for purposes of calculating rent under paragraph (i)(1)(ii)(A) of this section, will be determined under 24 CFR Part 965, Subpart E.

(5) In the case of members of a cooperative, rent under this paragraph (i) means the charges under the occupancy agreement between the members and the cooperative.

(j) *Verification of an applicant's income and rent.* The PHA must verify that an applicant is paying more than 50 percent of family income for rent, as follows:

(1) The PHA must verify a family's income in accordance with the standards and procedures that it uses to verify income for the purpose of determining applicant eligibility and Total Tenant Payment under 24 CFR Part 813.

(2)(i) The PHA must verify the amount due to the family's landlord (or cooperative) under the lease or occupancy agreement—

(A) By requiring the family to furnish copies of its most recent rental (or cooperative) receipts (which may include cancelled checks or money order receipts) or a copy of the family's current lease or occupancy agreement, or

(B) By contacting the landlord (or cooperative) or its agent directly.

The PHA must verify the amount paid to amortize the purchase price of a manufactured home—

(A) By requiring the family to furnish copies of its most recent payment receipts (which may include cancelled checks or money order receipts) or a copy of the family's current purchase agreement, or

(B) By contacting the lienholder directly.

(3) To verify the actual amount a family paid for utilities and other housing services, the PHA must require the family to provide copies of the appropriate bills or receipts, or must obtain the information directly from the utility or service supplier.

In the case of an applicant occupying a unit that has been or is being rehabilitated under the Rental Rehabilitation Program (see 24 CFR Part 511), the applicant will be considered as paying more than 50 percent of its income for rent if the applicant has been notified that following completion of rehabilitation its rent will be increased, and the applicant in fact would be required, no later than 60 days from the date the applicant is issued a Certificate of Family Participation under this part, to pay more than 50 percent of its income to continue renting the rehabilitated unit.

(k) *Notice and opportunity for a meeting where Federal preference is denied.* If the PHA determines that an applicant does not meet the criteria for receiving a Federal preference, the PHA must promptly provide the applicant with written notice of the determination. The notice must contain a brief statement of the reasons for the determination, and state that the applicant has the right to meet with the PHA's designee to review it. If requested, the meeting must be conducted by any person or persons designated by the PHA. Those designated may be an officer or employee of the PHA, including the person who made or reviewed the determination or his or her subordinate. The procedures specified in this paragraph (k) must be carried out in accordance with HUD's requirements. The applicant may exercise other rights if the applicant believes that he or she has been discriminated against on the basis of race, color, religion, sex, national origin, age, or handicap.

(l) *Effective date.* PHAs must implement the provisions of this section no later than July 13, 1988.

16. In § 882.514, paragraphs (a)(1), (b), and (f) are revised to read as follows:

§ 882.514 Family participation.

(a) *Initial determination of Family eligibility.* (1) The PHA is responsible for receipt and review of applications and determination of Family eligibility for participation, in accordance with HUD regulations (see Parts 812 and 813). The PHA is responsible for verifying the sources and amount of the Family's income and other information necessary for determining eligibility and the amount of the assistance payments. The PHA is also responsible for giving a Federal selection preference in accordance with § 882.517.

* * * * *

(b) *Selection of Families for participation.* When vacancies occur, the PHA will refer to the Owner one or more appropriate size Families on its waiting list. The PHA must select Families for participation in accordance with the provisions of the Program and in accordance with the PHA's application, including any PHA requirement or preferences as approved by HUD. The PHA must select Families eligible for housing assistance payments currently residing in units that are designated for rehabilitation under the Program without requiring that these Families be placed on the waiting list. Notwithstanding the fact that the PHA may not be accepting additional applications for participation because of

the length of the waiting list, the PHA may not refuse to place an applicant on the waiting list if the applicant is otherwise eligible for partcipation and claims that he or she qualifies for a Federal preference as provided in § 882.517(c)(2), unless the PHA determines, on the basis of the number of applicants who are already on the waiting list and who claim a Federal preference, and the anticipated number of admissions under this part, that—

(1) There is an adequate pool of applicants who are likely to qualify for a Federal preference and

(2) It is unlikely that, on the basis of the PHA's system for applying the Federal preferences, the preference or preferences that the applicant claims, and the preferences claimed by applicants on the waiting list, the applicant would qualify for assistance before other applicants on the waiting list.

* * * * *

(f) *Families determined by the PHA to be ineligible.* If a Family is determined by the PHA to be ineligible in accordance with the PHA's HUD-approved application, either at the application stage or after assistance has been provided on behalf of the Family, the PHA must promptly notify the Family by letter of the determination and the reasons for it and the letter must state that the Family has the right within a reasonable time (specified in the letter) to request an informal hearing. If, after conducting such an informal hearing, the PHA determines that the Family is ineligible, it must so notify the Family in writing. The procedures of this paragraph do not preclude the Family from exercising its other rights if it believes it is being discriminated against on the basis of race, color, religion, sex, handicap, or national origin. The informal review provisions for the denial of a Federal selection preference under § 882.517 are contained in paragraph (k) of that section.

17. In Part 882, a new § 882.517 is added, to read as follows:

§ 882.517 Federal selection preferences.

(a) *General.* (1) In selecting applicants for assistance under this subpart, a PHA must give preference to families that are otherwise eligible for assistance and that, at the time they are seeking housing assistance, are involuntarily displaced, living in substandard housing, or paying more than 50 percent of family income for rent.

(2)(i) The PHA must inform all applicants for assistance under this subpart of the availability of the Federal preferences, and must give all applicants an opportunity to show that they qualify for a preference. For purposes of this paragraph (a)(2)(i), applicants include families on any waiting list for assistance under this part maintained by the PHA when this section is implemented or thereafter.

(ii) If the PHA determines that the notification to all applicants on a waiting list required by paragraph (a)(2)(i) of this section is impracticable because of the length of the list, the PHA may provide this notification to fewer than all applicants on the list at any given time. The PHA must, however, have notified a sufficient number of applicants at any given time that, on the basis of the PHA's determination of the number of applicants on the waiting list who already claim a Federal preference, and the anticipated number of admissions under this part:

(A) There is an adequate pool of applicants who are likely to qualify for a Federal preference; and

(B) It is unlikely that, on the basis of the PHA's framework for applying the preferences under paragraph (b) of this section and the preferences claimed by those already on the waiting list, any applicant who has not been so notified would be admitted before those who have received notification.

(3) PHAs must apply the definitions of "standard, permanent replacement housing"; "involuntary displacement"; "substandard housing"; homeless family"; "family income"; and "rent" set forth in paragraphs (c)(5), (d), (f), (h), and (i), respectively, of this section, unless the PHA submits alternative definitions for HUD's review and approval. PHAs may apply the verification procedures contained in paragraphs (e), (g), and (j) of this section, or they may adopt verification procedures of their own.

(4) For purposes of this section, the term "Federal preference" means a tenant selection preference provided under this section. The term "preference" means a Federal preference, unless the context indicates otherwise.

(b) *Applying the preferences.* (1) Each PHA must include the Federal preferences in its tenant selection standards. The PHA must apply the Federal preferences in a manner that is consistent with the provisions of this section, the equal opportunity and other requirements of §§ 882.407 and 882.514, and other applicable requirements (including limitations on the use of local residency requirements and preferences).

(2)(i) Except as provided in paragraph (b)(2)(ii) of this section, the PHA must establish a system for applying the Federal preferences that provides that an applicant who qualifies for any of the Federal preferences is to receive assistance under this part before any other applicant who is not so qualified, without regard to the other applicant's qualification for one or more preferences or priorities that are not provided by Federal law, place on the waiting list, or the time of submission of an application for a Certificate.

(ii) The PHA's system for applying the Federal preferences may provide for circumstances in which applicants who do not qualify for a Federal preference are admitted to a project assisted under this subpart before other applicants who are so qualified. Not more than 10 percent of the applicants who are initially admitted to such a project in any one-year period (or such shorter period selected by the PHA before the beginning of its first full year under this paragraph (b)(2)(ii)) may be applicants referred to in the preceding sentence.

(iii) In applying the preferences under this paragraph (b)(2), the PHA may determine the relative weight to be accorded the Federal preferences, through means such as:

(A) Applying non-Federal preferences or priorities as a way of ranking applicants who qualify for a Federal preference (*e.g.*, provide that applicants who qualify for a Federal preference and a local residency preference take precedence over non-resident Federal preferenceholders; or provide that applicants whose rents were increased beyond 50 percent of their incomes after completion of Rental Rehabilitation activities are ranked higher than those who meet the rent burden standard because of other reasons);

(B) Aggregating the Federal preferences (*i.e.*, two Federal preferences outweigh one and three outweigh two);

(C) Ranking the Federal preferences (*e.g.*, provide that that an applicant living in substandard housing has greater need for housing than (and, therefore, would be considered for assistance before) an applicant paying more than 50 percent of income for rent); or

(D) Ranking the Federal preferences' definitional element (*e.g.*, provide that those living in housing that is dilapidated or has been declared unfit for habitation by an agency or unit of government have a greater need for housing than, and take precedence over, those whose housing is substandard only because it does not have a usable bathtub or shower inside the unit for the exclusive use of the family).

(3) Any selection preferences or priorities under this section or otherwise

that are used by a PHA must be established and administered in a manner that is not incompatible with Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d; Title VIII of the Civil Rights Act of 1968, 42 U.S.C. 3601–19; Executive Order 11063 on Equal Opportunity in Housing, 27 FR 11527 (1962), *as amended*, 46 FR 1253 (1980); Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. 794; the Age Discrimination Act of 1975, 42 U.S.C. 6101–07; or HUD's regulations and requirements issued under these authorities. Such preferences and priorities must also be consistent with HUD's affirmative fair housing objectives.

(4) The PHA may establish selection preferences for applicant living in the area where the PHA determines that it is not legally barred from entering into Contracts. However, preferences may not be based upon the length of time the applicant has resided in the jurisdiction. Applicants who are working or who have been notified that they are hired to work in the jurisdiction must be treated as residents of the jurisdiction.

(c) *Qualifying for a Federal preference.* (1) An applicant qualifies for a Federal preference if:

(i) The applicant has been involuntarily displaced and is not living in standard, permanent replacement housing or, within no more than six months from the date of certification under paragraph (c)(2) of this section or verification under paragraph (c)(3) of this section (as appropriate), the applicant will be involuntarily displaced;

(ii) The applicant is living in substandard housing; or

(iii) The applicant is paying more than 50 percent of family income for rent.

(2) Applicants may claim qualification for a Federal preference when they apply for assistance under this subpart (or thereafter until they are offered assistance) by certifying to the PHA that they qualify for preferred status under paragraph (c)(1) of this section. The PHA must accept this certification, unless it verifies that the applicant is not qualified for preferred status.

(3) Before selecting an applicant for participation, the PHA must require the applicant to provide verification that he or she qualifies for Federal preference under paragraph (c)(1) of this section by virtue of the applicant's current status. The applicant's current status must be determined without regard to whether there has been a change in the applicant's qualification for a Federal preference between the certification under paragraph (c)(2) of this section and the PHA's selection of the applicant for participation, including a change from one Federal preference category to another).

(4) If an applicant's qualification for a Federal preference under paragraph (c)(1) of this section has once been verified, the PHA need not require the applicant to verify such qualification again, unless, as determined by the PHA, such a long time has elapsed since verification as to make reverification desirable, or the PHA has reasonable grounds to believe that the applicant no longer qualifies for Federal preference.

(5) For purposes of this paragraph (c), "standard, permanent replacement housing" is housing—

(i) That is decent, safe, and sanitary;

(ii) That is adequate for the family size; and

(iii) that the family is occupying pursuant to a lease or occupancy agreement.

Such housing does not include transient facilities, such as motels, hotels, or temporary shelters for victims of domestic violence or homeless families, and in the case of domestic violence referred to in paragraph (d)(2) of this section, does not include the housing unit in which the applicant and the applicant's spouse or other member of the household who engages in such violence live.

(6) An applicant may not qualify for a Federal preference under paragraph (c)(1)(iii) of this section if the applicant is paying more than 50 percent of family income to rent a unit because the applicant's housing assistance under the United States Housing Act of 1937 or section 101 of the Housing and Urban Development Act of 1965 with respect to that unit has been terminated as a result of his or her refusal to comply with applicable program policies and procedures with respect to the occupancy of underoccupied and overcrowded units. (For examples of these policies and procedures, see §§ 215.65, 880.605, 881.605, 882.213, 882.509, 883.706, 884.219, 886.125, and 886.325.)

(d) *Definition of involuntary displacement.* (1) An applicant is or will be involuntarily displaced if the applicant has vacated or will have to vacate his or her housing unit as a result of one or more of the following actions:

(i) A disaster, such as a fire or flood, that results in the uninhabitability of an applicant's unit;

(ii) Activity carried on by an agency of the United States or by any State or local governmental body or agency in connection with code enforcement or a public improvement or development program; or

(iii) Action by a housing owner that results in an applicant's having to vacate his or her unit, where:

(A) The reason for the owner's action is beyond an applicant's ability to control or prevent;

(B) The action occurs despite an applicant's having met all previously imposed conditions of occupancy; and

(C) The action taken is other than a rent increase.

(2) An applicant is also involuntarily displaced if:

(i) The applicant has vacated his or her housing unit as a result of actual or threatened physical violence directed against the applicant or one or more members of the applicant's family by a spouse or other member of the applicant's household; or

(ii) The applicant lives in a housing unit with such an individual who engages in such violence.

For purposes of this paragraph (d)(2), the actual or threatened violence must, as determined by the PHA in accordance with HUD's administrative instructions, have occurred recently or be of a continuing nature.

(3) For purposes of paragraph (d)(1)(iii) of this section, reasons for an applicant's having to vacate a housing unit include, but are not limited to, conversion of an applicant's housing unit to non-rental or non-residential use; closure of an applicant's housing unit for rehabilitation or for any other reason; notice to an applicant that he or she must vacate a unit because the owner wants the unit for the owner's personal or family use or occupancy; sale of a housing unit in which an applicant resides under an agreement that the unit must be vacant when possession is transferred; or any other legally authorized act that results or will result in the withdrawal by the owner of the unit or structure from the rental market. Such reasons do not include the vacating of a unit by a tenant as a result of actions taken because of the tenant's refusal—

(i) To comply with applicable program policies and procedures under this title with respect to the occupancy of underoccupied and overcrowded units or

(ii) To accept a transfer to another housing unit in accordance with a court decree or in accordance with such policies and procedures under a HUD-approved desegregation plan.

(e) *Verification procedures for applicants involuntarily displaced.* Verification of an applicant's involuntary displacement is established by the following documentation:

(1) Certification, in a form prescribed by the Secretary, from a unit or agency of government that an applicant has been or will be displaced as a result of a disaster, as defined in paragraph (d)(1)(i) of this section;

(2) Certification, in a form prescribed by the Secretary, from a unit or agency of government that an applicant has been or will be displaced by government action, as defined in paragraph (d)(1)(ii) of this section;

(3) Certification, in a form prescribed by the Secretary, from an owner or owner's agent that an applicant had to, or will have to, vacate a unit by a date certain because of an owner action referred to in paragraph (d)(1)(iii) of this section; or

(4) Certification, in a form prescribed by the Secretary, of displacement because of the domestic violence referred to in paragraph (d)(2), from the local police department, social services agency, or court of competent jurisdiction, or a clergyman, physician, or public or private facility that provides shelter or counseling to the victims of domestic violence.

(f) *Definition of substandard housing.* (1) A unit is substandard if it:

(i) Is dilapidated;

(ii) Does not have operable indoor plumbing;

(iii) Does not have a usable flush toilet inside the unit for the exclusive use of a family;

(iv) Does not have a usable bathtub or shower inside the unit for the exclusive use of a family;

(v) Does not have electricity, or has inadequate or unsafe electrical service;

(vi) Does not have a safe or adequate source of heat;

(vii) Should, but does not, have a kitchen; or

(viii) Has been declared unfit for habitation by an agency or unit or government.

(2) For purposes of paragraph (f)(1) of this section, a housing unit is dilapidated if it does not provide safe and adequate shelter, and in its present condition endangers the health, safety, or well-being of a family, or it has one or more critical defects, or a combination of intermediate defects in sufficient number or extent to require considerable repair or rebuilding. The defects may involve original construction, or they may result from continued neglect or lack of repair or from serious damage to the structure.

(3) For purposes of this paragraph (f), an applicant who is a "homeless family" is living in substandard housing. For purposes of the preceding sentence, a "homeless family" includes any individual or family who:

(i) Lacks a fixed, regular, and adequate nighttime residence; and

(ii) Has a primary nighttime residence that is:

(A) A supervised publicly or privately operated shelter designed to provide temporary living accommodations (including welfare hotels, congregate shelters, and transitional housing for the mentally ill);

(B) An institution that provides a temporary residence for individuals intended to be institutionalized; or

(C) A public or private place not designed for, or ordinarily used as, a regular sleeping accommodation for human beings. A "homeless family" does not include any individual imprisoned or otherwise detained pursuant to an Act of the Congress or a State law.

(4) For purposes of paragraph (f)(1) of this section, Single Room Occupancy (SRO) Housing (as defined in § 882.102) is not substandard solely because it does not contain sanitary or food preparation facilities (or both).

(g) *Verification procedures for applicants living in substandard housing.* Verification that an applicant is living in substandard housing consists of certification, in a form prescribed by the Secretary, from a unit or agency of government or from an applicant's present landlord that the applicant's unit has one or more of the deficiencies listed in, or the unit's condition is as described in, paragraph (f)(1) or (2) of this section. In the case of a "homeless family" (as described in paragraph (f)(3) of this section), verification consists of certification, in a form prescribed by the Secretary, of this status from a public or private facility that provides shelter for such individuals, or from the local police department or social services agency.

(h) *Definition of family income.* For purposes of this section, family income is Monthly Income, as defined in 24 CFR 813.102.

(i) *Definition of rent.* (1) For purposes of this section, rent is defined as:

(i) The actual amount due, calculated on a monthly basis, under a lease or occupancy agreement between a family and the family's current landlord; and

(ii) In the case of utilities purchased directly by tenants from utility providers,

(A) The utility allowance (if any) determined for the Section 8 Existing Housing program under 24 CFR Part 882, Subparts A and B, for tenant-purchased utilities (except telephone) and the other housing services that are normally included in rent;

(B) If the family chooses, the average monthly payments that it actually made for these utilities and services for the most recent 12-month period or, if information is not obtainable for the entire period, for an appropriate recent period.

(2) For purposes of calculating rent under this paragraph (i), amounts paid to or on behalf of a family under any energy assistance program must be subtracted from the otherwise applicable rental amount, to the extent that they are not included in the family's income.

(3) In the case of an applicant who owns a manufactured home, but who rents the space upon which it is located, rent under this paragraph (i) includes the monthly payment to amortize the purchase price of the home, calculated in accordance with HUD's requirements.

(4) In the case of an applicant who resides within the jurisdiction of an Indian Housing Authority that is not administering a Section 8 Existing Housing program, the applicable utility allowance for purposes of calculating rent under paragraph (i)(1)(ii)(A) of this section, will be determined under 24 CFR Part 965, Subpart E.

(5) In the case of members of a cooperative, rent under this paragraph (i) means the charges under the occupancy agreement between the members and the cooperative.

(j) *Verification of an applicant's income, rent, and utilities payments.* The PHA must verify that an applicant is paying more than 50 percent of family income for rent, as follows:

(1) The PHA must verify a family's income in accordance with standards and procedures that it uses to verify income for purposes of determining applicant eligibility and Total Tenant Payment under 24 CFR Part 813.

(2)(i) The PHA must verify the amount due to the family's landlord (or cooperative) under the lease or occupancy agreement—

(A) By requiring the family to furnish copies of its most recent rental (or cooperative charges) receipts (which may include cancelled checks or money order receipts) or a copy of the family's current lease or occupancy agreement, or

(B) By contacting the landlord (or cooperative) or its agent directly.

(ii) The PHA shall verify the amount paid to amortize the purchase price of a manufactured home—

(A) By requiring the family to furnish copies of its most recent payment receipts (which may include cancelled checks or money order receipts) or a copy of the family's current purchase agreement, or

(B) By contacting the lienholder directly.

(3) To verify the actual amount that a family paid for utilities and other housing services, the PHA must require the family to provide copies of the appropriate bills or receipts, or must obtain the information directly from the utility or service supplier.

(k) *Notice and opportunity for a meeting where Federal preference is denied.* If the PHA determines that an applicant does not meet the criteria for receiving a Federal preference, the PHA must promptly provide the applicant with written notice of the determination. The notice must contain a brief statement of the reasons for the determination, and state that the applicant has the right to meet with the PHA's designee to review it. If requested, the meeting must be conducted by any person or persons designated by the PHA. Those designated may be an officer or employee of the PHA, including the person who made or reviewed the determination, or his or her subordinate. The procedures specified in this paragraph (k) must be carried out in accordance with HUD's requirements. The applicant may exercise other rights if the applicant believes that he or she has been discriminated against on the basis of race, color, religion, sex, national origin, age, or handicap.

(l) *Effective date.* PHAs must implement the provisions of this section no later than July 13, 1988.

PART 883—SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAM—STATE HOUSING AGENCIES

18. The authority citation for 24 CFR Part 883 continues to read as follows:

Authority: Secs. 3, 5, and 8, United States Housing Act of 1937 (42 U.S.C. 1437a, 1437c, and 1437f); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

19. In § 883.702, paragraph (b) is revised to read as follows:

§ 883.702 Responsibilities of owner.

* * * * *

(b) *Management and maintenance.* The owner is responsible for all management functions (including provision of Federal selection preferences in accordance with § 883.714, selection of tenants, reexamination of family incomes, evictions and other terminations of tenancy, and collection of rents) and all repair and maintenance functions (including ordinary and extraordinary maintenance and replacement of capital items). All these functions must be performed in compliance with applicable Equal Opportunity requirements.

* * * * *

20. In § 883.704, the introductory text of paragraph (b), and paragraphs (b)(2) and (3) are revised to read as follows:

§ 883.704 Selection and admission of tenants.

* * * * *

(b) *Determination of eligibility and selection of tenants.* The owner is responsible for determining whether the applicant is eligible, in accordance with Parts 812 and 813 of this chapter. The owner is also responsible for the selection of families, including giving a Federal preference in accordance with § 883.714.

* * * * *

(2) If the owner determines that the family is eligible and is otherwise acceptable and units are available, the owner will assign the family a unit of the appropriate size in accordance with HUD standards. If no suitable unit is available, the owner will place the family on a waiting list for the project and notify the family of when a suitable unit may become available. If the waiting list is so long that the applicant would not be likely to be admitted for the next 12 months, the owner may advise the applicant that no additional applications are being accepted for that reason, except that the owner may not refuse to place an applicant on the waiting list if the applicant is otherwise eligible for assistance and claims that he or she qualifies for a Federal preference as provided in § 883.714(c)(2), unless the owner determines, on the basis of the number of applicants who are already on the waiting list and who claim a Federal preference, and the anticipated number of admissions to the project, that: (i) There is an adequate pool of applicants who are likely to qualify for a Federal preference and (ii) it is unlikely that, on the basis of the owner's system for applying the Federal preferences, the preference or preferences that the applicant claims, and the preferences claimed by applicants on the waiting list, the applicant would qualify for admission to the project before other applicants on the waiting list.

(3) If the owner determines that an applicant is ineligible on the basis of income or family composition, or if the owner is not selecting the applicant for other reasons, the owner will promptly notify the applicant in writing of the determination and its reasons, and that the applicant has the right to meet with the owner or managing agent in accordance with HUD requirements. Where the owner is a PHA, the applicant may request an informal hearing. If the PHA determines that the applicant is not eligible, the PHA will notify the applicant and inform the applicant that he or she has the right to request a review by the Agency and HUD of the PHA's determination. The applicant may also exercise other rights if the applicant believes that he or she is being discriminated against on the basis of race, color, religion, sex, or national origin. The informal review provisions for the denial of a Federal preference under § 883.714 are contained in paragraph (k) of that section.

* * * * *

21. In Part 883, a new § 883.714 is added, to read as follows:

§ 883.714 Federal selection preferences.

(a) *General.* (1) In selecting applicants for assistance under this part, housing owners must give preference to applicants who are otherwise eligible for assistance and who, at the time they are seeking housing assistance, are involuntarily displaced, living in substandard housing, or paying more than 50 percent of family income for rent.

(2)(i) The owner must inform all applicants for assistance under this part of the availability of the Federal preferences, and must give all applicants an opportunity to show that they qualify for a preference. For purposes of this paragraph (a)(2)(i), applicants include families on any waiting list maintained by the owner for the project when this section is implemented or thereafter.

(ii) If the owner determines that the notification to all applicants on a waiting list required by paragraph (a)(2(i) of this section is impracticable because of the length of the list, the owner may provide this notification to fewer than all applicants on the list at any given time. The owner must, however, have notified a sufficient number of applicants at any given time that, on the basis of the owner's determination of the number of applicants on the waiting list who already claim a Federal preference, and the anticipated number of admissions to the project.

(A) There is an adequate pool of applicants who are likely to qualify for a Federal preference; and

(B) It is unlikely that, on the basis of the owner's framework for applying the preferences under paragraph (b) of this section and the preferences claimed by those already on the waiting list, any applicant who has not been so notified would be admitted to the project before those who have received notification.

(3) For purposes of this section, the term "Federal preference" means a tenant selection preference provided under this section. The term "preference" means a Federal preference, unless the context indicates otherwise.

(b) *Applying the Federal preferences.* (1) Each housing owner must include the Federal preferences in its tenant selection standards. The owner must apply the Federal preferences in a manner consistent with the provisions of this section, the equal opportunity and other requirements of §§ 883.312, 883.702, and 883.704 (including limitations on the use of local residency requirements and preferences contained in § 883.704(b)(1)), and other applicable requirements.

(2) The housing owner must establish a system for applying the Federal preferences that provides that an applicant who qualifies for any of the Federal preferences is to receive assistance under this part before any other applicant who is not so qualified, without regard to the other applicant's qualification for one or more preferences or priorities that are not provided by Federal law, place on any waiting list, or the time of submission of his or her application for assistance. In applying the preferences under this paragraph (b)(2), the owner may determine the relative weight to be accorded the Federal preferences, through means such as:

(i) Applying non-Federal preferences or priorities (such as local residency preferences) as a way of ranking applicants who qualify or claim qualification) for a Federal preference;

(ii) Aggregating the Federal preferences (*i.e.*, two Federal preferences outweigh one and three outweigh two);

(iii) Ranking the Federal preferences (*e.g.*, provide that an applicant living in substandard housing has greater need for housing than (and, therefore, would be considered for assistance before) an applciant paying more than 50 percent of income for rent); or

(iv) Ranking the Federal preferences' definitional elements (*e.g.*, provide that those living in housing that is dilapidated or has been declared unfit for habitation by an agency or unit of government have a greater need for housing than, and take precedence over, those whose housing is substandard only because it does not have a usable bathtub or shower inside the unit for the exclusive use of the family).

(3) Any selection preferences or priorities under this section or otherwise that are used by a housing owner must be established and administered in a manner that is not incompatible with Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d; Title VIII of the Civil Rights Act of 1968, 42 U.S.C. 3601–19; Executive Order 11063 on Equal Opportunity in Housing, 27 FR 11527 (1962), *as amended*, 46 FR 1253 (1980); Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. 794; the Age Discrimination Act of 1975, 42 U.S.C. 6101–07; or HUD's regulations and requirements issued under these authorities. Such preferences and priorities must also be consistent with HUD's affirmative fair housing objectives and (if applicable) the owner's Affirmative Fair Housing Marketing Plan.

(4) The owner must submit to HUD any selection preference system that uses a local residency preference, for review for consistency with the requirements of paragraph (b)(3) of this section, but HUD approval is not required before the owner may implement the framework.

(c) *Qualifying for a Federal preference.* (1) An applicant qualifies for a Federal preference if—

(i) The applicant has been involuntarily displaced and is not living in standard, permanent replacement housing or, within no more than six months from the date of certification under paragraph (c)(2) of this section or verification under paragraph (c)(3) of this section (as appropriate), the applicant will be involuntarily displaced;

(ii) The applicant is living in substandard housing; or

(iii) The applicant is paying more than 50 percent of family income for rent.

(2) Applicants may claim qualification for a Federal preference when they apply for assistance under this Part (or thereafter until the time that they are offered assistance) by certifying to the owner that they quality for a preference under paragraph (c)(1) of this section. The owner must accept this certification, unless the owner verifies that the applicant is not qualified for a Federal preference.

(3) Before executing a lease or occupancy agreement with an applicant who has been offered assistance on the basis of a Federal preference, the owner must require the applicant to provide verification that he or she qualifies for a Federal preference under paragrph (c)(1) of this section by virtue of the applicant's current status. The applicant's current status must be determined without regard to whether there has been a change in the applicant's qualification for a Federal preference between the certification under paragraph (c)(2) of this section and execution of an occupancy agreement, including a change from one preference category to another.

(4) If an applicant's qualification for a Federal preference under paragraph (c)(1) of this section has once been verified, the owner need not require the applicant to verify such qualification again, unless, as determined by the owner, such a long time has elapsed since verification as to make reverification desirable, or the owner has reasonable grounds to believe that the applicant no longer qualifies for a Federal preference.

(5) For purposes of this paragraph (c), "standard, permanent replacement housing" is housing—

(i) That is decent, safe, and sanitary;

(ii) That is adequate for the family size, and

(iii) That the family is occupying pursuant to a lease or occupancy agreement.

Such housing does not include transient facilities, such as motels, hotels, or temporary shelters for victims of domestic violence or homeless families, and in the case of domestic violence referred to in paragraph (d)(2) of this section, does not include the housing unit in which the applicant and the applicant's spouse or other member of the household who engages in such violence live.

(6) An applicant may not qualify for a Federal preference under paragraph (c)(1)(iii) of this section if the applicant is paying more than 50 percent of family income to rent a unit because the applicant's housing assistance under the United States Housing Act of 1937 or section 101 of the Housing and Urban Development Act of 1965 with respect to that unit has been terminated as a result of the applicant's refusal to comply with applicable program policies and procedures with respect to the occupancy of underoccupied and overcrowded units. (For examples of these policies and procedures, see §§ 215.65, 880.605, 881.605, 882.213, 882.509, 883.706, 884.219, 886.125, and 886.325.)

(d) *Definition of involuntary displacement.* (1) An applicant is or will be involuntarily displaced if the applicant has vacated or will have to vacate his or her housing unit as a result of one or more of the following actions:

(i) A disaster, such as a fire or flood, that results in the uninhabitability of an applicant's unit;

(ii) Activity carried on by an agency of the United States or by any State or local governmental body or agency in connection with code enforcement or a

public improvement or development program; or

(iii) Action by a housing owner that results in an applicant's having to vacate his or her unit, where:

(A) The reason for the owner's action is beyond an applicant's ability to control or prevent;

(B) The action occurs despite an applicant's having met all previously imposed conditions of occupancy; and

(C) The action taken is other than a rent increase.

(2) An applicant is also involuntarily displaced if—

(i) The applicant has vacated his or her housing unit as a result of actual or threatened physical violence directed against the applicant or one or more members of the applicant's family by a spouse or other member of the applicant's household; or

(ii) The applicant lives in a housing unit with such an individual who engages in such violence.

For purposes of this paragraph (d)(2), the actual or threatened violence must, as determined by the housing owner in accordance with HUD's administrative instructions, have occurred recently or be of a continuing nature.

(3) For purposes of paragraph (d)(1)(iii) of this section, reasons for an applicant's having to vacate a housing unit include, but are not limited to, conversion of an applicant's housing unit to non-rental or non-residential use; closure of an applicant's housing unit for rehabilitation or for any other reason; notice to an applicant that he or she must vacate a unit because the owner wants the unit for the owner's personal or family use or occupancy; sale of a housing unit in which an applicant resides under an agreement that the unit must be vacant when possession is transferred; or any other legally authorized act that results or will result in the withdrawal by the owner of the unit or structure from the rental market. Such reasons do not include the vacating of a unit by a tenant as a result of actions taken because of the tenant's refusal—

(i) To comply with applicable program policies and procedures under this title with respect to the occupancy of underoccupied and overcrowded units or

(ii) To accept a transfer to another housing unit in accordance with a court decree or in accordance with such policies and procedures under a HUD-approved desegregation plan.

(e) *Verification procedures for applicants involuntarily displaced.* Verification of an applicant's involuntary displacement is established by the following documentation:

(1) Certification, in a form prescribed by the Secretary, from a unit or agency of government that an applicant has been or will be displaced as a result of a disaster, as defined in paragraph (d)(1)(i) of this section;

(2) Certification, in a form prescribed by the Secretary, from a unit or agency of government that an applicant has been or will be displaced by government action, as defined in paragraph (d)(1)(ii) of this section;

(3) Certification, in a form prescribed by the Secretary, from an owner or owner's agent that an applicant had to, or will have to, vacate a unit by a date certain because of an owner action referred to in paragraph (d)(1)(iii) of this section; or

(4) Certification, in a form prescribed by the Secretary, of displacement because of the domestic violence referred to in paragraph (d)(2) of this section, from the local police department, social services agency, or court of competent jurisdiction, or a clergyman, physician, or public or private facility that provides shelter or counseling to the victims of domestic violence.

(f) *Definition of substandard housing.* (1) A unit is substandard if it:

(i) Is dilapidated;

(ii) Does not have operable indoor plumbing;

(iii) Does not have a usable flush toilet inside the unit for the exclusive use of a family;

(iv) Does not have a usable bathtub or shower inside the unit for the exclusive use of a family;

(v) Does not have electricity, or has inadequate or unsafe electrical service;

(vi) Does not have a safe or adequate source of heat;

(vii) Should, but does not, have a kitchen; or

(viii) Has been declared unfit for habitation by an agency or unit of government.

(2) For purposes of paragraph (f)(1) of this section, a housing unit is dilapidated if it does not provide safe and adequate shelter, and in its present condition endangers the health, safety, or well-being of a family, or it has one or more critical defects, or a combination of intermediate defects in sufficient number or extent to require considerable repair or rebuilding. The defects may involve original construction, or they may result from continued neglect or lack of repair or from serious damage to the structure.

(3) For purposes of this paragraph (f), an applicant who is a "homeless family" is living in substandard housing. For purposes of the preceding sentence, a "homeless family" includes any individual or family who:

(i) Lacks a fixed, regular, and adequate nighttime residence; and

(ii) Has a primary nighttime residence that is:

(A) A supervised publicly or privately operated shelter designed to provide temporary living accommodations (including welfare hotels, congregate shelters, and transitional housing for the mentally ill);

(B) An institution that provides a temporary residence for individuals intended to be institutionalized; or

(C) A public or private place not designed for, or ordinarily used as, a regular sleeping accommodation for human beings. A "homeless family" does ot include any individual imprisoned or otherwise detained pursuant to an Act of the Congress of a State law.

(4) For purposes of paragraph (f)(1) of this section, Single Room Occupancy (SRO) Housing (as defined in 24 CFR 882.102) is not substandard solely because it does not contain sanitary or food preparation facilities (or both).

(g) *Verification procedures for applicants living in substandard housing.* Verification that an applicant is living in substandard housing consists of certification, in a form prescribed by the Secretary, from a unit or agency of government or from an applicant's present landlord that the applicant's unit has one or more of the deficiencies listed in, or the unit's condition is as described in, paragraph (f) (1) or (2) of this section. In the case of a "homeless family" (as described in paragraph (f)(3) of this section), verification consists of certification, in a form prescribed by the Secretary, of this status from a public or private facility that provides shelter for such individuals, or from the local police department or social services agency.

(h) *Definition of family income.* For purposes of this section, family income is Monthly Income, as defined in 24 CFR 813.102.

(i) *Definition of rent.* (1) For purposes of this section, rent is defined as:

(i) The actual amount due, calculated on a monthly basis, under a lease or occupancy agreement between a family and family's current landlord; and

(ii) In the case of utilities purchased directly by tenants from utility providers,

(A) The utility allowance (if any) determined for the Section 8 Existing Housing program under 24 CFR Part 882, Subparts A and B, for tenant-purchased utilities (except telephone) and the other housing services that are normally included in rent; or

(B) If the family chooses, the average monthly payments that it actually made for these utilities and services for the most recent 12-month period or, if information is not obtainable for the entire period, for an appropriate recent period.

(2) For purposes of calculating rent under this paragraph (i), amounts paid to or on behalf of a family under any energy assistance program must be subtracted from the otherwise applicable rental amount, to the extent that they are not included in the family's income.

(3) In the case of an applicant who owns a manufactured home, but who rents the space upon which it is located, rent under this paragraph (i) includes the monthly payment to amortize the purchase price of the home, calculated in accordance with HUD's requirements.

(4) In the case of an applicant who resides within the jurisdiction of an Indian Housing Authority (IHA) that is not administering a Section 8 Existing Housing program, the applicable utility allowance for purposes of calculating rent under paragraph (i)(1)(ii)(A) of this section will be determined under 24 CFR Part 965, Subpart E.

(5) In the case of members of a cooperative, rent under this paragraph (i) means the charges under the occupancy agreement between the members and the cooperative.

(j) *Verification of an applicant's income, rent, and utilities payments.* The owner must verify that an applicant is paying more than 50 percent of family income for rent, as follows:

(1) The owner must verify a family's income in accordance with the standards and procedures that it uses to verify income for purposes of determining applicant eligibility and Total Tenant Payment under 24 CFR Part 813.

(2)(i) The owner must verify the amount due to the family's landlord (or cooperative) under the lease or occupany agreement—

(A) By requiring the family to furnish copies of its most recent rental (or cooperative charges) receipts (which may include cancelled checks or money order receipts) or a copy of the family's current lease or occupancy agreement, or

(B) By contacting the landlord (or cooperative) or its agent directly.

(ii) The owner must verify the amount paid to amortize the purchase price of a manufactured home—

(A) By requiring the family to furnish copies of its most recent payments receipts (which may include cancelled checks or money order receipts) of a copy of the family's current purchase agreement, or

(B) By contacting the lienholder directly.

(3) To verify the actual amount that a family paid for utilities and other housing services, the owner must require the family to provide copies of the appropriate bills or receipts, or must obtain the information directly from the utility or service supplier.

(k) *Notice and opportunity for a meeting where Federal preference is denied.* If the owner determines that an applicant does not meet the criteria for receiving a Federal preference, the owner must promptly provide the applicant with written notice of the determination. The notice must contain a brief statement of the reasons for the determination, and state that the applicant has the right to meet with the owner or the owner's designee to review it. If requested, the meeting must be conducted by a person or persons designated by the owner. Those designated may be an officer or employee of the owner, including the person who made or reviewed the determination, or his or her subordinate. The procedures specified in this paragraph (k) must be carried out in accordance with HUD's requirements. The applicant may exercise other rights if the applicant believes that he or she has been discriminated against on the basis of race, color, religion, sex, national origin, age, or handicap.

(l) *Effective date.* Housing owners must implement the provisions of this section no later than July 13, 1988.

PART 884—SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAM, NEW CONSTRUCTION SET-ASIDE FOR SECTION 515 RURAL RENTAL HOUSING PROJECTS

22. The authority citation for Part 884 continues to read as follows:

Authority: Secs. 3, 5, and 8, United States Housing Act of 1937 (42 U.S.C. 1437a, 1437c, and 1437f); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

23. In § 884.118, paragraph (a)(3) is revised to read as follows:

§ 884.118 Responsibilities of the owner.

(a) * * *

(3) Performance of all management functions, including the taking of applications; selection of families, including verification of income, provision of Federal selection preferences in accordance with § 884.220, and other pertinent requirements; and determination of eligibility and amount of tenant rent in accordance with HUD-established schedules and criteria;

* * * * *

24. In § 884.214, paragraphs (b)(1) and (2) are revised, and a new paragraph (b)(7) is added, to read as follows:

§ 884.214 Marketing.

* * * * *

(b) *Eligibility, section and admission of families.* (1) The owner is responsible for determination of eligibility of applicants, selection of families from among those determined to be eligible (including provision of Federal selection preferences in accordance with § 884.226), and computation of the amount of housing assistance payments on behalf of each selected family, in accordance with schedules and criteria established by HUD: *Provided,* That in establishing criteria for the selection of applicants, no local residency requirements or priority systems relating to place of residence may be applied to applicants who are working in the community.

(2) For every family that applies for admission, the owner and the applicant will complete and sign the form of application prescribed by HUD. However, if there are no vacant units and the owner's waiting list is such that there would be an unreasonable length of time before the applicant could be admitted, the owner may advise the applicant that the owner is not accepting applications for that reason, except that the owner may not refuse to place an applicant on the waiting list if the applicant is otherwise eligible for assistance and claims that he or she qualifies for a Federal preference as provided in § 884.226(c)(2), unless the owner determines, on the basis of the number of applicants who are already on the waiting list and who claim a Federal preference, and the anticipated number of admissions to the project, that:

(i) There is an adequate pool of applicants who are likely to qualify for a Federal preference, and

(ii) It is unlikely that, on the basis of the owner's system for applying the Federal preferences, the preference or the preferences that the applicant claims, and the preferences claimed by applicants on the waiting list, the applicant would qualify for admission before other applicants on the waiting list.

The owner must retain copies of all completed applications together with any related correspondence for three years. For each family selected for admission, the owner must submit one copy of the completed and signed

application to the HUD field office (in the case of private-owner/PHA projects, the owner simultaneously must send a copy of the form to the PHA). Housing assistance payments will not be made on behalf of an admitted family unit after this copy has been received by the HUD field office (or, in the case of private-owner/PHA projects, until the copy has been received by the PHA with a certification by the owner that the owner has sent a copy to HUD).

* * * * *

(7) The informal review provisions for the denial of a Federal selection preference under § 884.226 are contained in paragraph (k) of that section.

25. In Part 884, a new § 884.226 is added, to read as follows:

§ 884.226 Federal selection preferences.

(a) *General.* (1) In selecting applicants for assistance under this part, housing owners must give preference to applicants who are otherwise eligible for assistance and who, at the time they are seeking housing assistance, are involuntarily displaced, living in substandard housing, or paying more than 50 percent of family income for rent.

(2)(i) The owner must inform all applicants for assistance under this part of the availability of the Federal preferences, and must give all applicants an opportunity to show that they qualify for a preference. For purposes of this paragraph (a)(2)(i), applicants include families on any waiting list maintained by the owner for the project when this section is implemented or thereafter.

(ii) If the owner determines that the notification to all applicants on a waiting list required by paragraph (a)(2)(i) of this section is impracticable because of the length of the list, the owner may provide this notification to fewer than all applicants on the list at any given time. The owner must, however, have notified a sufficient number of applicants at any given time that, on the basis of the owner's determination of the number of applicants on the waiting list who already claim a Federal preference, and the anticipated number of admissions to the project:

(A) There is an adequate pool of applicants who are likely to qualify for a Federal preference; and

(B) It is unlikely that, on the basis of the owner's framework for applying the preferences under paragraph (b) and the preferences claimed by those already on the waiting list, any applicant who has not been so notified would be admitted to the project before those who have received notification.

(3) For purposes of this section, the term "Federal preference" means a tenant selection preference provided under this section. The term "preference" means a Federal preference, unless the context indicates otherwise.

(b) *Applying the Federal preferences.* (1) Each housing owner must include the Federal preferences in its tenant selection standards. The owner must apply the Federal preferences in a manner that is consistent with the provisions of this section, the equal opportunity and other requirements of §§ 884.113 and 884.214 (including limitations of the use of local residency requirements and preferences contained in § 884.214(b)(1)), and other applicable requirements.

(2) The housing owner must establish a system for applying the Federal preferences that provides that an applicant who qualifies for any of the preferences under this section is to receive assistance under this part before any other applicant who is not so qualified, without regard to the other applicant's qualification for one or more preferences or priorities that are not provided by Federal law, place on any waiting list, or the time of submission of his or her application for assistance. In applying the preferences under this paragraph (b)(2), an owner may determine the relative weight to be accorded the Federal preferences, through means such as:

(i) Applying non-Federal preferences or priorities (such as local residency preferences) as a way of ranking applicants who qualify (or claim qualification) for a Federal preference, as provided by paragraph (c)(2) of this section;

(ii) Aggregating the Federal preferences (*i.e.*, two Federal preferences outweight one and three outweigh two);

(iii) Ranking the Federal preferences (*e.g.*, provide that an applicant living in substandard housing has greater need for housing than (and, therefore, would be considered for assistance before) an applicant paying more than 50 percent of income for rent); or

(iv) Ranking the Federal preferences' definitional elements (*e.g.*, provide that those living in housing that is dilapidated or has been declared unfit for habitation by an agency or unit of government have a greater need for housing than, and take precedence over, those whose housing is substandard only because it does not have a usable bathtub or shower inside the unit for the exclusive use of the family).

(3) Any selection preferences or priorities under this section or otherwise that are used by a housing owner must be established and administered in a manner that is not incompatible with Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d; Title VIII of the Civil Rights Act of 1968, 42 U.S.C. 3601–19; Executive Order 11063 on Equal Opportunity in Housing, 27 FR 11527 (1962), *as amended*, 46 FR 1253 (1980); Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. 794; the Age Discrimination Act of 1975, 42 U.S.C. 6101–07; or HUD's regulations and requirements issued under these authorities. Such preferences and priorities must also be consistent with HUD's affirmative fair housing objectives and (if applicable) the owner's Affirmative Fair Housing Marketing Plan.

(4) The owner must submit to HUD any selection preference system that uses a local residency preference, for review for consistency with the requirements of paragraph (b)(3) of this section, but HUD approval is not required before the owner may implement the system.

(c) *Qualifying for a Federal preference.* (1) An applicant qualifies for a Federal preference if—

(i) The applicant has been involuntarily displaced and is not living in standard, permanent replacement housing or, within no more than six months from the date of certification under paragraph (c)(2) of this section or verification under paragraph (c)(3) of this section (as appropriate), the applicant will be involuntarily displaced;

(ii) The applicant is living in substandard housing; or

(iii) The applicant is paying more than 50 percent of family income for rent.

(2) Applicants may claim qualification for a Federal preference when they apply for assistance under this Part (or thereafter until they are offered assistance) by certifying to the owner that they qualify for a preference under paragraph (c)(1) of this section. An owner must accept this certification, unless the owner verifies that the applicant is not qualified for a Federal preference.

(3) Before executing a lease or occupancy agreement with an applicant who has been offered assistance on the basis of a Federal preference, the owner must require the applicant to provide verification that he or she qualifies for a Federal preference under paragraph (c)(1) of this section by virtue of the applicant's current status. The applicant's current status must be determined without regard to whether there has been a change in the

applicant's qualification for a preference between the certification under paragraph (c)(2) of this section and execution of an occupancy agreement, including a change from one Federal preference category to another.

(4) If an applicant's qualification for a Federal preference under paragraph (c)(1) of this section has once been verified, an owner need not require the applicant to verify such qualification again, unless, as determined by the owner, such a long time has elapsed since verification as to make reverification desirable, or the owner has reasonable grounds to believe that the applicant no longer qualifies for a Federal preference.

(5) For purposes of this paragraph (c), "standard, permanent replacement housing" is housing—

(i) That is decent, safe, and sanitary;

(ii) That is adequate for the family size; and

(iii) That the family is occupying pursuant to a lease or occupancy agreement.

Such housing does not include transient facilities, such as motels, hotels, or temporary shelters for victims of domestic violence or homeless families, and in the case of domestic violence referred to in paragraph (d)(2), does not include the housing unit in which the applicant and the applicant's spouse or other member of the household who engages in such violence live.

(6) An applicant may not qualify for a Federal preference under paragraph (c)(1)(iii) of this section if the applicant is paying more than 50 percent of family income to rent a unit because the applicant's housing asistance under the United States Housing Act of 1937or section 101 of the Housing and Urban Development Act of 1965 with respect to that unit has been terminated as a result of the applicant's refusal to comply with applicable program policies and procedures with respect to the occupancy of underoccupied and overcrowded units. (For examples of these policies and procedures, see §§ 215.65, 880.605, 881.605, 882.213, 882.509, 883.706, 884.219, 886.125, and 886.325.)

(d) *Definition of involuntary displacement.* (1) An applicant is or will be involuntarily displaced if the applicant has vacated or will have to vacate his or her housing unit as a result of one or more of the following actions:

(i) A disaster, such as a fire or flood, that results in the uninhabitability of an applicant's unit;

(ii) Activity carried on by an agency of the United States or by any State or local governmental body or agency in connection with code enforcement or a public improvement or development program; or

(iii) Action by a housing owner that results in an applicant's having to vacate his or her unit, where:

(A) The reason for the owner's action is beyond an applicant's ability to control or prevent;

(B) The action occurs despite an applicant's having met all previously imposed conditions of occupancy; and

(C) The action taken is other than a rent increase.

(2) An applicant is also involuntarily displaced if—

(i) The applicant has vacated his or her housing unit as a result of actual or threatened physical violence directed against the applicant or one or more members of the applicant's family by a spouse or other member of the applicant's household; or

(ii) The applicant lives in a housing unit with such an individual who engages in such violence.

For purposes of this paragraph (d)(2), the actual or threatened violence must, as determined by the housing owner in accordance with HUD's administrative instructions, have occurred recently or be of a continuing nature.

(3) For purposes of paragraph (d)(1)(iii) of this section, reasons for an applicant's having to vacate a housing unit include, but are not limited to, conversion of an applicant's housing unit to non-rental or non-residential use; closure of an applicant's housing unit for rehabilitation or for any other reason; notice to an applicant that he or she must vacate a unit because the owner wants the unit for the owner's personal or family use or occupancy; sale of a housing unit in which an applicant resides under an agreement that the unit must be vacant when possession is transferred; or any other legally authorized act that results or will result in the withdrawal by the owner of the unit or structure from the rental market. Such reasons do not include the vacating of a unit by a tenant as a result of actions taken because of the tenant's refusal—

(i) To comply with applicable program policies and procedures under this title with respect to the occupancy of underoccupied and overcrowded units or

(ii) To Accept a transfer to another housing unit in accordance with a court decree or in accordance with such policies and procedures under a HUD-approved desegregation plan.

(e) *Verification procedures for applicants involuntarily displaced.* Verification of an applicant's involuntary displacement is established by the following documentation:

(1) Cerfification, in a form prescribed by the Secretary, from a unit or agency of government that an applicant has been or will be displaced as a result of a disaster, as defined in paragraph (d)(1)(i) of this section;

(2) Certification, in a form prescribed by the Secretary, from a unit or agency of government that an applicant has been or will be displaced by government action, as defined in paragraph (d)(1)(ii) of this section;

(3) Certification, in a form prescribed by the Secretary, from an owner or owner's agent that an applicant had to, or will have to, vacate a unit by a date certain because of an owner action referred to in paragraph (d)(1)(iii) of this section; or

(4) Certification, in a form prescribed by the Secretary, of displacement because of the domestic violence referred to in paragraph (d)(2) of this section, from the local police department, social services agency, or court of competent jurisdiction, or a clergyman, physician, or public or private facility that provides shelter or counseling to the victims of domestic violence.

(f) *Definition of substandard housing.* (1) A unit is substandard if it:

(i) Is dilapidated;

(ii) Does not have operable indoor plumbing;

(iii) Does not have a usable flush toilet inside the unit for the exclusive use of a family;

(iv) Does not have a usable bathtub or shower inside the unit for the exclusive use of a family;

(v) Does not have electricity, or has inadequate or unsafe electrical service;

(vi) Does not have a safe or adequate source of heat;

(vii) Should, but does not, have a kitchen; or

(viii) Has been declared unfit for habitation by an agency or unit or government.

(2) For purposes of paragraph (f)(1) of this section, a housing unit is dilapidated if it does not provide safe and adequate shelter, and in its present condition endangers the health, safety, or well-being of a family, or it has one or more critical defects, or a combination of intermediate defects in sufficient number or extent to require considerable repair or rebuilding. The defects may involve original construction, or they may result from continued neglect or lack of repair or from serious damage to the structure.

(3) For purposes of this paragraph (f), an applicant who is a "homeless family"

is living in substandard housing. For purposes of the preceding sentence, a "homeless family" includes any individual or family who:

(i) Lacks a fixed, regular, and adequate nighttime residence; and

(ii) Has a primary nighttime residence that is:

(A) A supervised publicly or privately operated shelter designed to provide temporary living accommodations (including welfare hotels, congregate shelters, and transitional housing for the mentally ill);

(B) An institution that provides a temporary residence for individuals intended to be institutionalized; or

(C) A public or private place not designed for, or ordinarily used as, a regular sleeping accommodation for human beings.

A "homeless family" does not include any individual imprisoned or otherwise detained pursuant to an Act of the Congress or a State law.

(4) For purposes of paragraph (f)(1) of this section, Single Room Occupancy (SRO) Housing (as defined in 24 CFR 882.102) is not substandard solely because it does not contain sanitary or food preparation facilities (or both).

(g) *Verification procedures for applicants living in substandard housing.* Verification that an applicant is living in substandard housing consists of certification, in a form prescribed by the Secretary, from a unit or agency of government or from an applicant's present landlord that the applicant's unit has one or more of the deficiencies listed in, or the unit's condition is as described in, paragraph (f) (1) or (2) of this section. In the case of a "homeless family" (as described in paragraph (f)(3) of this section), verification consists of certification, in a form prescribed by the Secretary, of this status from a public or private facility that provides shelter for such individuals, or from the local police department or social services agency.

(h) *Definition of family income.* For purposes of this section, family income is Monthly Income, as defined in 24 CFR 813.102.

(i) *Definition of rent.* (1) For purposes of this section, rent is defined as:

(i) The actual amount due, calculated on a monthly basis, under a lease or occupancy agreement between a family and the family's current landlord; and

(ii) In the case of utilities purchased directly by tenants from utility providers,

(A) The utility allowance (if any) determined for the Section 8 Existing Housing program under 24 CFR Part 882, Subparts A and B, for tenant-purchased utilities (except telephone) and the other housing services that are normally included in rent; or

(B) If the family chooses, the average monthly payments that it actually made for these utilities and services for the most recent 12-month period or, if information is not obtainable for the entire period, for an appropriate recent period.

(2) For purposes of calculating rent under this paragraph (i), amounts paid to or on behalf of a family under any energy assistance program must be subtracted from the otherwise applicable rental amount to the extent that they are not included in the family's income.

(3) In the case of an applicant who owns a manufactured home, but who rents the space upon which it is located, rent under this paragraph (i) includes the monthly payment to amortize the purchase price of the home, as calculated in accordance with HUD's requirements.

(4) In the case of an applicant who resides within the jurisdiction of an Indian Housing Authority (IHA) that is not administering a Section 8 Existing Housing program, the applicable utility allowance for purposes of calculating rent under paragraph (i)(1)(ii)(A) of this section, will be determined under 24 CFR Part 965, Subpart E.

(5) In the case of members of a cooperative, rent under this paragraph (i) means the charges under the occupancy agreement between the members and the cooperative.

(j) *Verification of an applicant's income, rent, and utilities payments.* The owner must verify that that an applicant is paying more than 50 percent of family income for rent, as follows:

(1) The owner must verify the family's income in accordance with the standards and procedures that it uses to verify income for purposes of determining applicant eligibility and Total Tenant Payment under 24 CFR Part 813.

(2)(i) The owner must verify the amount due to the family's landlord (or cooperative) under the lease or occupancy agreement—

(A) By requiring the family to furnish copies of its most recent rental (or cooperative charges) receipts (which may include cancelled checks or money order receipts) or a copy of the family's current lease or occupancy agreement, or

(B) By contacting the landlord (or cooperative) or its agent directly.

(ii) The owner must verify the amount paid to amortize the purchase price of a manufactured home—

(A) By requiring the family to furnish copies of its most recent payment receipts (which may include cancelled checks or money order receipts) or a copy of the family's current purchase agreement, or

(B) By contacting the lienholder directly.

(3) To verify the actual amount that a family paid for utilities and other housing services, the owner must require the family to provide copies of the appropriate bills or receipts, or must obtain the information directly from the utility or service supplier.

(k) *Notice and opportunity for a meeting where Federal preference is denied.* If the owner determines that an applicant does not meet the criteria for receiving a Federal preference, the owner must promptly provide the applicant with written notice of the determination. The notice must contain a brief statement of the reasons for the determination, and state that the applicant has the right to meet with the owner or the owner's designee to review it. If requested, the meeting must be conducted by a person or persons designated by the owner. Those designated may be an officer or employee of the owner, including the person who made or reviewed the determination, or his or her subordinate. The procedures specified in this paragraph (k) must be carried out in accordance with HUD's requirements. The applicant may exercise other rights if the applicant believes that he or she has been discriminated against on the basis of race, color, religion, sex, national origin, age, or handicap.

(l) *Effective date.* Housing owners must implement the provisions of this section no later than July 13, 1988.

PART 886—SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAM—SPECIAL ALLOCATIONS

26. The authority citation for 24 CFR Part 886 continues to read as follows:

Authority: Secs. 3, 5, and 8, United States Housing Act of 1937 (42 U.S.C. 1437a, 1437c, 1437f); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

27. In § 886.119, paragraph (a)(3) is revised to read as follows:

§ 886.119 Responsibilities of the owner.

(a) * * *

(3) Performance of all management functions, including the taking of applications; selection of Families, verification of Income, provision of Federal selection preferences in accordance with § 886.132, and other pertinent requirements; and determination of eligibility and amount

of Tenant Rent in accordance with Part 813 of this chapter;

* * * * *

28. In § 886.121, paragraph (b) is revised to read as follows:

§ 886.121 Marketing.

* * * * *

(b) In taking applications, selecting families, and all related determinations, the owner must comply with the applicable provisions of the Contract and of this subpart.

29. In Part 886, a new § 886.132 is added, to read as follows:

§ 886.132 Federal selection preferences.

(a) *General.* (1) In selecting applicants for assistance under this subpart, housing owners must give preference to applicants who are otherwise eligible for assistance and who, at the time they are seeking housing assistance, are involuntarily displaced, living in substandard housing, or paying more than 50 percent of family income for rent.

(2)(i) The owner must inform all applicants for assistance under this part of the availability of the Federal preferences, and must give all applicants an opportunity to show that they qualify for a preference. For purposes of this paragraph (a)(2)(i), applicants include families on any waiting list maintained by the owner for the project when this section is implemented or thereafter.

(ii) If the owner determines that the notification to all applicants on a waiting list required by paragraph (a)(2)(i) of this section is impracticable because of the length of the list, the owner may provide this notification to fewer than all applicants on the list at any given time. The owner must, however, have notified a sufficient number of applicants at any given time that, on the basis of the owner's determination of the number of applicants on the waiting list who already claim a Federal preference, and the anticipated number of admissions to the project:

(A) There is an adequate pool of applicants who are likely to qualify for a Federal preference; and

(B) It is unlikely that, on the basis of the owner's framework for applying the preferences under paragraph (b) of this section and the preferences claimed by those already on the waiting list, any applicant who has not been so notified would be admitted to the project before those who have received notification.

(3) For purposes of this section, the term "Federal preference" means a tenant selection preference provided under this section. The term "preference" means a Federal preference, unless the context indicates otherwise.

(b) *Applying the preferences.* (1) Each housing owner must include the Federal preferences in its tenant selection standards. The owner must apply the Federal preferences in a manner that is consistent with the provisions of this section, the equal opportunity and other requirements of §§ 886.114 and 886.121 and other applicable requirements (including limitations on the use of local residency requirements and preferences).

(2) The housing owner must establish a system for applying the preferences that provides that an applicant who qualifies for any of the Federal preferences is to receive assistance under this part before any other applicant who is not so qualified, without regard to the other applicant's qualification for one or more preferences or priorities that are not provided by Federal law, place on any waiting list, or the time of submission of his or her application for assistance. In applying the preferences under this paragraph (b)(2), the owner may determine the relative weight to be accorded the Federal preferences, through means such as:

(i) Applying non-Federal preferences or priorities (such as local residency preferences) as a way of ranking applicants who qualify (or claim qualification) for a Federal preference, as provided by paragraph (c)(2) of this section;

(ii) Aggregating the Federal preferences (*i.e.*, two Federal preferences outweigh one and three outweigh two);

(iii) Ranking the Federal preferences (*e.g.*, provide that an applicant living in substandard housing has greater need for housing than (and, therefore, would be considered for assistance before) an applicant paying more than 50 percent income for rent); or

(iv) Ranking the Federal preferences' definitional elements (*e.g.*, provide that those living in housing that is dilapidated or has been declared unfit for habitation by an agency or unit of government have a greater need for housing than, and take precedence over, those whose housing is substandard only because it does not have a usable bathtub or shower inside the unit for the exclusive use of the family).

(3) Any selection preferences or priorities under this section or otherwise that are used by a housing owner must be established and administered in a manner that is not incompatible with Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d; Title VIII of the Civil Rights Act of 1968, 42 U.S.C. 3601–19; Executive Order 11063 on Equal Opportunity in Housing, 27 FR 11527 (1962), *as amended*, 46 FR 1253 (1980); Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. 794; the Age Discrimination Act of 1975, 42 U.S.C. 6101–07; or HUD's regulations and requirements issued under these authorities. Such preferences and priorities must also be consistent with HUD's affirmative fair housing objectives and (if applicable) the owner's Affirmative Fair Housing Marketing Plan.

(4) The owner must submit to HUD any selection preference system that uses a local residency preference, for review for consistency with the requirements of paragraph (b)(3) of this section, but HUD approval is not required before the owner may implement the system.

(5) Local residency requirements are prohibited. Local residency preferences may be applied in selecting tenants only to the extent that they are not inconsistent with HUD's affirmative fair housing marketing objectives and the owner's HUD-approved Affirmative Fair Housing Marketing Plan. With respect to any residency preference, persons expected to reside in the community as a result of current or planned employment will be treated as residents.

(c) *Qualifying for a Federal preference.* (1) An applicant qualifies for a Federal preference if—

(i) The applicant has been involuntarily displaced and is not living in standard, permanent replacement housing or, within no more than six months from the date of certification under paragraph (c)(2) of this section or verification under paragraph (c)(3) of this section (as appropriate), the applicant will be involuntarily displaced;

(ii) The applicant is living in substandard housing; or

(iii) The applicant is paying more than 50 percent of family income for rent.

(2) Applicants may claim qualification for a Federal preference when they apply for assistance under this subpart (or thereafter until they are offered assistance) by certifying to the owner that they qualify for a preference under paragraph (c)(1) of this section. An owner must accept this certification, unless the owner verifies that the applicant is not qualified for a Federal preference.

(3) Before executing a lease or occupancy agreement with an applicant who has been offered assistance on the basis of a Federal preference, the owner must require the applicant to provide verification that he or she qualifies for a

preference under paragraph (c)(1) of this section by virtue of the applicant's current status. The applicant's current status must be determined without regard to whether there has been a change in the applicant's qualification for a preference between the certification under paragraph (c)(2) of this section and execution of an occupancy agreement, including a change from one Federal preference category to another.

(4) If an applicant's qualification for a Federal preference under paragraph (c)(1) of this section has once been verified, an owner need not require the applicant to verify such qualification again, unless, as determined by the owner, such a long time has elapsed since verification as to make reverification desirable, or the owner has reasonable grounds to believe that the applicant no longer qualifies for a Federal preference.

(5) For purposes of this paragraph (c), "standard, permanent replacement housing" is housing—

(i) That is decent, safe, and sanitary;

(ii) That is adequate for the family size; and

(iii) That the family is occupying pursuant to a lease or occupancy agreement.

Such housing does not include transient facilities, such as motels, hotels, or temporary shelters for victims of domestic violence or homeless families, and in the case of domestic violence referred to in paragraph (d)(2) of this section, does not include the housing unit in which the applicant and the applicant's spouse or other member of the household who engages in such violence live.

(6) An applicant may not qualify for a Federal preference under paragraph (c)(1)(iii) of this section if the applicant is paying more than 50 percent of family income to rent a unit because the applicant's housing assistance under the United States Housing Act of 1937 or section 101 of the Housing and Urban Development Act of 1965 with respect to that unit has been terminated as a result of the applicant's refusal to comply with applicable program policies and procedures with respect to the occupancy of underoccupied and overcrowded units. (For examples of these policies and procedures, see §§ 215.65, 880.605, 881.605, 882.213, 882.509, 883.706, 884.219, 886.125, and 886.325.)

(d) *Definition of involuntary displacement.* (1) An applicant is or will be involuntarily displaced if the applicant has vacated or will have to vacate his or her housing unit as a result of one or more of the following actions:

(i) A disaster, such as a fire or flood, that results in the uninhabitability of an applicant's unit;

(ii) Activity carried on by an agency of the United States or by any State or local governmental body or agency in connection with code enforcement or a public improvement or development program; or

(iii) Action by a housing owner that results in an applicant's having to vacate his or her unit, where:

(A) The reason for the owner's action is beyond an applicant's ability to control or prevent;

(B) The action occurs despite an applicant's having met all previously imposed conditions of occupancy; and

(C) The action taken is other than a rent increase.

(2) An applicant is also involuntarily displaced if—

(i) The applicant has vacated his or her housing unit as a result of actual or threatened physical violence directed against the applicant or one or more members of the applicant's family by a spouse or other member of the applicant's household, or

(ii) The applicant lives in a housing unit with such an individual who engages in such violence.

For purposes of this paragraph (d)(2), the actual or threatened violence must, as determined by the housing owner in accordance with HUD's administrative instructions, have occurred recently or be of a continuing nature.

(3) For purposes of paragraph (d)(1)(iii) of this section, reasons for an applicant's having to vacate a housing unit include, but are not limited to, conversion of an applicant's housing unit to non-rental or non-residential use; closure of an applicant's housing unit for rehabilitation or for any other reason; notice to an applicant that he or she must vacate a unit because the owner wants the unit for the owner's personal or family use or occupancy; sale of a housing unit in which an applicant resides under an agreement that the unit must be vacant when possession is transferred; or any other legally authorized act that results or will result in the withdrawal by the owner of the unit or structure from the rental market. Such reasons do not include the vacating of a unit by a tenant as a result of actions taken because of the tenant's refusal—

(i) To comply with applicable program policies and procedures under this title with respect to the occupancy of underoccupied and overcrowded units or

(ii) To accept a transfer to another housing unit in accordance with a court decree or in accordance with such policies and procedures under a HUD-approved desegregation plan.

(e) *Verification procedures for applicants involuntarily displaced.* Verification of an applicant's involuntary displacement is established by the following documentation:

(1) Certification, in a form prescribed by the Secretary, from a unit or agency of government that an applicant has been or will be displaced as a result of a disaster, as defined in paragraph (d)(1)(i) of this section;

(2) Certification, in a form prescribed by the Secretary, from a unit of agency of government that an applicant has been or will be displaced by government action, as defined in paragraph (d)(1)(ii) of this section;

(3) Certification, in a form prescribed by the Secretary, from an owner or owner's agent that an applicant had to, or will have to, vacate a unit by a date certain because of an owner action referred to in paragraph (d)(1)(iii) of this section; or

(4) Certification, in a form prescribed by the Secretary, of displacement because of the domestic violence referred to in paragraph (d)(2) of this section, from the local police department, social services agency, or court of competent jurisdiction, or a clergyman, physician, or public or private facility that provides shelter or counseling to the victims of domestic violence.

(f) *Definition of substandard housing.* (1) A unit is substandard if it:

(i) Is dilapidated;

(ii) Does not have operable indoor plumbing;

(iii) Does not have a usable flush toilet inside the unit for the exclusive use of a family;

(iv) Does not have a usable bathtub or shower inside the unit for the exclusive use of a family;

(v) Does not have electricity, or has inadequate or unsafe electrical service;

(vi) Does not have a safe or adequate source of heat;

(vii) Should, but does not, have a kitchen; or

(viii) Has been declared unfit for habitation by an agency or unit of government.

(2) For purposes of paragraph (f)(1) of this section, a housing unit is dilapidated if it does not provide safe and adequate shelter, and in its present condition endangers the health, safety, or well-being of a family, or it has one or more critical defects, or a combination of intermediate defects in sufficient

number or extent to require considerable repair or rebuilding. The defects may involve original construction, or they may result from continued neglect or lack of repair or from serious damage to the structure.

(3) For purposes of this paragraph (f), an applicant who is a "homeless family" is living in substandard housing. For purposes of the preceding sentence, a "homeless family" includes any individual or family who:

(i) Lacks a fixed, regular, and adequate nighttime residence; and

(ii) Has a primary nighttime residence that is:

(A) A supervised publicly or privately operated shelter designed to provide temporary living accommodations (including welfare hotels, congregate shelters, and transitional housing for the mentally ill);

(B) An institution that provides a temporary residence for individuals intended to be institutionalized; or

(C) A public or private place not designed for, or ordinarily used as, a regular sleeping accommodation for human beings.

A "homeless family" does not include any individual imprisoned or otherwise detained pursuant to an Act of the Congress or a State law.

(4) For purposes of paragraph (f)(1) of this section, Single Room Occupancy (SRO) Housing (as defined in 24 CFR 882.102) is not substandard solely because it does not contain sanitary or food preparation facilities (or both).

(g) *Verification procedures for applicants living in substandard housing.* Verification that an applicant is living in substandard housing consists of certification, in a form prescribed by the Secretary, from a unit or agency of government or from an applicant's present landlord that the applicant's unit has one or more of the deficiencies listed in, or the unit's condition is as described in, paragraph (f) (1) or (2) of this section. In the case of a "homeless family" (as described in paragraph (f)(3) of this section), verification consists of certification, in a form prescribed by the Secretary, of this status from a public or private facility that provides shelter for such individuals, or from the local police department or social services agency.

(h) *Definition of family income.* For purposes of this section, family income is Monthly Income, as defined in 24 CFR 813.102.

(i) *Definition of rent.* (1) For purposes of this section, rent is defined as:

(i) The actual amount due, calculated on a monthly basis, under a lease or occupancy agreement between a family and the family's current landlord; and

(ii) In the case of utilities purchased directly by tenants from utility providers,

(A) The utility allowance (if any) determined for the Section 8 Existing Housing program under 24 CFR Part 882, Subparts A and B, for tenant-purchased utilities (except telephone) and the other housing services that are normally included in rent; or

(B) If the family chooses, the average monthly payments that it actually made for these utilities and services for the most recent 12-month period or, if information is not obtainable for the entire period, for an appropriate recent period.

(2) For purposes of calculating rent under this paragraph (i), amounts paid to or on behalf of a family under any energy assistance program must be subtracted from the otherwise applicable rental amount to the extent that they are not included in the family's income.

(3) In the case of an applicant who owns a manufactured home, but who rents the space upon which it is located, rent under this paragraph (i) includes the monthly payment to amortize the purchase price of the home, as calculated in accordance with HUD's requirements.

(4) In the case of an applicant who resides within the jurisdiction of an Indian Housing Authority (IHA) that is not administering a Section 8 Existing Housing program, the applicable utility allowance for purposes of calculating rent under paragraph (i)(1)(ii)(A) of this section will be determined under 24 CFR Part 965, Subpart E.

(5) In the case of members of a cooperative, rent under this paragraph (i) means the charges under the occupancy agreement between the members and the cooperative.

(j) *Verification of an applicant's income, rent, and utilities payments.* The owner must verify that an applicant is paying more than 50 percent of family income for rent, as follows:

(1) The owner must verify the family's income in accordance with standards and procedures that it uses to verify income for purposes of determining applicant eligibility and Total Tenant Payment under 24 CFR Part 813.

(2)(i) The owner must verify the amount due to the family's landlord (or cooperative) under the lease or occupancy agreement—

(A) By requiring the family to furnish copies of its most recent rental (or cooperative charges) receipts (which may include canceled checks or money order receipts) or a copy of the family's current lease or occupancy agreement, or

(B) By contacting the landlord (or cooperative) or its agent directly.

(ii) The owner must verify the amount paid to amortize the purchase price of a manufactured home—

(A) By requiring the family to furnish copies of its most recent payment receipts (which may include canceled checks or money order receipts) or a copy of the family's current purchase agreement, or

(B) By contacting the lienholder directly.

(3) To verify the actual amount that a family paid for utilities and other housing services, the owner must require the family to provide copies of the appropriate bills or receipts, or must obtain the information directly from the utility or service supplier.

(k) *Notice and opportunity for a meeting where Federal preference is denied.* If the owner determines that an applicant does not meet the criteria for receiving a Federal preference, the owner must promptly provide the applicant with written notice of the determination. The notice must contain a brief statement of the reasons for the determination, and state that the applicant has the right to meet with the owner or the owner's designee to review it. If requested, the meeting must be conducted by any person or persons designated by the owner. Those designated may be an officer or employee of the owner, including the person who made or reviewed the determination, or his or her subordinate. The procedures specified in this paragraph (k) must be carried out in accordance with HUD's requirements. The applicant may exercise other rights if the applicant believes that he or she has been discriminated against on the basis of race, color, religion, sex, national origin, age, or handicap.

(l) *Closure of waiting list.* Notwithstanding the fact that the owner may be refusing additional applications because of the length of the waiting list, the owner may not refuse to place an applicant on the waiting list if the applicant is otherwise eligible for participation and claims that he or she qualifies for a Federal preference as provided in paragraph (c)(2) of this section, unless the owner determines, on the basis of the number of applicants who are already on the waiting list and who claim a Federal preference, and the anticipated number of admissions to the project, that (1) there is an adequate pool of applicants who are likely to qualify for a Federal preference and (2) it is unlikely that, on the basis of the owner's system for applying the Federal preferences, the preference or

preferences that the applicant claims, and the preferences claimed by applicants on the waiting list, the applicant would qualify for admission to the project before other applicants on the waiting list.

30. In § 886.318, paragraph (a)(3) is revised to read as follows:

§ 886.318 Responsibilities of the owner.

(a) *Management and maintenance.*

* * * * *

(3) Performance of all management functions, including the taking of applications; selection of families in accordance with the owner's tenant selection factors approved by HUD and the Federal preferences in accordance with § 886.337; verification of income and other pertinent requirements; and determination of eligibility and amount of tenant rent in accordance with Part 813 of this chapter;

* * * * *

31. In § 886.321, paragraphs (b) (1), (2), and (6) are revised to read as follows:

§ 886.321 Marketing.

* * * * *

(b)(1) HUD will determine the eligibility for assistance of families in occupancy before sales closing. The owner will be responsible for determination of eligibility of applicants for tenancy after sale, selection of families from among those determined to be eligible (including provision of Federal preferences in accordance with § 886.337), and computation of the amount of housing assistance payments on behalf of each selected family, in accordance with the Gross Rent and the Total Tenant Payment computed in accordance with 24 CFR Part 813. The owner shall pay any utility reimbursement to each family each month it is due. Local residency requirements are prohibited. Local residency preferences are discouraged and may be applied in selecting tenants only to the extent that they are not inconsistent with HUD's affirmative fair housing marketing objectives and the owner's HUD-approved Affirmative Fair Housing Marketing Plan. With respect to any residency preferences, persons expected to reside in the community as a result of current or planned employment must be treated as residents.

(2) For every family that applies for admission, the owner and the applicant must complete and sign the form of application prescribed by HUD. When the owner decides no longer to accept applications or to accept applications only from families that claim a Federal preference under § 886.337, the owner must publish a notice to that effect in a publication likely to be read by potential applicants. The notice must state the reasons for the owner's refusal to accept additional applications. When the owner agrees to accept applications again, a notice to this effect must also be published. Notwithstanding the fact that the owner may not be accepting additional applications for tenancy because of the length of the waiting list, the owner may not refuse to place an applicant on the waiting list if the applicant is otherwise eligible for participation and claims that he or she qualifies for a Federal preference as provided in § 886.337(c)(2), unless the owner determines, on the basis of the number of applicants who are already on the waiting list and who claim a Federal preference, and the anticipated number of admissions to the project, that (i) there is an adequate pool of applicants who are likely to qualify for a Federal preference and (ii) it is unlikely that, on the basis of the owner's system for applying the Federal preferences, the preference or preferences that the applicant claims, and the preferences claimed by applicants on the waiting list, the applicant would qualify for admissions before other applicants on the waiting list. The owner must retain copies of all completed applications together with any related correspondence for three years. For each family selected for admission, the owner must submit one copy of the completed and signed application to HUD. Housing assistance payments will not be made on behalf of an admitted family until after this copy has been received by HUD.

* * * * *

(6) If the owner determines that an applicant is not eligible, or, if eligible, not selected, the owner must notify the applicant in writing of the determination, the reasons upon which the determination is made, and inform the applicant that the applicant has the right within a reasonable time (specified in the letter) to request an informal hearing if the applicant believes that the owner's determination is based on erroneous information. The procedures of this paragraph (b)(6) do not preclude an applicant from exercising his or her other rights if the applicant believes that he or she is being discriminated against on the basis of race, color, religion, sex, national origin, age, or handicap. The owner must retain for three years a copy of the application, the letter, the applicant's response, if any, the record of any informal hearing, and a statement of final disposition. The informal review provisions for the denial of a tenant selection preference under § 886.337 are contained in paragraph (k) of that section.

* * * * *

32. In Part 886, a new § 886.337 is added to read as follows:

§ 886.337 Federal selection preferences.

(a) *General.* (1) In selecting applicants for assistance under this subpart, housing owners must give preference to applicants who are otherwise eligible for assistance and who, at the time they are seeking housing assistance, are involuntarily displaced, living in substandard housing, or paying more than 50 percent of family income for rent.

(2)(i) The owner must inform all applicants for assistance under this part of the availability of the Federal preferences, and must give all applicants an opportunity to show that they qualify for a preference. For purposes of this paragraph (a)(2)(i), applicants include families on any waiting list maintained by the owner for the project when this section is implemented or thereafter.

(ii) If the owner determines that the notification to all applicants on a waiting list required by paragraph (a)(2)(i) of this section is impracticable because of the length of the list, the owner may provide this notification to fewer than all applicants on the list at any given time. The owner must, however, have notified a sufficient number of applicants at any given time that, on the basis of the owner's determination of the number of applicants on the waiting list who already claim a Federal preference, and the anticipated number of admissions to the project:

(A) There is an adequate pool of applicants who are likely to qualify for a Federal preference; and

(B) It is unlikely that, on the basis of the owner's framework for applying the preferences under paragraph (b) of this section and the preferences claimed by those already on the waiting list, any applicant who has not been so notified would be admitted to the project before those who have received notification.

(3) For purposes of this section, the term "Federal preference" means a tenant selection preference provided under this section. The term "preference" means a Federal preference, unless the context indicates otherwise.

(b) *Applying the Federal preferences.* (1) Each housing owner must include the Federal preferences in its tenant selection standards. The owner must apply the Federal preferences in a manner consistent with the provisions of this section, the equal opportunity and

other requirements of §§ 886.313 and 886.321 (including limitations on the use of local residency requirements and preferences contained in § 886.321(b)(1)), and other applicable requirements.

(2) The housing owner must establish a system for applying the preferences that provides that an applicant who qualifies for any of the Federal preferences is to receive assistance under this subpart before any other applicant who is not so qualified, without regard to the other applicant's qualification for one or more preferences or priorities that are not provided by Federal law, place on any waiting list, or the time of submission of his or her application for assistance. In applying the preferences under this paragraph (b)(2), the owner may determine the relative weight to be accorded the Federal preferences, through means such as:

(i) Applying non-Federal preferences or priorities (such as local residency preferences) as a way of ranking applicants who qualify (or claim qualification) for a Federal preference, as provided by paragraph (c)(2) of this section;

(ii) Aggregating the Federal preferences (*i.e.*, two Federal preferences outweight one and three outweight two);

(iii) Ranking the Federal preferences (*e.g.*, provide that an applicant living in substandard housing has greater need for housing than (and, therefore, would be considered for assistance before) an applicant paying more than 50 percent income for rent); or

(iv) Ranking the Federal preferences' definitional elements (*e.g.*, provide that those living in housing that is dilapidated or has been declared unfair for habitation by an agency or unit of government have a greater need for housing than, and take precedence over, those whose housing is substandard only because it dose not have a usable bathtub or shower inside the unit for the exclusive use of the family).

(3) Any selection preferences or priorities under this section or otherwise that are used by a housing owner must be established and administered in a manner that is not incompatible with Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d; Title VIII of the Civil Rights Act of 1968, 42 U.S.C. 3601–19; Executive Order 11063 on Equal Opportunity in Housing, 27 FR 11527 (1962), *as amended*, 46 FR 1253 (1980); Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. 794; the Age Discrimination Act of 1975, 42 U.S.C. 6101–07; or HUD regulations and requirements issued under these authorities. Such preferences and priorities must also be consistent with HUD's affirmative fair housing objectives and (if applicable) the owner's Affirmative Fair Housing Marketing Plan.

(4) The owner must submit to HUD any selection preference system that uses a local residency preference, for review for consistency with the requirements of paragraph (b)(3) of this section, but HUD approval is not required before the owner may implement the system.

(c) *Qualifying for a Federal preference.* (1) An applicant qualifies for a Federal preference if—

(i) The applicant has been involuntarily displaced and is not living in standard, permanent replacement housing or, within no more than six months from the date of certification under paragraph (c)(2) of this section or verification under paragraph (c)(3) of this section (as appropriate), the applicant will be involuntarily displaced;

(ii) The applicant is living in substandard housing; or

(iii) The applicant is paying more than 50 percent of family income for rent.

(2) Applicants may claim qualification for a Federal preference when they apply for assistance under this subpart (or thereafter until the time that they are offered assistance) by certifying to the owner that they qualify for a preference under paragraph (c)(1) of this section. The owner must accept this certification, unless the owner verifies that the applicant is not qualified for a Federal preference.

(3) Before executing a lease or occupancy agreement with an applicant who has been offered assistance on the basis of a Federal preference, the owner must require the applicant to provide verification that he or she qualifies for a Federal preference under paragraph (c)(1) of this section by virtue of the applicant's current status. The applicant's current status must be determined without regard to whether there has been a change in the applicant's qualification for a preference between the certification under paragraph (c)(2) of this section and execution of an occupancy agreement, including a change from one Federal preference category to another.

(4) If an applicant's qualification for a Federal preference under paragraph (c)(1) of this section has once been verified, an owner need not require the applicant to verify such qualification again, unless, as determined by the owner, such a long time has elapsed since verification as to make reverification desirable, or the owner has reasonable grounds to believe that the applicant no longer qualifies for a Federal preference.

(5) For purposes of this paragraph (c), "standard, permanent replacement housing" is housing—

(i) That is decent, safe, and sanitary;

(ii) That is adequate for the family size; and

(iii) That the family is occupying pursuant to a lease or occupancy agreement.

Such housing does not include transient facilities, such as motels, hotels, or temporary shelters for victims of domestic violence or homeless families, and in the case of domestic violence referred to in paragraph (d)(2) of this section, does not include the housing unit in which the applicant and the applicant's spouse or other member of the houshold who engages in such violence live.

(6) An applicant may not qualify for a Federal preference under paragraph (c)(1)(iii) of this section if the applicant is paying more than 50 percent of family income to rent a unit because the applicant's housing assistance under the United States Housing Act of 1937 or section 101 of the Housing and Urban Development Act of 1965 with respect to that unit has been terminated as a result of the applicant's refusal to comply with applicable program policies and procedures with respect to the occupancy of underoccupied and overcrowded units. (For examples of these policies and procedures, see §§ 215.65, 880.605, 881.605, 882.213, 882.509, 883.706, 884.219, 886.125, and 886.325.)

(d) *Definition of involuntary displacement.* (1) An applicant is or will be involuntarily displaced if the applicant has vacated or will have to vacate his or her housing unit as a result of one or more of the following actions:

(i) A disaster, such as a fire or flood, that results in the uninhabitability of an applicant's unit;

(ii) Activity carried on by an agency of the United States or by any State or local of governmental body or agency in connection with code enforcement or a public improvement or development program; or

(iii) Action by a housing owner that results in an applicant's having to vacate his or her unit, where:

(A) The reason for the owner's action is beyond an applicant's ability to control or prevent;

(B) The action occurs despite an applicant's having met all previously imposed conditions of occupancy; and

(C) The action taken is other than a rent increase.

(2) An applicant is also involuntarily displace if—

(i) The applicant has vacated his or her housing unit as a result of actual or threatened physical violence directed against the applicant or one or more members of the applicant's family by a spouse or other member of the applicant's household; or

(ii) The applicant lives in a housing unit with such an individual who engages in such violence.

For purposes of this paragraph (d)(2), the actual or threatened violence must, as determined by the housing owner in accordance with HUD's administrative instructions, have occurred recently or be of a continuing nature.

(3) For purposes of paragraph (d)(1)(iii) of this section, reasons for an applicant's having to vacate a housing unit include, but are not limited to, conversion of an applicant's housing unit to non-rental or non-residential use; closure of an applicant's housing unit for rehabilitation or for any other reason; notice to an applicant that he or she must vacate a unit because the owner wants the unit for the owner's personal or family use or occupancy; sale of a housing unit in which an applicant resides under an agreement that the unit must be vacant when possession is transferred; or any other legally authorized act that results or will result in the withdrawal by the owner of the unit or structure from the rental market. Such reasons do not include the vacating of a unit by a tenant as a result of actions taken because of the tenant's refusal—

(i) To comply with applicable program policies and procedures under this title with respect to the occupancy of underoccupied and overcrowded units or

(ii) To accept a transfer to another housing unit in accordance with a court decree or in accordance with such policies and procedures under a HUD-approved desegregation plan.

(e) *Verification procedures for applicants involuntarily displaced.* Verification of an applicant's involuntary displacement is established by the following documentation:

(1) Certification, in form prescribed by the Secretary, from a unit or agency of government that an applicant has been or will be displaced as a result of a disaster, as defined in paragraph (d)(1)(i) of this section.

(2) Certification, in a form prescribed by the Secretary, from a unit or agency of government that an applicant has been or will be displaced by government action, as defined in paragraph (d)(1)(ii) of this section;

(3) Certification, in a form prescribed by the Secretary, from an owner or owner's agency that an applicant had to, or will have to, vacate a unit by a date certain because or an owner action referred to in paragraph (d)(1)(iii) of this section; or

(4) Certification, in a form prescribed by the Secretary, or displacement because of the domestic violence referred to in paragraph (d)(2) of this section, from the local police department, social services agency, or court of competent jurisdiction, or a clergyman, physician, or public or private facility that provides shelter or counseling to the victims of domestic violence.

(f) *Definition of substandard housing.* (1) A unit is substandard if it:

(i) Is dilapidated;

(ii) Does not have operable indoor plumbing;

(iii) Does not have a usable flush toilet inside the unit for the exclusive use of a family;

(iv) Does not have usable bathtub or shower inside the unit for the exclusive use of a family;

(v) Does not have electricity, or has inadequate or unsafe electrical service;

(vi) Does not have a safe or adequate source of heat;

(vii) Should, but does not, have a kitchen; or

(viii) Has been declared unfit for habitation by an agency or unit of the government.

(2) For purposes of paragraph (f)(1) of this section, a housing unit is dilapidated if it does not provide safe and adequate shelter, and in its present condition endangers the health, safety, or well-being of a family, or it has one or more critical defects, or a combination or intermediate defects in sufficient number or extent to require considerable repair or rebuilding. The defects may involve original construction, or they may result from continued neglect or lack of repair or from serious damage to the structure.

(3) For purposes of this paragraph (f), an applicant who is a "homeless family" is living in substandard housing. For purposes of the preceding sentence, a "homeless family" includes any individual or family who:

(i) Lacks a fixed, regular, or adequate nighttime residence; and

(ii) Has a primary nighttime residence that is:

(A) A supervised publicly or privately operated shelter designed to provide temporary living accommodations (including welfare hotels, congregate shelters, and transitional housing for the mentally ill);

(B) An institution that provides a temporary residence for individuals intended to be institutionalized; or

(C) A public or private place not designed for, or ordinarily used as, a regular sleeping accommodation for human beings.

A "homeless family" does not include any individual imprisoned or otherwise detained pursuant to an Act of the Congress or a State law.

(4) For purposes of paragraph (f)(1) of this section, Single Room Occupancy (SRO) Housing (as defined in 24 CFR 882.102) is not substandard solely because it does not contain sanitary or food preparation facilities (or both).

(g) *Verification procedures for applicants living in substandard housing.* Verification that an applicant is living in substandard housing consists of certification, in a form prescribed by the Secretary, from a unit or agency of government or from an applicant's present landlord that the applicant's unit has one or more of the deficiencies listed in, or the unit's condition is as described in, paragraph (f) (1) or (2) of this section. In the case of a "homeless family" (as described in paragraph (f) (3) of this section), verification consists of certification, in a form prescribed by the Secretary, of this status from a public or private facility that provides shelter for such individuals, or from the local police department or social services agency.

(h) *Definition of family income.* For purposes of this section, family income is Monthly Income, as defined in 24 CFR 813.102.

(i) *Definition of rent.* (1) For purposes of this section, rent is defined as:

(i) The actual amount due, calculated on a monthly basis, under a lease or occupancy agreement between a family and the family's current landlord; and

(ii) In the case of utilities purchased directly by tenants from utility providers,

(A) The utility allowance (if any) determined for the Section 8 Existing Housing program under 24 CFR Part 882, Subparts A and B, for tenant-purchased utilities (except telephone) and the other housing services that are normally included in rent; or

(B) If the family chooses, the average monthly payments that it actually made for these utilities and services for the most recent 12-month period or, if information is not obtainable for the entire period, for an appropriate recent period.

(2) For purposes of calculating rent under this paragraph (i), amounts paid to or on behalf of a family under any energy assistance program must be subtracted from the otherwise

applicable rental amount, to the extent that they are not included in the family's income.

(3) In the case of an applicant who owns a manufactured home, but who rents the space upon which it is located, rent under this paragraph (i) includes the monthly payment to amortize the purchase price of the home, as calculated in accordance with HUD's requirements.

(4) In the case of an applicant who resides within the jurisdiction of an Indian Housing Authority (IHA) that is not administering a Section 8 Existing Housing program, the applicable utility allowance for purposes of calculating rent under paragraph (i)(1)(ii)(A) of this section will be determined under 24 CFR Part 965, Subpart E.

(5) In the case of members of a cooperative, rent under this paragraph (i) means the charges under the occupancy agreement between the members and the cooperative.

(j) *Verification of an applicant's income, rent, and utilities payments.* The owner must verify that an applicant is paying more than 50 percent of family income, as follows:

(1) The owner must verify a family's income in accordance with standards and procedures that it uses to verify income for purposes of determining applicant eligibility and Total Tenant Payment under 24 CFR Part 813.

(2)(i) The owner must verify the amount due to the family's landlord (or cooperative) under the lease or occupancy aggreement—

(A) By requiring the family to furnish copies of its most recent rental (or cooperative charges) receipts (which may include cancelled checks or money order receipts) or a copy of the family's current lease or occupancy agreement, or

(B) By contacting the landlord or its agent directly.

(ii) The owner must verify the amount paid to amortize the purchase price of a manufactured home—

(A) By requiring the family to furnish copies of its most recent payment receipts (which may include cancelled checks or money order receipts) or a copy of the family's current purchase agreement, or

(B) By contacting the lienholder directly.

(3) To verify the actual amount that a family paid for utilities and other housing services, the owner must require the family to provide copies of the appropriate bills or receipts, or must obtain the information directly from the utility or service supplier.

(k) *Notice and opportunity for a meeting where Federal preference is denied.* If the owner determines that an applicant does not meet the criteria for receiving a Federal preference, the owner must promptly provide the applicant with written notice of the determination. The notice must contain a brief statement of the reasons for the determination, and state that the applicant has the right to meet the owner or the owner's designee to review it. If requested, the meeting must be conducted by a person or persons designated by the owner. Those designated may be an officer or employee of the owner, including the person who made or reviewed the determination, or his or her subordinate. The procedures specified in this paragraph (k) must be carried out in accordance with HUD's requirements. The applicant may exercise other rights if the applicant believes that he or she has been discriminated against on the basis of race, color, religion, sex, national origin, age, or handicap.

(l) *Effective date.* Housing owners must implement the provisions of this section no later than July 13, 1988.

PART 904—LOW RENT HOUSING HOMEOWNERSHIP OPPORTUNITIES

33. The authority citation for 24 CFR Part 904 continues to read as follows:

Authority: United States Housing Act of 1937 (42 U.S.C. 1437–1437q); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

34. In § 904.104, paragraphs (c), (f)(1), and (g)(2) are revised to read as follows:

§ 904.104 Eligibility and selection of homebuyers.

* * * * *

(c) *Determination of eligibility and preparation of list.* The LHA, without participation of a recommending committee (see paragraph (e)(1) of this section), will determine whether each applicant family is income-eligible for the development, and will assign each eligible applicant his or her appropriate place on a waiting list for the development, in sequence based upon the date of the application, suitable type or size of unit, qualification for a Federal preference in accordance with § 904.122, and factors affecting preference or priority established by the LHA's regulations. Notwithstanding the fact that the LHA may not be accepting additional applications because of the length of the waiting list, the LHA may not refuse to place an applicant on the waiting list if the applicant is otherwise eligible for participation and claims that he or she qualifies for a Federal preference as provided in § 904.122(c)(2), unless the LHA determines, on the basis of the number of applicants who are already on the waiting list and who claim a Federal preference, and the anticipated number of admissions to housing under Turnkey III, that—

(1) There is an adequate pool of applicants who are likely to qualify for a Federal preference and

(2) It is unlikely that, on the basis of the LHA's system for applying the Federal preferences, the preference or preferences that the applicant claims, and the preferences claimed by applicants on the waiting list, the applicant would qualify for admission before other applicants on the waiting list.

* * * * *

(f) * * *

(1) Selection procedures that do not automatically deny admission to a particular class; that ensure selection on a nondiscriminatory and nonsegregated basis; that give a Federal preference in accordance with § 904.122; and that facilitate achievement of the anticipated results for occupancy stated in the approved Affirmative Fair Housing Marketing Plan.

* * * * *

(g) * * *

(2) Applicants who are not selected for a specific Turnkey III development will be so notified in accordance with HUD-approved procedure. The notice will state the reason for the applicant's rejection (including a nonrecommendation by the recommending committee, unless the applicant has previously been so notified by the committee) and that the applicant will be given an informal hearing on such determination, regardless of the reason for the rejection, if the applicant makes a request for such a hearing within a reasonable time (to be specified in the notice) from the date of the notice. The informal review provisions for the denial of a Federal preference under § 904.122 are contained in paragraph (k) of that section.

35. In Part 904, a new § 904.122 is added, to read as follows:

§ 904.122 Federal selection preferences.

(a) *General.* (1) In selecting applicants for admission to housing under Turnkey III, each LHA must give preference to applicants who are otherwise eligible and who, at the time they are seeking housing assistance, are involuntarily displaced, living in substandard housing, or paying more than 50 percent of family income for rent.

(2)(i) The LHA must inform all applicants for admission to housing under Turnkey III of the availability of the Federal preferences, and must give

all applicants an opportunity to show that they qualify for a preference. For purposes of this paragraph (a)(2)(i), applicants include families on any waiting list for admission maintained by the LHA when this section is implemented or thereafter.

(ii) If the LHA determines that the notification to all applicants on a waiting list required by paragraph (a)(2)(i) of this section is impracticable because of the length of the list, the LHA may provide this notification to fewer than all applicants on the list at any given time. The LHA must, however, have notified a sufficient number of applicants at any given time that, on the basis of the LHA's determination of the number of applicants on the waiting list who already claim a Federal preference, and the anticipated number of admissions to the project:

(A) There is an adequate pool of applicants who are likely to qualify for a Federal preference; and

(B) It is unlikely that, on the basis of the LHAs framework for applying the preferences under paragraph (b) and the preferences claimed by those already on the waiting list, any applicant who has not been so notified would be admitted to housing under Turnkey III before those who have received notification.

(3) An LHA must apply the definitions of "standard, permanent replacement housing"; "involuntary displacement"; "substandard housing" and "homeless family"; "family income"; and "rent" set forth in paragraphs (c)(5), (d), (f), (h), and (i), respectively, of this section, unless the LHA submits alternative definitions for HUD's review and approval. An LHA may apply the verification procedures found in paragraphs (e), (g), and (j) of this section, or they may, in its own discretion and without HUD approval, adopt verification procedures of its own.

(4) For purposes of this section, the term "Federal preference" means a tenant selection preference provided under section. The term "preference" means a Federal preference, unless the context indicates otherwise.

(b) *Applying the Federal preferences.* (1) Each LHA must include the Federal preferences in its selection policies and procedures. The LHA must apply the Federal preferences in a maner that is consistent with the provisions of this section, the nondiscrimination and other requirements of § 904.104, and other applicable requirements.

(2)(i) Except as provided in paragraph (b)(2)(ii) of this section, the LHA must establish a system for applying the Federal preferences that provides that an applicant who qualifies for any of the Federal preferences is to be admitted to housing under Turnkey III before any other applicant who is not so qualified, without regard to the other applicant's qualification for one or more preferences or priorities that are not provided by Federal law, place on the waiting list, or the time of submission of an application for assistance.

(ii) The LHA's system for applying the Federal preferences may provide for circumstances in which applicants who do not qualify for a Federal preference are admitted to housing under Turnkey III before other applicants who are so qualified. Not more than 10 percent of the applicants who are initially admitted in any one-year period (or such shorter period selected by the LHA before the beginning of its first full year under this paragraph (b)(2)(ii) may be applicants referred to in the preceding sentence.

(iii) In applying the preferences under this paragraph (b)(2), the LHA may determine the relative weight to be accorded the Federal preferences, through means such as:

(A) Applying non-Federal preferences or priorities (such as local residency preferences) as a way of ranking applicants who qualify (or claim qualification) for a Federal preference;

(B) Aggregating the Federal preferences (*i.e.*, two Federal preferences outweigh one and three outweigh two);

(C) Ranking the Federal preferences (*e.g.*, provide that an applicant living in substandard housing has greater need for housing than (and, therefore, would be considered for assistance before) an applicant paying more than 50 percent of income for rent); or

(D) Ranking the Federal preferences' definitions elements (*e.g.*, provide that those living in housing that is dilapidated or has been declared unfit for habitation by an agency or unit of government have a greater need for housing than and, take precedence over, those whose housing is substandard only because it does not have a usable bathtub or shower inside the unit for the exclusive use of the family).

(3) Requirements or preferences for those living in the jurisdiction of the LHA at the time of application are permissible, subject to the following: no requirement or preference may be based upon the identity or location of the housing that is occupied or proposed to be occupied by the applicant, nor upon the length of time the applicant has resided in the jurisdiction; applicants who are working or who have been notified that they are hired to work in the jurisdiction will be treated as residents of the jurisdiction.

(c) *Qualifying for a Federal preference.* (1) An applicant qualifies for a Federal preference if—

(1) The applicant has been involuntarily displaced and is not living in standard, permanent replacement housing, or within no more than six months from the date of certification under paragraph (c)(2) of this section or verification under paragraph (c)(3) of this section (as appropriate), the applicant will be involuntarily displaced;

(ii) The applicant is living in substandard housing; or

(iii) The applicant is paying more than 50 percent of family income for rent.

(2) Applicants may claim qualification for a Federal preference when they apply for admission (or thereafter until they are selected for a Turnkey III development) by certifying to the LHA that they qualify for preference under paragraph (c)(1) of this section. An LHA must accept this certification, unless the LHA verifies that the applicant is not qualified for a Federal preference.

(3) Before executing a Homebuyers Ownership Opportunity Agreement with an applicant who has been selected on the basis of a Federal preference, the LHA must require the applicant to provide verification that he or she qualifies for a preference under paragraph (c)(1) of this section by virtue of the applicant's current status. The applicant's current status must be determined without regard to whether there has been a change in the applicant's qualification for a preference between the certification under paragraph (c)(2) of this section and execution of a Homebuyers Ownership Opportunity Agreement, including a change from one Federal preference category to another).

(4) If an applicant's qualification for a Federal preference under paragraph (c)(1) of this section has once been verified, an LHA need not require the applicant to verify such qualification again, unless, as determined by the LHA, such a long time has elapsed since verification as to make reverification desirable, or the LHA has reasonable grounds to believe that the applicant no longer qualifies for a Federal preference.

(5) For purposes of this paragraph (c), "standard, permanent replacement housing" is housing—

(i) That is decent, safe, and sanitary;

(ii) That is adequate for the family size; and

(iii) That the family is occupying pursuant to a lease or occupancy agreement.

Such housing does not include transient facilities, such as motels, hotels, or

temporary shelters for victims of domestic violence or homeless families, and in the case of domestic violence referred to in paragraph (d)(2) of this section, does not include the housing unit in which the applicant and the applicant's spouse or other member of the household who engages in such violence live.

(6) An applicant may not qualify for a Federal preference under paragraph (c)(1)(iii) of this section if the applicant is paying more than 50 percent of family income to rent a unit because the applicant's housing assistance under the United States Housing Act of 1937 or section 101 of the Housing and Urban Development Act of 1965 with respect to that unit has been terminated as a result of the applicant's refusal to comply with applicable program policies and procedures with respect to the occupancy of underoccupied and overcrowded units.

(d) *Definition of involuntary displacement.* (1) An applicant is or will be involuntarily displaced if the applicant has vacated or will have to vacate his or her housing unit as a result of one or more of the following actions:

(i) A disaster, such as a fire or flood, that results in the uninhabitability of an applicant's unit;

(ii) Activity carried on by an agency of the United States or by any State or local governmental body or agency in connection with code enforcement or a public improvement or development program; or

(iii) Action by a housing owner that results in an applicant's having to vacate his or her unit, where;

(A) The reason for the owner's action is beyond an applicant's ability to control or prevent;

(B) The action occurs despite an applicant's having met all previously imposed conditions of occupancy; and

(C) The action taken is other than a rent increase.

(2) An applicant also is involuntarily displaced if—

(i) The applicant has vacated his or her housing unit as a result of actual or threatened physical violence directed against the applicant or one or more members of the applicant's family by a spouse or other member of the applicant's household; or

(ii) The applicant lives in a housing unit with such an individual who engages in such violence.

For purposes of this paragraph (d)(2), the actual or threatened violence must, as determined by the LHA in accordance with HUD's administrative instructions, have occurred recently or be of a continuing nature.

(3) For purposes of paragraph (d)(1)(iii) of this section, reasons for an applicant's having to vacate a housing unit include, but are not limited to, conversion of an applicant's housing unit to non-rental or non-residential use; closure of an applicant's housing unit for rehabilitation or for any other reason; notice to an applicant that he or she must vacate a unit because the owner wants the unit for the owner's personal or family use or occupancy; sale of a housing unit in which an applicant resides under an agreement that the unit must be vacant when possession is transferred; or any other legally authorized act that results or will result in the withdrawal by the owner of the unit or structure from the rental market. Such reasons do not include the vacating of a unit by a tenant as a result of actions taken because of the tenant's refusal—

(i) To comply with applicable program policies and procedures under this title with respect to the occupancy of underoccupied and overcrowded units or

(ii) To accept a transfer to another housing unit in accordance with a court decree or in accordance with such policies and procedures under a HUD-approved desegregation plan.

(e) *Verification procedures for applicants involuntarily displaced.* Verification of an applicant's involuntary displacement is established by the following documentation:

(1) Certification, in a form prescribed by the Secretary, from a unit or agency of government that an applicant has been or will be displaced as a result of a disaster, as defined in paragraph (d)(1)(i) of this section;

(2) Certification, in a form prescribed by the Secretary, from a unit or agency of government that an applicant has been or will be displaced by government action, as defined in paragraph (d)(1)(ii) of this section;

(3) Certification, in a form prescribed by the Secretary, from an owner or owner's agent that an applicant had to, or will have to, vacate a unit by a date certain because of an owner action referred to in paragraph (d)(1)(iii) of this section; or

(4) Certification, in a form prescribed by the Secretary, of displacement because of the domestic violence referred to in paragraph (d)(2) of this section, from the local police department, social services agency, or court of competent jurisdiction, or a clergyman, physician, or public or private facility that provides shelter or counseling to the victims of domestic violence.

(f) *Definition of substandard housing.* (1) A unit is substandard if it:

(i) Is dilapidated;

(ii) Does not have operable indoor plumbing;

(iii) Does not have a usable flush toilet inside the unit for the exclusive use of a family;

(iv) Does not have a usable bathtub or shower inside the unit for the exclusive use of a family;

(v) Does not have electricity, or has inadequate or unsafe electrical service;

(vi) Does not have a safe or adequate source of heat;

(vii) Should, but does not, have a kitchen; or

(viii) Has been declared unfit for habitation by an agency or unit of government.

(2) For purposes of paragraph (f)(1) of this section, a housing unit is dilapidated if it does not provide safe and adequate shelter, and in its present condition endangers the health, safety, or well-being of a family, or it has one or more critical defects, or a combination of intermediate defects in sufficient number or extent to require considerable repair or rebuilding. The defects may involve original construction, or they may result from continued neglect or lack of repair or from serious damage to the structure.

(3) For purposes of this paragraph (f), an applicant who is a "homeless family" is living in substandard housing. For purposes of the preceding sentence, a "homeless family" includes any individual or family who:

(i) Lacks a fixed, regular, and adequate nighttime residence; and

(ii) Has a primary nighttime residence that is:

(A) A supervised publicly or privately operated shelter designed to provide temporary living accommodations (including welfare hotels, congregate shelters, and transitional housing for the mentally ill);

(B) An institution that provides a temporary residence for individuals intended to be institutionalized; or

(C) A public or private place not designed for, or ordinarily used as, a regular sleeping accommodation for human beings.

A "homeless family" does not include any individual imprisoned or otherwise detained pursuant to an Act of the Congress or a State law.

(4) For purposes of paragraph (f)(1) of this section, Single Room Occupancy (SRO) Housing (as defined in 24 CFR 882.102) is not substandard solely because it does not contain sanitary or food preparation facilities (or both).

(g) *Verification procedures for applicants living in substandard housing.* Verification that an applicant is living in substandard housing consists of certification, in a form prescribed by the Secretary, from a unit or agency of government or from an applicant's present landlord that the applicant's unit has one or more of the deficiencies listed in, or the unit's condition is as described in, paragraph (f) (1) or (2) of this section. In the case of a "homeless family" (as described in paragraph (f)(3) of this section), verification consists of certification, in a form prescribed by the Secretary, of this status from a public or private facility that provides shelter for such individuals, or from the local police department or social services agency.

(h) *Definition of family income.* For purposes of this section, family income is Monthly Income, as defined in 24 CFR 913.102.

(i) *Definition of rent.* (1) For purposes of this section, rent is defined as:

(i) The actual amount due, calculated on a monthly basis, under a lease or occupancy agreement between a family and the family's current landlord; and

(ii) In the case of utilities purchased directly by tenants from utility provides,

(A) The LHA's reasonable estimate of tenant-purchased utilities (except telephone) and the other housing services that are normally included in rent; or

(B) If the family chooses, the average monthly payments that it actually made for these utilities and services for the most recent 12-month period or, if information is not obtainable for the entire period, for an appropriate recent period.

(2) For purposes of calculating rent under this paragraph (i), amounts paid to or on behalf of a family under any energy assistance program must be subtracted from the otherwise applicable rental amount to the extent that they are not included in the family's income.

(3) In the case of an applicant who owns a manufactured home, but who rents the space upon which it is located, rent under this paragraph (i) includes the monthly payment to amortize the purchase price of the home, as calculated in accordance with HUD's requirements.

(4) In the case of members of a cooperative, rent under this paragraph (i) means the charges under the occupancy agreement between the members and the cooperative.

(j) *Verification of an applicant's income, rent, and utilities payments.* The LHA must verify that an applicant is paying more than 50 percent of family income for rent, as follows:

(1) The LHA must verify a family's income in accordance with the standards and procedures that it uses to verify income for the purpose of determining applicant eligibility and Total Tenant Payment under 24 CFR Part 913.

(2)(i) The LHA must verify the amount due to the family's landlord (or cooperative) under the lease or occupancy agreement—

(A) By requiring the family to furnish copies of its most recent rental (or cooperative charges) receipts (which may include cancelled checks or money order receipts) or a copy of the family's current lease or occupancy agreement, or

(B) By contacting the landlord (or cooperative) or its agent directly.

(ii) The LHA must verify the amount paid to amortize the purchase price of a manufactured home—

(A) By requiring the family to furnish copies of its most recent payment receipts (which may include cancelled checks or money order receipts) or a copy of the family's current purchase agreement, or

(B) By contacting the lienholder directly.

(3) To verify the actual amount that a family paid for utilities and other housing services, the LHA must require the family to provide copies of the appropriate bills or receipts, or must obtain the information directly from the utility or service supplier.

(k) *Notice and opportunity for a meeting where Federal preference is denied.* If the LHA determines that an applicant does not meet the criteria for receiving a Federal preference, the LHA must promptly provide the applicant with written notice of the determination. The notice must contain a brief statement of the reasons for the determination, and state that the applicant has the right to meet with the LHA's designee to review it. If requested, the meeting must be conducted by a person or persons designated by the LHA. Those designated may be an officer or employee of the LHA, including the person who made or reviewed the determination, or his or her subordinate. The procedures specified in this paragraph (k) must be carried out in accordance with HUD's requirements. The applicant may exercise other rights if the applicant believes that he or she has been discriminated against on the basis of race, color, religion, sex, national origin, age, or handicap.

(l) *Effective date.* LHAs must implement the provisions of this section no later than July 13, 1988.

PART 905—INDIAN HOUSING

36. The authority citation for 24 CFR Part 905 continues to read as follows:

Authority: Secs. 3, 4, 5, 6, 9, 11, 12, and 16, United States Housing Act of 1937 (42 U.S.C. 1437a, 1437b, 1437c, 1437d, 1437g, 1437i, 1437j, and 1437n); sec. 7(b), Indian Self-Determination and Education Assistance Act (25 U.S.C. 450e(b)); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

37. Section 905.302 is amended by revising paragraphs (b)(2) (ii) and (iii), and by adding a new paragraph (b)(2)(iv), to read as follows:

§ 905.302 Admission policies.

* * * * *

(b) * * *

(2) * * *

(ii) To avoid concentrations of the most economically and socially deprived families in any one or all of the IHA's Projects;

(iii) To achieve compliance with the applicable provisions of Part 913 of this chapter, including, but not limited to, §§ 913.103 through 913.105, which specify the requirements concerning income levels of families who would otherwise qualify; and

(iv) To give a preference in the selection of tenants and Homebuyers (in accordance with § 905.313) to families that at the time they are seeking housing assistance, are involuntarily displaced, living in substandard housing, or paying more than 50 percent of family income for rent.

38. In Part 905, a new § 905.313 is added, to read as follows:

§ 905.313 Federal selection preferences.

(a) *General.* (1) In selecting applicants for admission to its projects, each IHA must give preference to applicants who are otherwise eligible for assistance and who, at the time they are seeking housing assistance, are involuntarily displaced, living in substandard housing, or paying more than 50 percent of family income for rent.

(2)(i) The IHA must inform all applicants for assistance of the availability of the Federal preferences, and must give all applicants an opportunity to show that they qualify for a preference. For purposes of this paragraph (a)(2)(i), applicants include families on any waiting list for assistance maintained by the IHA when this section is implemented or thereafter.

(ii) If the IHA determines that the notification to all applicants on a waiting list required by paragraph (a)(2)(i) of this section is impracticable

because of the length of the list, the IHA may provide this notification to fewer than all applicants on the list at any given time. The IHA must, however, have notified a sufficient number of applicants at any given time that, on the basis of the IHA's determination of the number of applicants on the waiting list who already claim a Federal preference, and the anticipated number of project admissions:

(A) There is an adequate pool of applicants who are likely to qualify for a Federal preference; and

(B) It is unlikely that, on the basis of the IHA's framework for applying the preferences under paragraph (b) and the preferences claimed by those already on the waiting list, any applicant who has not been so notified would receive assistance before those who have received notification.

(3) An IHA must apply the definitions of "standard, permanent replacement housing"; "involuntary displacement"; "substandard housing" and "homeless family"; "family income"; and "rent" set forth in paragraphs (c)(5), (d), (f), (h), and (i), respectively, of this section, unless the IHA submits alternative definitions for HUD's review and approval. An IHA may apply the verification procedures found in paragraphs (e), (g), and (j) of this section, or it may, in its own discretion and without HUD approval, adopt verification procedures of its own.

(4) For purposes of this section, the term "Federal preference" means a tenant selection preference provided under this section. The term "preference" means a Federal preference, unless the context indicates otherwise.

(b) *Applying the Federal preferences.* (1) Each IHA must include the Federal preferences in its tenant selection policies and procedures. The IHA must apply the Federal preferences in a manner that is consistent with the provisions of this section, and other applicable requirements.

(2)(i) Except as provided in paragraph (b)(2)(ii) of this section, the IHA must establish a system for applying the Federal preferences that provides than an applicant who qualifies for any of the Federal preferences is to receive assistance before any other applicant who is not so qualified without regard to the other applicant's qualification for one or more preferences or priorities that are not provided by Federal law, place on the waiting list, or the time of submission of an application for assistance.

(ii) The IHA's system for applying the Federal preferences may provide for circumstances in which applicants who do not qualify for a Federal preference receive assistance before other applicants who are so qualified. Not more than 10 percent of the applicants who initially receive assistance in any one-year period (or such shorter period selected by the IPH before the beginning of its first full year under this paragraph (b)(2)(ii) may be applicants referred to in the preceding sentence.

(iii) In applying the preferences under this paragraph (b)(2), the IHA may determine the relative weight to be accorded the Federal preferences, through means such as:

(A) Applying non-Federal preferences or priorities (such as local residency preferences) as a way of ranking applicants who qualify (or claim qualification) for a Federal preference;

(B) Aggregating the Federal preferences (*i.e.*, two Federal preferences outweigh one and three outweigh two);

(C) Ranking the Federal preferences (*e.g.*, provide that an applicant living in substandard housing has greater need for housing than (and, therefore, would be considered for assistance before) an applicant paying more than 50 percent of income for rent); or

(D) Ranking the Federal preferences' definitional elements (*e.g.*, provide that those living in housing that is dilapidated or has been declared unfit for habitation by an agency or unit of government have a greater need for housing than, and take precedence over, those whose housing is substandard only because it does not have a usable bathtub or shower inside the unit for the exclusive use of the family).

(3) To the extent that HUD has determined that Title VI of the Civil Rights Act of 1964 and Title VIII of the Civil Rights Act of 1968 apply to a tribal government, any selection preferences or priorities used by an IHA within such a tribe's jurisdiction must be established and administered in a manner that is consistent with HUD's affirmative fair housing objectives and that is not incompatible with Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d; Title VIII of the Civil Rights Act of 1968, 42 U.S.C. 3601–19; Executive Order 11063 on Equal Opportunity in Housing, 27 FR 11527 (1962), *as amended*, 46 FR 1253 (1980); Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. 794; the Age Discrimination Act of 1975, 42 U.S.C. 6101–07; or HUD's regulations and requirements issued under these authorities.

(4) The IHA must submit to HUD any selection preference system that uses a local residency preference, for review for consistency with the requirements of paragraph (b)(3) of this section, but HUD approval is not required before the IHA may implement the system.

(c) *Qualifying for a Federal preference.* (1) An applicant qualifies for a Federal preference if—

(i) The applicant has been involuntarily displaced and is not living in standard, permanent replacement housing, or within no more than six months from the date of certification under paragraph (c)(2) of this section or verification under paragraph (c)(3) of this section (as appropriate), the applicant will be involuntarily displaced;

(ii) The applicant is living in substandard housing; or

(iii) The applicant is paying more than 50 percent of family income for rent.

(2) Applicants may claim qualification for a Federal preference when they apply for admission to a project (or thereafter until they are offered a unit in the project) by certifying to the IHA that they qualify for a preference under paragraph (c)(1) of this section. An IHA must accept this certification, unless the IHA verifies that the applicant is not qualified for a Federal preference.

(3) Before an applicant is admitted to a project on the basis of a Federal preference, the IHA must require the applicant to provide verification that he or she qualifies for a Federal preference under paragraph (c)(1) of this section by virtue of the applicant's current status. The applicant's current status must be determined without regard to whether there has been a change in the applicant's qualification for a preference between the certification under paragraph (c)(2) of this section and admission to a project, including a change from one Federal preference category to another.

(4) If an applicant's qualification for a Federal preference under paragraph (c)(1) of this section has once been verified, an IHA need not require the applicant to verify such qualification again, unless, as determined by the IHA, such a long time has elapsed since verification as to make reverification desirable, or the IHA has reasonable grounds to believe that the applicant no longer qualifies for a Federal preference.

(5) For purposes of this paragraph (c), "standard, permanent replacement housing" is housing—

(i) That is decent, safe, and sanitary;

(ii) That is adequate for the family size; and

(iii) That the family is occupying pursuant to a lease or occupancy agreement.

Such housing does not include transient facilities, such as motels, hotels, or temporary shelters for victims of

domestic violence or homeless families, and in the case of domestic violence referred to in paragraph (d)(2), of this section, does not include the housing unit in which the applicant and the applicant's spouse or other member of the household who engages in such violence live.

(6) An applicant may not qualify for a Federal preference under paragraph (c)(1)(iii) of this section if the applicant is paying more than 50 percent of family income to rent a unit because the applicant's housing assistance under the United States Housing Act of 1937 or section 101 of the Housing and Urban Development Act of 1965 with respect to that unit has been terminated as a result of the applicant's refusal to comply with applicable program policies and procedures with respect to the occpancy of underoccupied and overcrowded units.

(d) *Definition of involuntary displacement.* (1) An applicant is or will be involuntarily displaced if the applicant has vacated or will have to vacate his or her housing unit as a result of one or more of the following actions:

(i) A disaster, such as a fire or flood, that results in the uninhabitability of an applicant's unit;

(ii) Activity carried on by an agency of the United States or by any State or local governmental body or agency in connection with code enforcement or a public improvement or development program; or

(iii) Action by a housing owner that results in an applicant's having to vacate his or her unit, where:

(A) The reason for the owner's action is beyond an applicant's ability to control or prevent;

(B) The action occurs despite an applicant's having met all previously imposed conditions of occupancy; and

(C) The action taken is other than a rent increase.

(2) An applicant also is involuntarily displaced if—

(i) The applicant has vacated his or her housing unit as a result of actual or threatened physical violence directed against the applicant or one or more members of the applicant's family by a spouse or other member of the applicant's household; or

(ii) The applicant lives in a housing unit with such an individual who engages in such violence.

For purposes of this paragraph (d)(2), the actual or threatened violence must, as determined by the IHA in accordance with HUD's administrative instructions, have occurred recently or be of a continuing nature.

(3) For purposes of paragraph (d)(1)(iii) of this section, reasons for an applicant's having to vacate a housing unit include, but are not limited to, conversion of an applicant's housing unit to non-rental or non-residential use; closure of an applicant's housing unit for rehabilitation or for any other reason; notice to an applicant that he or she must vacate a unit because the owner wants the unit for the owner's personal or family use or occupancy; sale of a housing unit in which an applicant resides under an agreement that the unit must be vacant when possession is transferred; or any other legally authorized act that results or will result in the withdrawal by the owner of the unit or structure from the rental market. Such reasons do not include the vacating of a unit by a tenant as a result of actions taken because of the tenant's refusal (i) to comply with applicable program policies and procedures under this title with respect to the occupancy of underoccupied and overcrowded units or (ii) to accept a transfer to another housing unit in accordance with a court decree or in accordance with such policies and procedures under a HUD-approved desegregation plan.

(e) *Verification procedures for applicants involuntarily displaced.* Verification of an applicant's involuntary displacement is established by the following documentation:

(1) Certification, in a form prescribed by the Secretary, from a unit or agency of government that an applicant has been or will be displaced as a result of a disaster, as defined in paragraph (d)(1)(i) of this section;

(2) Certification, in a form prescribed by the Secretary, from a unit or agency of government that an applicant has been or will be displaced by government action, as defined in paragraph (d)(1)(ii) of this section;

(3) Certification, in a form prescribed by the Secretary, from an owner or owner's agent that an applicant had to, or will have to, vacate a unit by a date certain because of an owner action referred to in paragraph (d)(1)(iii) of this section; or

(4) Certification, in a form prescribed by the Secretary, of displacement because of the domestic violence referred to in paragraph (d)(2) of this section, from the local police department, social services agency, or court of competent jurisdiction, or a clergyman, physician, or public or private facility that provides shelter or counseling to the victims of domestic violence.

(f) *Definition of substandard housing.* (1) A unit is substandard if it:

(i) Is dilapidated;

(ii) Does not have operable indoor plumbing;

(iii) Does not have a usable flush toilet inside the unit for the exclusive use of a family;

(iv) Does not have a usable bathtub or shower inside the unit for the exclusive use of a family;

(v) Does not have electricity, or has inadequate or unsafe electrical service;

(vi) Does not have a safe or adequate source of heat;

(vii) Should, but does not, have a kitchen; or

(viii) Has been declared unfit for habitation by an agency or unit of government.

(2) For purposes of paragraph (f)(1) of this section, a housing unit is dilapidated if it does not provide safe and adequate shelter, and in its present condition endangers the health, safety, or well-being of a family, or it has one or more critical defects, or a combination of intermediate defects in sufficient number or extent to require considerable repair or rebuilding. The defects may involve original construction, or they may result from continued neglect or lack of repair or from serious damage to the structure.

(3) For purposes of this paragraph (f), an applicant who is a "homeless family" is living in substandard housing. For purposes of the preceding sentence, a "homeless family" includes any individual or family who:

(i) Lacks a fixed, regular, and adequate nighttime residence; and

(ii) Has a primary nighttime residence that is:

(A) A supervised publicly or privately operated shelter designed to provide temporary living accommodations (including welfare hotels, congregate shelters, and transitional housing for the mentally ill);

(B) An institution that provides a temporary residence for individuals intended to be institutionalized; or

(C) A public or private place not designed for, or ordinarily used as, a regular sleeping accommodation for human beings. A "homeless family" does not include any individual imprisoned or otherwise detained pursuant to an Act of the Congress or a State law.

(4) For purposes of paragraph (f)(1) of this section, Single Room Occupancy (SRO) Housing (as defined in 24 CFR 882.102) is not substandard solely because it does not contain sanitary or food preparation facilities (or both).

(g) *Verification procedures for applicants living in substandard housing.* Verification that an applicant is living in substandard housing consists of certification, in a form prescribed by the Secretary, from a unit or agency of

government or from an applicant's present landlord that the applicant's unit has one or more of the deficiencies listed in, or the unit's condition is as described in, paragraph (f) (1) or (2) of this section. In the case of a "homeless family" (as described in paragraph (f)(3) of this section), verification consists of certification, in a form prescribed by the Secretary, of this status from a public or private facility that provides shelter for such individuals, or from the local police department or social services agency.

(h) *Definition of family income.* For purposes of this section, family income is Monthly Income, as defined in 24 CFR 913.102.

(i) *Definition of rent.*

(1) For purposes of this section, rent is defined as:

(i) The actual amount due, calculated on a monthly basis, under a lease or occupancy agreement between a family and the family's current landlord; and

(ii) In the case of utilities purchased directly by tenants from utility providers,

(A) The IHA's reasonable estimate of tenant-purchased utilities (except telephone) and the other housing services that are normally included in rent; or

(B) If the family chooses, the average monthly payments that it actually made for these utilities and services for the most recent 12-month period or, if information is not obtainable for the entire period, for an appropriate recent period.

(2) For purposes of calculating rent under this paragraph (i), amounts paid to or on behalf of a family under any energy assistance program must be subtracted from the otherwise applicable rental amount to the extent that they are not included in the family's income.

(3) In the case of an applicant who owns a manufactured home, but who rents the space upon which it is located, rent under this paragraph (i) includes the monthly payment to amortize the purchase price of the home, as calculated in accordance with HUD's requirements.

(4) In the case of members of a cooperative, rent under this paragraph (i) means the charges under the occupancy agreement between the members and the cooperative.

(j) *Verification of an applicant's income, rent, and utilities payments.* The IHA must verify that an applicant is paying more than 50 percent of family income for rent, as follows:

(1) The IHA must verify the family's income in accordance with the standards and procedures that it uses to verify income for the purpose of determining applicant eligibility and Total Tenant Payment under 24 CFR Part 913.

(2)(i) An IHA must verify the amount due to the family's landlord (or cooperative) under the lease or occupancy agreement—

(A) By requiring the family to furnish copies of its most recent rental (or cooperative charges) receipts (which may include cancelled checks or money order receipts) or a copy of the family 's current lease or occupancy agreement, or

(B) By contacting the landlord (or cooperative) or its agent directly.

(ii) An IHA must verify the amount paid to amortize the purchase price of a manufactured home—

(A) By requiring the family to furnish copies of its most recent payment receipts (which may include cancelled checks or money order receipts) or a copy of the family current purchase agreement, or

(B) By contacting the lienholder directly.

(3) To verify the actual amount that a family paid for utilities and other housing services, the IHA must require the family to provide copies of the appropriate bills or receipts, or must obtain the information directly from the utility or service supplier.

(k) *Notice and opportunity for a meeting where Federal preference is denied.* If the IHA determines that an applicant does not meet the criteria for receiving a Federal preference, the IHA must promptly provide the applicant with written notice of the determination. The notice must contain a brief statement of the reasons for the determination, and state that the applicant has the right to meet with the IHA's designee to review it. If requested, the meeting must be conducted by a person or persons designated by the IHA. Those designated may be an officer or employee of the IHA, including the person who made or reviewed the determination, or his or her subordinate. The procedures specified in this paragraph (k) must be carried out in accordance with HUD's requirements. The applicant may exercise other rights if the applicant believes that he or she has been discriminated against on the basis of race, color, religion, sex, national origin, age, or handicap.

(l) *Closure of waiting list.* Notwithstanding the fact that the IHA may not be accepting additional applications because of the length of the waiting list, the IHA may not refuse to place an applicant on the waiting list if the applicant is otherwise eligible for assistance and claims that he or she qualifies for a Federal preference under this section, unless the IHA determines, on the basis of the number of applicants who are already on the waiting list and who claim a Federal preference, and the anticipated number of project admissions, that—

(1) There is an inadequate pool of applicants who are likely to qualify for a Federal preference and

(2) It is unlikely that, on the basis of the IHA's system for applying the Federal preferences, the preference or preferences that the applicant claims, and the preferences claimed by applicants on the waiting list, the applicant would qualify for assistance before other applicants on the waiting list.

(m) *Effective date.* IHAs must implement the provisions of this section no later than July 13, 1988.

39. In § 905.406, paragraph (d) is revised to read as follows:

§ 905.406 Selection of MH homebuyers.

* * * * *

(d) *Making the selections.* Promptly after HUD approval of the application for a Project, the IHA must proceed with selection of as many Homebuyers as there are homes in the Project. Selection of Homebuyers must be made from the MH waiting list in accordance with the date of application, qualification for a Federal preference in accordance with § 905.313, and other pertinent factors under the IHA's admissions regulations established in accordance with § 905.302. Selection of a Homebuyer will be made only after the site for that Homebuyer has received HUD final site approval and the form of MH contribution to be made by that Homebuyer has been determined. Notwithstanding the fact that IHA may not be accepting additional applications because of the length of the waiting list, the IHA may not refuse to place an applicant on the waiting list if the applicant is otherwise eligible for assistance and claims that he or she qualifies for a Federal preference as provided in § 905.313(c)(2), unless the IHA determines, on the basis of the number of applicants who are already on the waiting list and who claim a Federal preference, and the anticipated number of homes available, that—

(1) There is an adequate pool of applicants who are likely to qualify for a Federal preference and

(2) It is unlikely that, on the basis of the IHA's system for applying the Federal preferences, the preference or preferences that the applicant claims, and the preferences claimed by applicants on the waiting list, the applicant would qualify for assistance

before other applicants on the waiting list.

40. In § 905.407, paragraph (a) is revised to read as follows:

§ 905.407 Notification to applicant families.

(a) *Notification to families not meeting admission requirements.* When an IHA determines that a family does not meet the admission requirements, the IHA must give the family prompt written notice of this determination. The notice must state the basis for the determination, and that the family is entitled to an informal hearing by the IHA on the determination, if a request for such hearing is made within a reasonable time (as specified in the notice). The informal review provisions for the denial of a Federal preference under § 905.313 are contained in paragraph (k) of that section.

* * * * *

PART 960—ADMISSION TO, AND OCCUPANCY OF, PUBLIC HOUSING

41. The authority citation for 24 CFR Part 960 continues to read as follows:

Authority: Secs. 3, 5, 6, and 16, United States Housing Act of 1937 (42 U.S.C. 1437a, 1437c, 1437d, 1437n); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

42. In § 960.204, paragraph (b) is revised to read as follows:

§ 960.204 PHA tenant selection policies.

* * * * *

(b) Such policies and procedures must be designed to—

(1) Avoid concentrations of the most economically and socially deprived families in any one or all of the PHA's public housing projects;

(2) Preclude admission of applicants whose habits and practices reasonably may be expected to have a detrimental effect on the tenants or the project environment;

(3) Subject to the requirements and limitations of Part 913 of this chapter, attain, within a reasonable period of time, a tenant body in each project composed on families with a broad range of incomes and rent-paying ability that is generally representative of the range of incomes of lower income families in the PHA's area of operation, as defined in State law; and

(4) Give preference (in accordance with § 960.211) to applicants who are otherwise eligible for assistance and who, at the time they are seeking housing assistance, are involuntarily displaced, living in substandard housing, or paying more than 50 percent of family income for rent.

* * * * *

43. In § 960.206, paragraph (a) is revised to read as follows:

§ 960.206 Verification procedures.

(a) *General.* Adequate procedures must be developed to obtain and verify information with respect to each applicant. (See Part 913 of this chapter.) Information relative to the acceptance or rejection of an applicant, or the grant or denial of a Federal preference under § 960.211, must be documented and placed in the applicant's file.

* * * * *

44. Section 960.207 is revised to read as follows:

§ 960.207 Notification to applicants.

(a) The PHA must promptly notify any applicant determined to be ineligible for admission to a project of the basis for such determination, and must provide the applicant upon request, within a reasonable time after the determination is made, with an opportunity for an informal hearing on such determination. The informal review provisions for the denial of a Federal preference under § 960.211 are contained in paragraph (k) of that section.

(b) When a determination has been made that an applicant is eligible and satisfies all requirements for admission, including the tenant selection criteria, the applicant must be notified of the approximate date of occupancy insofar as that date can be reasonably determined. Notwithstanding the fact that the PHA may not be accepting additional applications for tenancy because of the length of the waiting list, the PHA may not refuse to place an applicant on the waiting list if the applicant is otherwise eligible for assistance and claims that he or she qualifies for a Federal preference as provided in § 960.211, unless the PHA determines, on the basis of the number of applicants who are already on the waiting list and who claim a Federal preference, and the anticipated number of project admissions, that—

(1) There is an adequate pool of applicants who are likely to qualify for a Federal preference and

(2) It is unlikely that, on the basis of the PHA's system for applying the Federal preferences, the preference or preferences that the applicant claims, and the preferences claimed by applicants on the waiting list, the applicant would qualify for assistance before other applicants on the waiting list.

45. In Part 960, a new § 960.211 is added, to read as follows:

§ 960.211 Federal selection preferences.

(a) *General.* (1) In selecting applicants for admission to its projects, each PHA must give preference to applicants who are otherwise eligible for assistance and who, at the time they are seeking housing assistance, are involuntarily displaced, living in substandard housing, or paying more than 50 percent of family income for rent.

(2)(i) The PHA must inform all applicants for assistance of the availability of the Federal preferences, and must give all applicants an opportunity to show that they qualify for a preference. For purposes of this paragraph (a)(2)(i), applicants include families on any waiting list for assistance maintained by the PHA when this section is implemented or thereafter.

(ii) If the PHA determines that the notification to all applicants on a waiting list required by paragraph (a)(2)(i) of this section is impracticable because of the length of the list, the PHA may provide this notification to fewer than all applicants on the list at any given time. The PHA must, however, have notified a sufficient number of applicants at any given time that, on the basis of the PHA's determination of the number of applicants on the waiting list who already claim a Federal preference, and the anticipated number of project admissions:

(A) There is an adequate pool of applicants who are likely to qualify for a Federal preference; and

(B) It is unlikely that, on the basis of the PHA's framework for applying the preferences under paragraph (b) and the preferences claimed by those already on the waiting list, any applicant who has not been so notified would receive assistance before those who have received notification.

(3) The PHA must apply the definitions of "standard, permanent replacement housing"; "involuntary displacement"; "substandard housing" and "homeless family"; "family income"; and "rent" set forth in paragraphs (c)(5), (d), (f), (h), and (i), respectively, of this section, unless the PHA submits alternative definitions of HUD's review and approval. The PHA may apply the verification procedures found in paragraphs (e), (g), and (j) of this section or it may, in its own discretion and without HUD approval, adopt verification procedures of its own, as provided in § 960.206.

(4) For purposes of this section, the term "Federal preference" means a tenant selection preference provided under this section. The term "preference" means a Federal

preference, unless the context indicates otherwise.

(b) *Applying the Federal preferences.* (1) Each PHA must include the Federal preferences in its tenant selection policies and procedures. The PHA must apply the Federal preferences in a manner that is consistent with the provisions of this section, the nondiscrimination requirements of § 960.203, the requirements with respect to tenant selection policies and procedures and standards and criteria under §§ 960.204 and 960.205 (including limitations on the use of residency preferences and requirements contained in § 960.204(e)), and other applicable requirements.

(2)(i) Except as provided in paragraph (b)(2)(ii) of this section, the PHA must establish a system for applying the Federal preferences that provides that an applicant who qualifies for any of the Federal preferences is to receive assistance before any other applicant who is not so qualified without regard to the other applicant's qualification for one or more preferences or priorities that are not provided by Federal law, place on the waiting list, or the time of submission of an application for assistance.

(ii) The PHA's system for applying the Federal preferences may provide for circumstances in which applicants who do not qualify for a Federal preference are provided assistance before other applicants who are so qualified. Not more than 10 percent of the applicants who initially receive assistance in any one-year period (or such shorter period selected by the PHA before the beginning of its first full year under this paragraph (b)(2)(ii)) may be applicants referred to in the preceding sentence.

(iii) In applying the preferences under this paragraph (b)(2), the PHA may determine the relative weight to be accorded the Federal preferences, through means such as:

(A) Applying non-Federal preferences or priorities (such as local residency preferences) as a way of ranking applicants who qualify (or claim qualification) for a Federal preference;

(B) Aggregating the Federal preferences (*i.e.*, two Federal preferences outweigh one and three outweigh two);

(C) Ranking the Federal preferences (*e.g.*, provide that an applicant living in substandard housing has greater need for housing than (and, therefore, would be considered for assistance before) an applicant paying more than 50 percent of income for rent); or

(D) Ranking the Federal preferences' definitional elements (*e.g.*, provide that those living in housing that is dilapidated or has been declared unfit for habitation by an agency or unit of government have a greater need for housing than, and take precedence over, those whose housing is substandard only because it does not have a usable bathtub or shower inside the unit for the exclusive use of the family).

(3) Any selection preferences or priorities used by a PHA must be established and administered in a manner that is consistent with HUD's affirmative fair housing objectives and that is not incompatible with Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d; Title VIII of the Civil Rights Act of 1968, 42 U.S.C. 3601–19; Executive Order 11063 on Equal Opportunity in Housing, 27 FR 11527 (1962), *as amended*, 46 FR 1253 (1980); Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. 794; the Age Discrimination Act of 1975, 42 U.S.C. 6101–07, or HUD's regulations and requirements issued under these authorities.

(4) The PHA must submit to HUD any selection preference system that uses a local residency preference, for review for consistency with the requirements of paragraph (b)(3) of this section, but HUD approval is not required before the PHA may implement the system.

(c) *Qualifying for a Federal preference.* (1) An applicant qualifies for a Federal preference if—

(i) The applicant has been involuntarily displaced and is not living in standard, permanent replacement housing, or, within no more than six months from the date of certification under paragraph (c)(2) of this section or verification under paragraph (c)(3) of this section (as appropriate), the applicant will be involuntarily displaced;

(ii) The applicant is living in substandard housing; or

(iii) The applicant is paying more than 50 percent of family income for rent.

(2) Applicants may claim qualification for a Federal preference when they apply for admission to a project (or thereafter until they are offered a unit in a project) by certifying to the PHA that they qualify for a preference under paragraph (c)(1) of this section. A PHA must accept this certification unless the PHA verifies that the applicant is not qualified for a Federal preference.

(3) Before executing a lease with an applicant who has been offered a unit on the basis of a Federal preference, the PHA must require the applicant to provide verification that he or she qualifies for a Federal preference under paragraph (c)(1) of this section by virtue of the applicant's current status. The applicant's current status must be determined without regard to whether there has been a change in the applicant's qualification for a preference between the certification under paragraph (c)(2) of this section and execution of an occupancy agreement, including a change from one Federal preference category to another.

(4) If an applicant's qualification for a Federal preference under paragraph (c)(1) of this section has once been verified, a PHA need not require the applicant to verify such qualification again, unless, as determined by the PHA, such a long time has elapsed since verification as to make reverification desirable, or the PHA has reasonable grounds to believe that the applicant no longer qualifies for a Federal preference.

(5) For purposes of this paragraph (c), "standard, permanent replacement housing" is housing—

(i) That is decent, safe, and sanitary;

(ii) That is adequate for the family size; and

(iii) That the family is occupying pursuant to a lease or occupancy agreement.

Such housing does not include transient facilities, such as motels, hotels, or temporary shelters for victims of domestic violence or homeless families, and in the case of domestic violence referred to in paragraph (d)(2) of this section, does not include the housing unit in which the applicant and the applicant's spouse or other member of the household who engages in such violence live.

(6) An applicant may not qualify for a Federal preference under paragraph (c)(1)(iii) of this section if the applicant is paying more than 50 percent of family income to rent a unit because the applicant's housing assistance under the United States Housing Act of 1937 or section 101 of the Housing and Urban Development Act of 1965 with respect to that unit has been terminated as a result of the applicant's refusal to comply with applicable program policies and procedures with respect to the occupancy of underoccupied and overcrowded units.

(d) *Definition of involuntary displacement.* (1) An applicant is or will be involuntarily displaced if the applicant has vacated or will have to vacate his or her housing unit as a result of one or more of the following actions:

(i) A disaster, such as a fire or flood, that results in the uninhabitability of an applicant's unit;

(ii) Activity carried on by an agency of the United States or by any State or local governmental body or agency in connection with code enforcement or a public improvement or development program; or

(iii) Action by a housing owner that results in an applicant's having to vacate his or her unit, where:

(A) The reason for the owner's action is beyond an applicant's ability to control or prevent;

(B) The action occurs despite an applicant's having met all previously imposed conditions of occupancy; and

(C) The action taken is other than a rent increase.

(2) An applicant also is involuntarily displaced if—

(i) The applicant has vacated his or her housing unit as a result of actual or threatened physical violence directed against the applicant or one or more members of the applicant's family by a spouse or other member of the applicant's household; or

(ii) The applicant lives in a housing unit with such an individual who engages in such violence.

For purposes of this paragraph (d)(2), the actual or threatened violence must, as determined by the PHA in accordance with HUD's administrative instructions, have occurred recently or be of a continuing nature.

(3) For purposes of paragraph (d)(1)(iii) of this section, reasons for an applicant's having to vacate a housing unit include, but are not limited to, conversion of an applicant's housing unit to non-rental or non-residential use; closure of an applicant's housing unit for rehabilitation or for any other reason; notice to an applicant that he or she must vacate a unit because the owner wants the unit for the owner's personal or family use or occupancy; sale of a housing unit in which an applicant resides under an agreement that the unit must be vacant when possession is transferred; or any other legally authorized act that results or will result in the withdrawal by the owner of the unit or structure from the rental market. Such reasons do not include the vacating of a unit by a tenant as a result of actions taken because of the tenant's refusal—

(i) To comply with applicable program policies and procedures under this title with respect to the occupancy of underoccupied and overcrowded units or

(ii) To accept a transfer to another housing unit in accordance with a court decree or in accordance with such policies and procedures under a HUD-approved desegregation plan.

(e) *Verification procedures for applicants involuntarily displaced.* Verification of an applicant's involuntary displacement is established by the following documentation:

(1) Certification, in a form prescribed by the Secretary, from a unit or agency of government that an applicant has been or will be displaced as a result of a disaster, as defined in paragraph (d)(1)(i) of this section;

(2) Certification, in a form prescribed by the Secretary, from a unit or agency of government that an applicant has been or will be displaced by government action, as defined in paragraph (d)(1)(ii) of this section;

(3) Certification, in a form prescribed by the Secretary, from an owner or owner's agent that an applicant had to, or will have to, vacate a unit by a date certain because of an owner action referred to in paragraph (d)(1)(iii) of this section; or

(4) Certification, in a form prescribed by the Secretary, of displacement because of the domestic violence referred to in paragraph (d)(2) of this section, from the local police department, social services agency, or court of competent jurisdiction, or a clergyman, physician, or public or private facility that provides shelter or counseling to the victims of domestic violence.

(f) *Definition of substandard housing.* (1) A unit is substandard if it:

(i) Is dilapidated;

(ii) Does not have operable indoor plumbing;

(iii) Does not have a usable flush toilet inside the unit for the exclusive use of a family;

(iv) Does not have a usable bathtub or shower inside the unit for the exclusive use of a family;

(v) Does not have electricity, or has inadequate or unsafe electrical service;

(vi) Does not have a safe or adequate source of heat;

(vii) Should, but does not, have a kitchen; or

(viii) Has been declared unfit for habitation by an agency or unit of government.

(2) For purposes of paragraph (f)(1) of this section, a housing unit is dilapidated if it does not provide safe and adequate shelter, and in its present condition endangers the health, safety, or well-being of a family, or it has one or more critical defects, or a combination of intermediate defects in sufficient number or extent to require considerable repair or rebuilding. The defects may involve original construction, or they may result from continued neglect or lack of repair or from serious damage to the structure.

(3) For purposes of this paragraph (f), an applicant who is a "homeless family" is living in substandard housing. For purposes of the preceding sentence, a "homeless family" includes any individual or family who:

(i) Lacks a fixed, regular, and adequate nighttime residence; and

(ii) Has a primary nighttime residence that is:

(A) A supervised publicly or privately operated shelter designed to provide temporary living accommodations (including welfare hotels, congregate shelters, and transitional housing for the mentally ill);

(B) An institution that provides a temporary residence for individuals intended to be institutionalized; or

(C) A public or private place not designed for, or ordinarily used as, a regular sleeping accommodation for human beings.

A "homeless family" does not include any individual imprisoned or otherwise detained pursuant to an Act of the Congress or a State law.

(4) For purposes of paragraph (f)(1) of this section, Single Room Occupancy (SRO) Housing (as defined in § 882.102) is not substandard solely because it does not contain sanitary or food preparation facilities (or both).

(g) *Verification procedures for applicants living in substandard housing.* Verification that an applicant is living in substandard housing consists of certification, in a form prescribed by the Secretary, from a unit or agency of government or from an applicant's present landlord that the applicant's unit has one or more of the deficiencies listed in, or the unit's condition is as described in, paragraph (f) (1) or (2) of this section. In the case of a "homeless family" (as described in paragraph (f)(3) of this section), verification consists of certification, in a form prescribed by the Secretary, of this status from a public or private facility that provides shelter for such individuals, or from the local police department or social services agency.

(h) *Definition of family income.* For purposes of this section, family income is Monthly Income, as defined in 24 CFR 913.102.

(i) *Definition of rent.* (1) For purposes of this section, rent is defined as:

(i) The actual amount due, calculated on a monthly basis, under a lease or occupancy agreement between a family and the family's current landlord; and

(ii) In the case of utilities purchased directly by tenants from utility providers,

(A) The PHA's reasonable estimate of tenant-purchased utilities (except telephone) and the other housing services that are normally included in rent; or

(B) If the family chooses, the average monthly payments that it actually made for these utilities and services for the most recent 12-month period or, if

information is not obtainable for the entire period, for an appropriate recent period.

(2) For purposes of calculating rent under this paragraph (i), amounts paid to or on behalf of a family under any energy assistance program must be subtracted from the otherwise applicable rental amount to the extent that they are not included in the family's income.

(3) In the case of an applicant who owns a manufactured home, but who rents the space upon which it is located, rent under this paragraph (i) includes the monthly payment to amortize the purchase price of the home, as calculated in accordance with HUD's requirements.

(4) In the case of members of a cooperative, rent under this paragraph (i) means the charges under the occupancy agreement between the members and the cooperative.

(j) *Verification of an applicant's income, rent, and utilities payments.* The PHA must verify that an applicant is paying more than 50 percent of family income for rent, as follows:

(1) The PHA must verify the family's income in accordance with the standards and procedures that it uses to verify income for the purpose of determining applicant eligibility and Total Tenant Payment under 24 CFR Part 913.

(2)(i) The PHA must verify the amount due to the family's landlord (or cooperative) under the lease or occupancy agreement—

(A) By requiring the family to furnish copies of its most recent rental (or cooperative charges) receipts (which may include cancelled checks or money order receipts) or a copy of the family's current lease or occupancy agreement, or

(B) By contacting the landlord (or cooperative) or its agent directly.

(ii) The PHA must verify the amount paid to amortize the purchase price of a manufactured home—

(A) By requiring the family to furnish copies of its most recent payment receipts (which may include cancelled checks or money order receipts) or a copy of the family's current purchase agreement, or

(B) By contacting the lienholder directly.

(3) To verify the actual amount that a family paid for utilities and other housing services, the PHA must require the family to provide copies of the appropriate bills or receipts, or must obtain the information directly from the utility or service supplier.

(k) *Notice and opportunity for a meeting where Federal preference is denied.* If the PHA determines that an applicant does not meet the criteria for receiving a Federal preference, the PHA must promptly provide the applicant with written notice of the determination. The notice must contain a brief statement of the reasons for the determination, and state that the applicant has the right to meet with the PHA's designee to review it. If requested, the meeting must be conducted by a person or persons designated by the PHA. Those designated may be an officer or employee of the PHA, including the person who made or reviewed the determination, or his or her subordinate. The procedures specified in this paragraph (k) must be carried out in accordance with HUD's requirements. The applicant may exercise other rights if the applicant believes that he or she has been discriminated against on the basis of race, color, religion, sex, national origin, age, or handicap.

(l) *Effective date.* PHAs must implement the provisions of this section no later than July 13, 1988.

Dated: December 21, 1987.

Samual R. Pierce, Jr.,

Secretary.

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Federal Register

Friday
January 15, 1988

Part III

Department of the Interior

Minerals Management Service
Bureau of Land Management

30 CFR Parts 202, 203, 206, 207, 210, and 241
43 CFR Parts 3100 and 3160
Revision of Oil Product Valuation Regulations and Related Topics; Final Rule

DEPARTMENT OF THE INTERIOR

Minerals Management Service

30 CFR Parts 202, 203, 206, 207, 210, and 241

Bureau of Land Management

43 CFR Parts 3100 and 3160

Revision of Oil Product Valuation Regulations and Related Topics

AGENCY: Minerals Management Service and Bureau of Land Management, Interior.

ACTION: Final rule.

SUMMARY: This rulemaking provides for the amendment and clarification of regulations governing valuation of oil for royalty computation purposes. The amended and clarified regulations govern the methods by which value is determined when computing oil royalties and net profit shares under Federal (onshore and Outer Continental Shelf) and Indian (Tribal and allotted) oil and gas leases (except leases on the Osage Indian Reservation, Osage County, Oklahoma).

EFFECTIVE DATE: March 1, 1988.

FOR FURTHER INFORMATION CONTACT: Dennis C. Whitcomb, Chief, Rules and Procedures, (303) 231–3432, (FTS) 326–3432.

SUPPLEMENTARY INFORMATION: The principal authors of this rulemaking are John L. Price, Scott L. Ellis, Thomas J. Blair, Stanley J. Brown, and William H. Feldmiller, of the Royalty Valuation and Standards Division of the Royalty Management Program, Minerals Management Service (MMS); Donald T. Sant, Deputy Associate Director for Valuation and Audit, Minerals Management Service; and Peter J. Schaumberg of the Office of the Solicitor, Washington, DC.

I. Introduction

On January 15, 1987, 52 FR 1858, the Minerals Management Service (MMS) of the Department of the Interior issued a notice of proposed rulemaking to amend the regulations governing the valuation of oil from Federal leases onshore and on the Outer Continental Shelf (OCS), and from Indian Tribal and allotted leases. During the public comment period, MMS received over 100 written comments. In addition, public hearings were held in Lakewood, Colorado, on March 4, 1987, and in New Orleans, Louisiana, on March 17, 1987. Sixteen persons made oral presentations at those hearings.

Because of the complexity of the regulations, and in accordance with MMS's understanding with Congress, MMS issued a Further Notice of Proposed Rulemaking on August 17, 1987 (52 FR 30826), which included as an appendix MMS's draft of the final regulations. The purpose of the further notice of proposed rulemaking was to obtain further public comment during a short comment period and then to make any necessary revisions to the final regulations. See Conference Report on H.R. 1827, in the *Congressional Record* dated June 27, 1987, at pages H5651–H5666.

The public comment period on the First Further Notice of Proposed Rulemaking was scheduled to close on September 2, 1987, but was extended to September 11, 1987 (52 FR 33247, September 2, 1987). On September 21, 1987, MMS issued a Notice of Intent to Issue a Second Further Notice of Proposed Rulemaking (52 FR 35451). In that Notice, MMS stated that all comments received on the Further Notice of Proposed Rulemaking and the first draft final rules would be included in the rulemaking record for this rule, even if they were received after September 11.

In addition to receiving written comments on the first draft final rules, MMS held several meetings with representatives from the States, Indian lessors and industry in an effort to develop a set of regulations which were acceptable generally to all groups, though not a panacea for any one of them. Each of the groups exhibited a commendable willingness to make positive contributions to the process and, where necessary, to reach compromises.

In a further effort to ensure that all of the interested constituencies had a full and fair opportunity to comment upon the gas valuation rules following the several meetings and MMS's review of the written comments, MMS issued a Second Further Notice of Proposed Rulemaking and second draft final rules (52 FR 39846, October 23, 1987). Public comments were received for 30 days. Over 25 additional comments were submitted in response to the second further notice of proposed rulemaking. Many commenters repeated comments that had been submitted in response to earlier requests for comments. However, MMS did receive additional comments, particularly on sections that were changed. All comments were reviewed and considered in drafting the final rule.

MMS has considered carefully all of the public comments received during this rulemaking process, which included draft rules and input from the Royalty Management Advisory Committee (RMAC), proposed rules, and further notices of proposed rulemaking with draft final rules. A complete account of the RMAC process is included in the preamble to the proposed regulations issued in January 1987. Based on its review, MMS hereby adopts final regulations governing the valuation of oil from Federal and Indian leases. These regulations will apply prospectively to production on or after the effective date specified in the **EFFECTIVE DATE** section of this preamble.

II. Purpose and Background

The MMS is revising the current regulations regarding the valuation of oil to accomplish the following:

(1) Clarification and reorganization of the existing regulations at 30 CFR Parts 202, 203, 206, 207, 210, 241, and 43 CFR Parts 3100 and 3160.

(2) Creation of regulations consistent with the present organizational structure of the Department of the Interior (DOI).

(3) Placement of the oil royalty valuation regulations in a format compatible with the valuation regulations for all leasable minerals.

(4) Clarification that royalty is to be paid on all consideration received by lessees, less applicable allowances, for lease production.

(5) Creation of regulations to guide the lessee in the determination of allowable transportation costs for oil to aid in the calculation of proper royalty due the lessor.

Structurally, these regulations include the reorganization of Parts 202, 203, 206, 207, 210, and 241. Each part is reorganized by redesignating "Subpart B—Oil and Gas, General" as "Subpart B—Oil, Gas, and OCS Sulfur, General"; "Subpart C—Oil and Gas, Onshore" as "Subpart C—Federal and Indian Oil"; and "Subpart D—Oil, Gas, and Sulfur, Offshore" as "Subpart D—Federal and Indian Gas."

Also, a number of sections are renumbered and/or moved to a new subpart. In addition, new §§ 202.51, 202.101, 206.103, 206.104, 207.1, 207.2, 207.5, and 210.55 are added to the appropriate parts and subparts.

Current § 206.104 is an onshore operational regulation which is under the jurisdiction of the Bureau of Land Management (BLM). This section is being redesignated as 43 CFR 3162.7–4, and the existing § 3162.7–4 is being redesignated as § 3162.7–5. Also, in order to avoid any inconsistencies between these final rules and the BLM rules, 43 CFR 3103.3–1 is being revised by deleting subsections (c) and (d) and

redesignating existing subsection (3) as new subsection (c).

This rule applies prospectively to production on or after the effective date specified in the **EFFECTIVE DATE** section of this preamble. It supersedes all existing oil royalty valuation directives contained in numerous Secretarial, Minerals Management Service, and U.S. Geological Survey Conservation Division (now Bureau of Land Management, Onshore Operations) orders, directives, regulations and Notice to Lessees (NTL's) issued over past years. Specific guidelines governing reporting requirements consistent with these new oil valuation regulations will be incorporated into the MMS Payor Handbook.

For the convenience of oil and gas lessees, payors, and the public, the following chart summarizes the effects of these rules.

Regulation changes	Descriptions
I. Redesignations:	
1. Subpart Titles	
The titles of all subparts in Parts 202, 203, 206, 207, 210, and 241 have been redesignated, retitled, or added as necessary, to reflect the following titles: (Subparts are reserved under certain Parts).	The subparts were retitled in order to organize them by a commodity (oil vs. gas, etc.) rather than emphasizing location (onshore vs. offshore) as was done formerly.
Subpart A—General Provisions	
Subpart B—Oil, Gas, and OCS Sulfur, General	
Subpart C—Federal and Indian Oil	
Subpart D—Federal and Indian Gas	
Subpart E—Solid Minerals, General	
Subpart F—Coal	
Subpart G—Other Solid Minerals	
Subpart H—Geothermal Resources	
Subpart I—OCS Sulfur	
2. Part 202	
Sections 202.150, 202.151, and 202.152 under old Subpart D are redesignated as § 202.100, under new Subpart C and §§ 202.53, and 202.52, under new Subpart B, respectively.	This action is the result of retitling of the subparts.
3. Part 203	
Section 203.150 under old Subpart D is redesignated as § 203.50 under new Subpart B. Section 203.200 under old Subpart E is redesignated as § 203.250 under new Subpart F.	This action is the result of retitling of the subparts.
4. Part 206	
Sections 206.300 and 206.301 under old Subpart G are redesignated as §§ 206.350 and 206.351 under new Subpart H, respectively.	This action is the result of retitling of the subparts.
Section 206.104 under old Subpart C is redesignated under Title 43 CFR as § 3162.7-4. Existing § 3162.7-4 is redesignated as § 3162.7-5.	This section addresses a BLM onshore operations issue which properly belongs in 43 CFR.
5. Part 210	
Sections 210.300 and 210.301 of old Subpart F are redesignated as §§ 210.350 and 210.351 under new Subpart H, respectively.	This action corresponds to the redesignation of Subpart F as Subpart H.
Section 241.100 under old Subpart C is redesignated as § 241.53 under new Subpart B	This action is the result of retitling of the subparts.
II. Deletions:	
1. Part 202	
Sections 202.100 through 202.103 are removed from old Subpart C	These sections cover activities now governed by BLM.
2. Part 203	
Section 203.100 is removed from old Subpart C	This section covers an activity now governed by BLM operations personnel.
3. Part 206	
Section 206.103 is removed from old Subpart C	This section has been rewritten and relocated in the regulations as Subparts C and D of Part 206.
4. Part 207	
Sections 207.1, 207.2, 207.5, 207.6 and 207.7 are removed	The subject matter of these sections is addressed elsewhere in the regulations. They are, therefore, redundant and have been removed to avoid confusion.
5. Part 210	
Sections 210.100 through 210.105, and §§ 210.150 and 210.151 are removed from old Subparts C and D, respectively.	These requirements of §§ 210.100 and 210.101 are now covered by Part 207, as amended. Sections 210.102, 210.103 and 210.104 are no longer applicable (these forms are no longer in use). Section 210.105 has been replaced by new § 210.55.
6. Part 241	
Section 241.10 under Subpart A is removed and reserved. Paragraph (c) of new § 241.53 (formerly § 241.100) is removed from new Subpart B.	The forms identified in § 241.53(c) and § 241.10 are no longer applicable.
III. Additions:	
1. Part 202	
Sections 202.51 and 202.101 are added to new Subparts B and C	These new sections provide oil valuation standards and procedures.
2. Part 206	
Sections 206.103 and 206.104 are added to new Subpart C	These new sections provide oil valuation standards and procedures.
3. Part 207	
Sections 207.1, 207.2, and 207.5 are added to new Subpart A	These new sections reference the definitions in Part 206 and set forth certain recordkeeping requirements.
4. Part 210	
Section 210.55 is added	This will replace § 210.105.

The rules in § 206.100 expressly recognize that where the provisions of any Indian lease, or any statute or treaty affecting any Indian lease, are inconsistent with the regulations, then the lease, statute, or treaty will govern to the extent of the inconsistency. The same principle applies to Federal leases.

A separate oil definitions section applicable to the royalty valuation of oil is included in this rulemaking in Part 206. All definitions contained under each subpart of Part 206 will be applicable to the regulations contained in Parts 202, 203, 207, 210, and 241. Because the definitions are specific to these parts, they may not necessarily conform to definitions of the same terms in other Federal agencies' regulations.

III. Response to General Comments Received on Proposed Oil Product Valuation Regulations and Related Topics

The notice of proposed oil valuation regulations was published in the **Federal Register** on January 15, 1987 (52 FR 1858). This was followed by a Further Notice of Proposed Rulemaking (52 FR 30826, August 17, 1987), and a Second Further Notice of Proposed Rulemaking (52 FR 39846, October 23, 1987). Over 150 comments were received from interested persons including Indian lessors, the States, and industry.

The commenters included industry/trade groups, State, local, and Federal governmental entities, Indian Tribes or allottees, a State/Tribal association, and an individual.

The MMS received many diverse comments on the principles underlying

the proposed valuation methodology. These comments did not address specific sections of the proposed regulations. The respondents generally comprised two groups, with industry generally on one side and States and Indians on the opposing side. The general comments were categorized into five more-or-less interrelated issues: (1) Acceptance of gross proceeds under an arm's-length contract, or the benchmark, as the value for royalty purposes; (2) deduction of transportation costs; (3) legal mandates and responsibilities toward Indians; (4) complexity and obscurity of regulations and definitions; and (5) economic impacts.

(1) Acceptance of gross proceeds as the value for royalty purpose

Industry commenters generally agreed that the basic premise underlying the proposed rulemaking is sound because value is best determined by the interaction of competing market forces. However, State and Indian commenters disagreed, particularly objecting to the concept of accepting gross proceeds received under arm's-length transactions as representative of market value. The commenters were concerned that the acceptance of gross proceeds, without additional testing of its validity, could lead to manipulation of pricing schedules, an erosion of payors' accountability and, in general, would fail to protect the interests of the lessor. Many pointed out that gross proceeds has historically not been considered equivalent to market value, citing various legal opinions in support. In view of this, State and Indian commenters declared that royalty value should be equivalent to the highest price posted for like-quality production in a field or area.

MMS Response: The MMS's experience demonstrates that the highest price posted in a given field does not necessarily reflect a bona fide offer to purchase, nor does it reflect that significant quantities of oil are being purchased at that price. In these regulations, MMS generally will assess royalty on the value to which the lessee is legally entitled under its arm's-length contract. MMS maintains that gross proceeds to which a lessee is legally entitled under arm's-length contracts are determined by market forces and thus represent the best measure of market value. For many Indian leases, MMS will also require consideration of the highest price paid for a major portion of production in accordance with the lease terms.

To assure that gross proceeds represent market value, and thus insure accountability, Indian and State commenters suggested that reported gross proceeds values should be tested/validated by using the net-back (work-back) procedure as an independent crosscheck. They also suggested that royalty reporting should be routinely monitored by using this procedure.

MMS Response: The MMS believes that gross proceeds under arm's-length contracts are representative of market value. However, MMS will continue to monitor value determinations under its regulations to ensure that those determinations yield reasonable values. To routinely perform labor-intensive net-back calculations is impractical.

Some State respondents doubted that the benchmark hierarchy system for determining values under non-arm's-length transactions could be properly applied because of the system's complexity and because the valuation procedure is predicated upon a payor's ability and willingness to identify a transaction as either arm's-length or non-arm's-length. They feared that industry might be reluctant to identify non-arm's-length transactions and thus merely declare gross proceeds as value, thereby placing the burden of proper finding upon MMS during audit.

MMS Response: The MMS supports the benchmark system. Most of industry, those who report under the system, believe it to be a workable system. In general, industry can identify its own arm's-length contracts based on standards established in these regulations and it is in its best interests not to classify non-arm's-length transactions as arm's-length because of the threat of both high interest costs and possible penalties. However, MMS will use the audit process to verify that contracts which are claimed to be arm's-length satisfy all the standards of the definition, discussed in detail below.

(2) Deduction of Transportations Costs

Although industry commenters supported the proposed deductions for transportation costs, many of the respondents believed the allowable deductions were too restrictive, and one suggested that transportation allowances should be actual costs based on Federal Energy Regulatory Commission (FERC) tariffs or arm's-length transportation arrangements. However, comments from States and Indians objected to the allowances as being too liberal and unnecessarily open-ended by effectively granting the allowances regardless of need. They suggested that transportation deductions should be allowed only when transportation costs are necessary to the sale of the production, that transportation allowances should be limited to OCS production only, or that no deductions should be allowed, at least for tribal lands.

MMS Response: The MMS believes that costs incurred by a lessee to transport lease production to a delivery point off the lease increases its value and, therefore, is a recognized deduction. See the transportation allowance section of this preamble for further discussion.

(3) Legal Mandates and Responsibilities Toward Indians

Some State and Indian respondents questioned the legality of the proposed rulemaking, expressing their view that the proposed modifications, particularly with respect to arm's-length contracts and gross proceeds, are contrary to the intent of the valuation requirements of the Mineral Lands Leasing Act, 30 U.S.C. 181 *et seq.*, and the Federal Oil and Gas Royalty Management Act of 1982 (FOGRMA), 30 U.S.C. 1701 *et seq.*, and are a marked departure from historical valuation regulations and lease terms. Their basic argument is that the statutes require royalty based on the value of production, and a royalty clause based upon "value" is not satisfied by a valuation procedure based upon gross proceeds; in their opinion, value may be considerably higher than revenues from arm's-length transactions.

MMS Response: The regulations generally define value on the basis of market transactions, consistent with commonly held economic philosophy, rather than some arbitrary "value" which can be easily misconstrued, disputed, or misinterpreted. The MMS believes there is no conflict between the intent of the Mineral Lands Leasing Act, FOGRMA, and the valuation procedures being adopted herein.

The mineral leasing laws require that the Secretary receive a royalty on the "value of production" from minerals produced from Federal lands, but value is a word without precise definition. "Men have all but driven themselves mad in an effort to definitize its meaning." *Andrews v. Commissioner of Internal Revenue*, 135 F.2d 314, 317 (2d Cir. 1943). The word "value" has sometimes been modified by the words "fair market", although the mineral leasing law provisions on "value of production" do not include these words. But, these adjectives do not really clarify the word "value." The word "fair" can modify the word "value" as in "fair value" or it can modify the word market as in "fair market." The term "fair value" may not be interpreted the same as the "fair market" value. The term "fair market value," however, has

been generally accepted to be the price received by a willing and knowledgeable seller not obligated to sell from a willing and knowledgeable buyer not obligated to buy. Willing, knowledgeable, and obligated are again adjectives which are not terms of precise definition. These general concepts, however, were still the general principles which were followed in drafting these regulations on valuation of production for the purpose of calculating royalties. The general presumption is that persons buying or selling products from Federal and Indian leases are willing, knowledgeable, and not obligated to buy or sell. Because the U.S. economy is built upon a system in which individuals are provided the opportunity to advance their individual self interest, this seems to be a reasonable presumption. This system and its reliance on self-motivated individuals to engage in transactions which are to their own best interest, therefore, is a cornerstone of the regulations.

The purpose of these regulations is to define the value of production, for royalty purposes, for production from Federal and Indian lands. Value can be determined in different ways, and these rules explain how value is to be established in different circumstances. Value in these regulations generally is determined by prices set by individuals of opposing economic interests transacting business between themselves. Prices received for the sale of products from Federal and Indian leases pursuant to "arm's-length contracts," in many instances, are accepted as value for royalty purposes. However, even for some arm's-length contracts, contract prices may not be used for value purposes if the lease terms provide for other measures of value (such as Indian leases) or when there is a reason to suspect the bona fide nature of a particular transaction. Even the alternative valuation methods, however, are determined by reference to prices received by individuals buying or selling like-quality products in the same general area who have opposing economic interests. Also, in no instance can value be less than the amount received by a lessee in a particular transaction.

The Indian commenters took particular exception to the proposed rulemaking, pointing out that the proposed valuation procedures based on gross proceeds are in conflict with the Secretary's duty under the Unallotted Indian Leasing Act of 1938 and the Indian Mineral Development Act of 1982 to ensure that tribes and allottees receive the maximum return for their property. They disagreed that gross proceeds represented market value, and thus believed they would not receive the maximum benefit accruable from production pursuant to statutes. One respondent suggested that the proposed regulations apply prospectively only to newly issued leases so that royalties owed to Tribes and allottees under existing regulations would not be diminished.

MMS Response: MMS believes the new valuation regulations, with the changes discussed in more detail below, are fully consistent with the Secretary's obligations to Indian lessors.

(4) Complexity and Obscurity of Regulations and Definitions

Some commenters believed that the proposed rulemaking generally was excessively complicated, leading to difficulty in interpretation. As a result, they believe the proposed rules fail to achieve the stated goals of simplification and providing certainty.

MMS Response: The MMS has endeavored to correct certain identified deficiencies in the final rulemaking. The regulations combine previous regulations, NTL's, orders, and internal policies. They will provide a single source for product value guidance which necessarily will be simpler and more comprehensive than the existing procedures.

(5) Economic Impacts

State and Indian commenters disagreed with MMS's statement that the proposed regulations would yield long-term benefits to royalty owners. Indian commenters, in particular, believed the proposed valuation rules would have a significant detrimental economic impact on Tribes and allottees. A detailed analysis of the economic impacts of the proposed rules was suggested by one commenter to support MMS's claim that the short-term effects on revenues would be limited.

MMS Response: The MMS believes that the regulations provide valuation criteria that will result in reasonable values and will create an atmosphere of certainty in royalty payments and thereby correct some of the royalty deficiencies encountered in the past.

The Further Notice of Proposed Rulemaking of August 17, 1987 (52 FR 30826), and the Second Further Notice of Proposed Rulemaking of October 23, 1987 (52 FR 39846), specifically requested comments on certain broad issues, and the Second Further Notice of Proposed Rulemaking also specifically requested comments on certain individual issues. Because the response to both the broad and specific issues were also addressed in the Preamble to the Final Gas Valuation Regulations published elsewhere in today's **Federal Register**, reviewers are directed to the responses provided in the Preamble to that rulemaking.

The MMS will monitor the operation and effect of the rules being adopted today. In 3 years, MMS will review the results of its analysis to determine if any significant changes to the regulations are required. In the meantime, technical and minor adjustments to the rules will be made as necessary.

IV. Section-by-Section Analysis and Response to Comments

Comments were not received on every section of the proposed regulations. Therefore, if any of those sections were not changed significantly from the proposal, there generally is no further discussion in this preamble. The preamble to the proposed regulation (52 FR 1858, January 15, 1987) may be consulted for a full description of the purpose of those sections. For other sections, this preamble will address primarily the extent to which the final rule was changed from the proposal. Again, a complete discussion of the applicable sections may be found in the preamble to the proposed regulation.

Section 202.52 Royalties.

For purposes of clarity, one State commenter suggested that the word "royalty" be inserted before the words "rate specified", and the words "amount of royalty" be deleted and replaced with the words "royalty rate." This suggestion was made because some lessees have confused the computation of royalty rate and the computation of the amount of royalties due.

MMS Response: The MMS agrees that these suggested changes should be made for purposes of clarity and the final rule has been modified accordingly.

The MMS has removed from the final rules the two sections addressing the general responsibilities of MMS and lessees. All of these responsibilities are addressed in various provisions of 30 CFR and elsewhere. Thus, these sections were duplicative and, based on the comments received, caused confusion.

Section 202.100 Royalty on oil.

Indian commenters recommended that paragraph (a) should provide specifically that Indian lessors, as well as MMS, have the right to require payment in-kind for royalties due on production.

MMS Response: Most Indian lessors have the authority to require payment

in-kind for royalties due on production. To the extent the lease terms so provide, the lessor may take its royalty-in-kind. However, because requests to take royalty-in-kind may involve operational difficulties for the lessee, as well as a change in accounting and reporting procedures necessary for MMS to properly monitor royalty obligations, MMS will continue to administer such requests. Therefore, if an Indian lessor wants royalty-in-kind, he or she must contact MMS. The MMS then will make arrangements with the lessee for the in-kind payment.

The MMS also has added a provision clarifying that when royalties are paid in value, the royalties due are equal to the value for royalty purposes multiplied by the royalty rate.

Industry commenters recommended that this section state that no permission is necessary to exempt from royalty any oil used for the benefit of the lease, either on-lease or off-lease, and including communitized or unitized areas. In addition, another industry commenter stated that where agency approval is necessary, this section should address the procedure to acquire such permission.

Some Indian commenters also recommended that any royalty-free use of oil be subject to prior approval to ensure that production from Indian leases is not disproportionately used in royalty-free operations. One Indian commenter objected to any off-lease use of oil that would be royalty free.

MMS Response: The royalty-free use of oil is an operational matter covered by the appropriate operating regulations of the BLM and MMS for onshore and OCS operations, respectively. The BLM requirements are governed by the provisions of Notice to Lessees and Operators No. 4A. Therefore, although these comments raised many substantive issues, they are not properly addressed in this rulemaking. The MMS does not believe that prior approval for royalty-free use of oil is warranted because most leases by their specific terms allow royalty-free use of oil and it is a matter which will be reviewed during audits to prevent abuse.

One industry commenter proposed that MMS consider expansion of § 202.100(b) to include appropriate royalty deductions for the oil equivalent cost of alternative fuels which may also be used for beneficial purposes on the lease.

MMS Response: This suggestion was not adopted. This issue is more properly directed to operational regulations, not value regulations, and is outside the scope of this rule. The MMS has included these provisions simply to reflect the general lease terms and regulatory provisions which prescribe the royalty obligation.

Proposed § 202.100(b), which addressed royalty-free use of oil for leases committed to unit or communitization agreements, has been expanded in the final rules to also cover production facilities handling production from more than one lease with the approval of the appropriate agency. Although MMS is satisfied that this issue is an operational matter governed sufficiently by the appropriate operation of the unit agreement or communitization agreement and BLM's and MMS's regulations, the number of comments received regarding this issue led MMS to believe that reiterating these operational requirements was advisable. This regulation simply provides that a disproportionate share of the fuel consumed at a production facility serving multiple leases may not be allocated to an individual lease without incurring a royalty obligation on a portion of the fuel.

A State commenter suggested changes designed to help end the confusion about the distinction between computing the royalty rate and computing the amount of royalties due. MMS has adopted some changes to the wording of §§ 202.100(a) and (b) for clarity.

Section 202.100(c) was proposed as § 206.100(d). A comment was received from industry suggesting the addition of the phrase "because of negligence of lessee" after the words "offshore lease," in order to be consistent with section 308 of FOGRMA.

MMS Response: This subpart addresses the valuation of oil which has been determined to be "avoidably lost," not the reason(s) for that determination. Determination of "avoidably lost" and "negligence" is a function of MMS OCS Operations for OCS leases and BLM for onshore Federal and Indian leases. The BLM's requirements are governed by the provisions of 43 CFR Part 3160 and Notice to Lessees and Operators No. 4A. The MMS's requirements are governed by 30 CFR Part 250. The addition of the recommended phrase, therefore, is considered inappropriate for inclusion in this rulemaking.

Section 202.100(d) requires royalties to be paid on insurance compensation for unavoidably lost oil. Several industry commenters stated that to require a lessee to pay royalties on any compensation received through insurance coverage or other arrangements for oil unavoidably lost is unfair. They stated that insurance proceeds are not received for the sale of production and should not be subject to sharing with the lessor. They believe, however, that if MMS insists on collecting a portion of such proceeds, the cost of such insurance coverage should be allowed as a deduction from royalty.

MMS removed the insurance compensation section from the first draft final rule. Many Indian and State commenters thought this change was unfair, stating that if the lessee was compensated for the production, the lessor should then receive its royalty share.

MMS Response: The MMS has reinstated this provision in the final rules. However, royalties are due only if the lessee receives insurance compensation from a third person. No royalty is due where the lessee self-insures.

The MMS has added at § 202.100(e) of the final rules a provision concerning production governed by a federally approved unitization or communitization agreement. Section 202.100(e) states that all agreement production attributable to a Federal or Indian lease in accordance with the terms of the agreement is subject to the royalty payment and reporting requirements of Title 30 of the Code of Federal Regulations even if an agreement participant actually taking the production is not the lessee of the Federal or Indian lease. Only a few concerns were expressed about this requirement and many commenters supported it. Most important, however, § 202.100(e) requires generally that the value, for royalty purposes, of this production be determined in accordance with 30 CFR Part 206 under the circumstances involved in the actual disposition of the production. For example, if a Federal lessee does not sell or otherwise dispose of its allocable share of unit production, then it will be sold or otherwise disposed of by other unit participants. If one of the unit participants other than the Federal lessee transports the oil to a terminal off the unit area under an arm's-length transportation agreement and then sells the oil under an arm's-length sales contract, the value, for royalty purposes, will be that person's gross proceeds less the costs of transportation incurred under the arm's-length transportation agreement. This provision does not address the issue of what person must report and pay the royalties, it only addresses the issue of valuation.

These rules do not require non-Federal and non-Indian lessees to conform to these regulations for valuing production. The MMS merely has required that the lessee must determine its royalty liability in accordance with the other interest owners' contracts or

proceeds as long as those royalties comply with these value regulations. Any balancing problem that may exist because of interest owners taking more than their entitlement is a matter to be settled by the agreement members.

The MMS has added a new subparagraph (3) to the final rules to clarify that all agreement participants actually taking volumes in excess of their allocated share of production in any month are deemed to have taken ratably from all persons taking less than their proportionate share. The MMS decided that such a provision was required to provide certainty as to which unit participants' dispositions the lessee must consider to satisfy the requirements of this provision, especially where there is no balancing agreement among the unit participants.

Some industry commenters also stated that the foreseeable results of this paragraph include: (1) Chronic late payments of royalties; (2) inconsistent AFS and PAAS reporting; (3) difficulty in determining proper royalty values where the overproduced working interest owners dispose of production pursuant to non-arm's-length transactions; and (4) excessive accounting and administrative costs for MMS and all working interest owners.

MMS Response: The MMS believes that lessees generally will be able to comply with the requirements of the regulations. However, MMS has added a new subparagraph (2) which authorizes MMS to approve a royalty valuation method different from that prescribed by subparagraph (1) to value any volumes of agreement production allocated to a lessee but which the lessee does not take. The lessee must request the exception and MMS may approve it only if it is consistent with the purposes of the regulations. For example, under a unit agreement a Federal lessee may be entitled to 1,000 barrels of production. It is required to pay royalty on that volume. However, it only is able to sell 750 barrels that month. The lessee could request that MMS allow it to pay royalty on the remaining 250 barrels at its contract price.

The MMS recognizes that under most balancing agreements, a lessee who has under taken at some point will over take to balance its account. Since the lessee was required to pay royalties on the value of its allocated share when it under took, the lessee is not required to pay additional royalties for prior periods for that lease when it subsequently over takes. Again, royalties are due only on the allocated share of agreement production even when the lessee takes and sells a greater volume. The MMS has added a new subparagraph (4) to clarify this issue.

Some industry commenters recommended that paying and reporting royalties be accomplished solely on the basis of sales. According to these comments, because royalties will have been paid on total sales from the leases, there should be no decrease in royalty payments due over the life of the lease through the use of the sales approach.

MMS Response: Paying and reporting royalty solely on the basis of sales would not conform to the requirements of the federally approved agreement or the terms of the lease. It also could cause a hardship for Indian lessors who rely on a steady stream of revenues when there is production from their leases. Therefore, it is not an acceptable procedure.

In response to comments that the valuation method for production from unitization and communitization agreements required by the proposed and draft rules could cause royalty calculation and reporting problems for lessees, MMS is including in the final rules in subsection (f) an exception authority for valuing production from Federal and Indian leases committed to agreements. The authority is discretionary and may be exercised where the lessee requests an alternative method, the proposal is consistent with applicable statutes, lease terms and agreement terms, to the extent practical persons with an interest in the agreement are notified and given an opportunity to comment, and, to the extent practical all persons with an interest in a Federal or Indian lease committed to the agreement agree to use the proposed method.

Section 206.100 Purpose and scope.

One industry commenter agreed with the concept that Indian Tribal and allotted leases be treated under the same oil valuation standards applied to Federal leases unless the specific lease terms require otherwise. That commenter also suggested that MMS support Indian Tribes and allottees, if requested, in marketing their royalty share of production. An Indian Tribe commenter asserted that it may be inconsistent to use the same oil valuation standards for Indian and Federal leases: "Because of the trust responsibility of the United States to maximize Indian royalties, it may be inconsistent to have Indian and Federal leases treated the same under this section, especially if the policy of Interior is to earn a reasonable and long-term maximum rate of return and revenues for all parties."

MMS Response: The MMS believes generally that maintaining a single set of oil valuation regulations that apply to both Federal and Indian lands (except leases on the Osage Indian Reservation) provides for consistency and certainty in the determination of the value of oil for all lands administered by the DOI and will result in obtaining a reasonable and appropriate rate of return to all parties concerned. However, because of the lease terms of many Indian leases, MMS has included in the rules some additional valuation standards applicable only to those Indian leases.

MMS has added a general statement that the purpose of these rules is to establish the value of production for royalty purposes consistent with the mineral leasing laws, other applicable laws, and lease terms.

In accordance with paragraph (b) of this section, where the provisions of any statute, treaty, lease or settlement agreement are inconsistent with these regulations, the lease, statute, treaty or settlement agreement provision will govern to the extent of that inconsistency. This policy also applies to court decisions—regulatory revisions will be required to the extent of any inconsistency with the existing regulations, provided they are not ambiguous or unclear in their intent. Thus, MMS maintains the DOI's responsibility to Indians by assuring that the regulations do not supersede the authority granted by the lease, or violate provisions of a statute, treaty, or court decision.

Several Indian respondents commented on § 206.100(b). One suggested that the proposed rules should expressly recognize that "where provisions of any Indian lease, or any statute or treaty affecting Indian leases, as stated or *as interpreted by the courts*, are inconsistent with the regulations, then the lease, statute or treaty, or *court interpretation* would govern to the extent of the inconsistency."

Another commenter expressed the view that "caution should be exercised before stating that 'the lease * * * provision shall govern to the extent of that inconsistency.' Many Indian allottee and tribal leases are very old and were entered into when industry practices were very different than they are now. The parties to the lease may have understood the lease to incorporate standard industry practice at that time. For this reason, some provisions may have been omitted from the written instrument. It may be proper to interpret some of those unwritten provisions in light of today's standards, but it may be grossly unfair to the

royalty owner to so interpret others. One such example may be transportation costs. If transportation costs were not being deducted from royalties when the lease was entered into, transportation costs should not be deducted now, even though not mentioned in the lease. It is our conclusion that this should be considered and the regulations should make some mention of this consideration." Another commenter suggested including settlement agreements entered into to resolve administrative or judicial litigation because these agreements may vary from the rules.

MMS Response: Obviously, MMS will comply with court orders and judicial decisions which affect these regulations. It is well known, however, that court decisions often focus only on parts of issues, leaving those decisions open to interpretation. Furthermore, a court's jurisdiction can limit the applicability of its decision. It is for these reasons that MMS has elected not to include an express reference to court decisions or court interpretations in this or any other subpart of these regulations.

Contrary to the interpretation of this section by the second commenter, the regulations will not change any specific lease provisions. The MMS has included the suggested reference to settlement agreements.

Few comments were received concerning § 206.100(c). One from industry endorsed the recommendation of the Royalty Management Advisory Committee (RMAC) Oil Valuation Panel which proposes placing a limit on the time period during which MMS may conduct an audit on a lease. It asserted that such a limitation "encourages prompt action, assures the retention of appropriate records, and gives the lessee assurance that its current business will not be disrupted by examinations of very remote payments. We believe a 6-year limitation is reasonable for both MMS and the lessee."

The Indian respondent is concerned that "Although all royalty payments made to MMS will purportedly be subject to later audit and adjustment, MMS's past audit record does not reassure the tribes that all royalties due will be collected."

MMS Response: These regulations concern valuation procedures, not accounting functions. All MMS audits are subject to the requirements found at 30 CFR 217.50, which does not specify any time limit during which MMS may conduct an audit. Because the reference in § 206.100(c) is intended only to be a general reminder that royalty payments will be audited, the recommendation to place a time limit on audits was not adopted. The MMS has modified the provision in the final rule to make it clear that this provision applies to payments made directly to Indian Tribes or allottees as well as those made to MMS either for Federal or Indian leases. MMS will address the issue of audit closure elsewhere.

Several Indian commenters suggested that MMS should amend § 206.100(d) to specifically refer to the Secretary's trust responsibility to the Indians.

MMS Response: The MMS has made the suggested change.

The MMS received a comment from an Alaska Native Corporation stating that MMS should not make the new regulations applicable to an Alaska Native Corporation's proportionate share of leases acquired under section 14(g) of the Alaska Native Claims Settlement Act, 43 U.S.C. 1613(g).

Under section 14(g), a native corporation can acquire all or part of the lease. The commenter's point was that, at the time a proportionate interest in a lease is acquired, the native corporation had an expectation of what royalties it would receive, and it would be inequitable for MMS to modify that expectation for leases or portions of leases which MMS does not even own.

MMS Response: In the draft final rules accompanying the second further notice of proposed rulemaking, MMS proposed to add a § 206.100(e) which provided that regulations, guidelines, and Notices to Lessees in effect on the date that an Alaska Native Corporation acquired a proportionate interest in a lease will continue to apply to that interest. The MMS received several comments that this provision is unfair and not supportable because the lease terms expressly recognize that regulations may change and that the lease will be subject to the new regulations. The MMS agrees with the comments and has deleted this section from the final rules. However, it should be clarified that these rules do not have any retroactive effect. The MMS does not intend that any rules adopted in this rulemaking would apply to production involving Alaska Native Corporation interests which occurred prior to the effective date of this rulemaking.

Section 206.101 Definitions.

"Allowance"—Comments were received on this paragraph from State entities, Indian Tribes, and a Federal agency. One State commenter pointed out that this definition appears to be inconsistent with the sections of the valuation regulations dealing with transportation allowances (§§ 206.104 and 206.105). The word "allowance" is defined in terms of being "authorized," "accepted" or "approved," whereas the regulations state that a transportation "allowance" can be deducted without prior approval. Their concern is that the definition should match the usage in the regulations. An Indian commenter stated that the definition should "clearly specify that the transportation allowance applies only to transportation from *the lease boundary* to a point of sale remote from the lease and that such costs be reasonable, actual, *and necessary*." A Federal agency comment stated that the definition is too liberal and would result in the Federal Government subsidizing oil companies' operation costs. They cited an example where a transportation allowance of as much as 50 percent could be granted for moving oil in lateral lines to off-lease measurement points; specifically, from wellheads to a Lease Automatic Custody Transfer (LACT) unit. One State commenter suggested that the definition is unnecessarily broad and recommended deleting the language "or an MMS-accepted or approved" as well as deleting the phrase "to a point of sale or point of delivery remote from the lease." This commenter also suggested adding the words "necessary and" before the word "reasonable." The rationale for making these changes is that there are other sections of the regulations that clarify "that MMS need not provide advance approval before a lessee could take an allowance." The "accepted or approved" language could be interpreted to suggest that "allowances are not subject to later adjustments by MMS after full audit, based on arguments that the allowance was accepted by MMS after receipt of the actual costs report under § 206.105(b)(2), or accepted under the terms of the regulations."

MMS Response: These regulations, in effect, "authorize" the lessees to deduct certain costs incurred for transportation from the value without prior approval. (See §§ 206.104 and 206.105). Allowances computed by the lessee shall be "accepted" by MMS subject to review and/or audit. The MMS has not included a definition of the phrase "remote from the lease" in the final rules. To eliminate any confusion, MMS has replaced this phrase with the phrase "off the lease." Thus, transportation off the lease, other than gathering, is subject to an allowance. The MMS has included an express statement in the final rule that transportation allowances do not apply to gathering costs. An industry group comment that the phrase "excluding gathering" be deleted was

rejected because MMS believes that gathering is a cost of making oil marketable, which must be borne exclusively by the lessee.

"Area"—A comment was received from industry addressing this definition as being imprecise and in need of specified limits in order to define how large an "area" can be. In addition, the commenter proposed that the definition should be clarified by inserting the phrase "or producing unit" after "oil and/or gas field."

MMS Response: The definition seeks to encompass a concept that is very difficult to describe. Narrowing its scope by describing it in terms of size will only establish an arbitrary basis for the definition. To avoid this, MMS elected to retain the definition as proposed.

"Arm's-length contract"—A large number of comments were received on this definition from industry, Indians, a State/Tribal association, States, and a Federal agency. The proposed definition of "arm's-length contract" generated a significant number of comments because it is, as one commenter noted, the "* * * linchpin of the benchmark system * * *." Because of the importance of this concept, it is not surprising that several commenters disagreed with the definition, either in part or in its entirety. Indeed, one State commenter described the reliance on the concept of "arm's-length" as a method of determining value to be "both inefficient and inappropriate" and suggested deleting the definition altogether. The majority of commenters, however, focused on what they considered to be flaws in the originally proposed definition and the specific recommendations they considered necessary to conclusively address those flaws.

One Indian commenter suggested that the basic flaw in the definition is the assumption that the interests of the lessee and the lessor are identical. This commenter pointed out that the courts "have recognized that the interests of lessees and lessors often diverge. See, e.g., *Piney Woods Country Life School* v. *Shell Oil Company* 726 F.2d 225 (5th Cir. 1984), *cert. denied.*, 105 S. Ct. 1868, (1985), *Amoco Production Company* v. *Alexander*, 622 S.W. 2d 563, (Tex. 1981)." Another State commenter described the definition as "clearly deficient because it is limited to formal affiliation or common ownership interests between the contracting parties." The assumption that arm's-length contract prices reflect market value "ignores the fact that parties may have contractual or other relationships or understandings which would cause them to price oil below its value, especially if the benefit of the reduced royalty burden can be shared by means of the oil sales contract." This commenter believed that the lessee's and lessor's interests may not be the same, and that the royalties due lessors is viewed by many lessees as a cost to be minimized, not maximized. Another comment submitted by the State/Tribal association cited the following as an example of a situation where, although the parties are unaffiliated, the market value may be less than the arm's-length contract price: "Thus, for example, the price received by a lessee/producer who is a captive shipper of a single purchaser pipeline, albeit unaffiliated, will be accepted as the value, despite the fact that competing market forces are not operating. Even if audit revealed facts that would indicate that the sales price is suspect, the government would be bound under the proposed regulations to accept it if the parties were nominally unaffiliated. The MMS proposal would even foreclose the use of standard price checks, presently used * * * in * * * audit efforts, to assure that contract proceeds represent the statutory requirement of fair market value of production." One State commenter concluded that in its attempt to establish an "almost purely objective" test and provide for certainty in valuation, MMS has inadequately tried to justify "giving away the power to prevent manipulation of the public's royalties." Other State and Indian commenters claimed that the proposed definition, although it may be objective, remains "unworkable" mainly because it does not include any reference to "adverse economic interests" and "free and open market" nor would it serve as an effective audit tool. They urge MMS to use the definition first proposed by MMS to the RMAC because "that definition incorporates the common legal understanding of the term arm's-length—the existence of unaffiliated willing buyers and willing sellers of adverse economic interests operating in a free and open market—and is the only definition that can assure against valuation becoming an industry 'honor system.' "

One State commenter stressed that even though the inclusion of additional criteria ("adverse economic interest" and "free and open market") would increase subjectivity, "the appeals process is in place to provide protection against arbitrary decisions." State and Indian commenters specifically recommended that the proposed definition be replaced by the one proposed to RMAC by MMS in the draft regulations. That definition reads as follows:

> Arm's-length contract means a contract or agreement that has been freely arrived at in the open marketplace between independent, nonaffiliated parties of adverse economic interests not involving any consideration other than the sale, processing, and/or transportation of lease products, and prudently negotiated under the facts and circumstances existing at that time.

One Indian Tribal commenter suggested that "MMS should derive a definition of oil value for royalty purposes (instead of what they consider would be a necessary, all-inclusive, lengthy definition of arm's-length contract) which is simple and which represents the true value of the production. The [commenter] submits that such a definition must be based on the highest price paid or posted for similar oil in the same field or area." Another commenter stressed that the definition limits the discretion of the Secretary to select whatever method he/she considers appropriate to determine the value of oil for royalty purposes.

A large number of industry commenters agreed that the definition of an "arm's-length contract" as "a contract or agreement between independent and nonaffiliated persons" is sound and appropriate. However, these same commenters (plus some Indian and State commenters) objected to the phrase in the proposed definition "or if one person owns an interest (regardless of how small), either directly or indirectly, in another person" as being too "restrictive." [1] The rationale for this position is that the phrase appears to defeat MMS's intent to use arm'slength contracts as the principal valuation method. Many industry commenters addressed the need to clarify the definition in order to insure that joint ventures, joint operating agreements, tax partnerships, and other relationships where the "interest" of one party in another is not one of beneficial control, are specifically excluded. As one of these commenters put it: "Similarly, involvement in one or more joint operations with a competitor should not be viewed as materially affecting the arm's-length nature of transactions between the firms.

[1] Several commenters used the word "restrictive" to mean that the language in the proposed definition regarding "if one person owns an interest (regardless of how small), either directly or indirectly, in another person" significantly restricts the number of situations where an arm's-length contract would actually exist. A few comments espoused this same position, yet they termed the definition as too "broad." As used in this discussion, MMS considers the word "restrictive" to represent the above-mentioned position, and the word "broad" to denote that the language of the definition is either too vague or not restrictive enough.

However, the reference to joint venture in the definition of person, which is referenced in the proposed definition of arm's-length contract, could be improperly construed as including normal joint oil field operations conducted under the terms of joint operating or similar agreements. Joint operations clearly involve no interlocking ownership of the instruments of voting securities as between the firms. Joint operations are undertaken to accomplish effective reservoir management, to satisfy spacing requirements, or to share the enormous costs involved in certain OCS and frontier areas. Such joint operations are often mandated and/or approved and sanctioned by the various governmental agencies having jurisdiction and supervision over the operations (i.e., communitization, unitization, and development plans; and joint bidding agreements). They do not establish joint marketing rights, or otherwise erode the competitive desire of each owner to achieve maximum value for its share of production." Several industry commenters also complained that the ownership by one party of one share of stock in another party would confer affiliated or non-arm's-length status to virtually all otherwise arm's-length transactions between the two parties. They further stated that this would be true even if the pension plan of one party holds one share of stock in the other party. One Indian commenter suggested that MMS would waste its efforts trying to determine ownership interest: "There is also a problem with using ownership interest 'regardless of how small' in the definition. There is no definition in the proposed regulations of 'owns an interest.' Would the ownership of one share of stock be considered owning an interest? Parameters must be set and adhered to. When MMS starts trying to determine ownership interests no matter how small, an endless quagmire will develop, and time and resources will be devoted to this determination when they would be better spent on MMS's other duties."

Another industry commenter pointed out that the proposed definition is inconsistent with the guidelines concerning beneficial control under generally accepted accounting principles, while a number of other industry commenters claimed that it eliminates certainty in valuation.

The majority of all the comments stress the need to replace the phrase "or if one person owns an interest (regardless of how small), either directly or indirectly, in another person" with a statement that specifies quantifiable limits that would be used to determine whether or not one party would be considered to have a controlling interest in another party. Nearly all of these comments recommended that MMS adopt the following language for the definition of control which has already been implemented by BLM as codified at 43 CFR 3400.0–5(rr)(3) (51 FR 43910, December 5, 1986):

Controlled by or under common control with, based on the instruments of ownership of the voting securities of an entity, means:

(i) Ownership in excess of 50 percent constitutes control;

(ii) Ownership of 20 through 50 percent creates a presumption of control; and

(iii) Ownership of less than 20 percent creates a presumption of noncontrol.

A few industry commenters recommended replacing the word "person" with the word "party" in the definition of arm's-length contract because they foresee that the use of the word "person" will "unnecessarily preclude contracts between joint ventures from qualifying as arm's-length." Similarly, one industry commenter suggested deleting the words "consortium" and "joint venture" from the definition for "person" ("party") for the same reason.

Finally, one industry commenter objected to "the implicit and explicit presumption throughout the Oil Proposal that proceeds actually received through affiliated sales are less than fair value. This presumption places an unfair, impractical, and impossible standard on a producer who, acting in its best economic interest, elects to sell to an affiliated entity. In this regard, a redefinition of the term "Arm's-Length Contract" is recommended to eliminate reference to and inclusion of de minimis relationships."

Based on the numerous comments concerning the originally proposed definition, MMS included in the first draft final rule a definition which adopted the "control" language found in the BLM's regulations at 43 CFR 3400.0–5(rr)(3). In response to those commenters who believed that parties to an arm's-length contract must have adverse economic interests, MMS included in the first draft final rule definition a provision which requires that to be arm's-length a contract must reflect the total consideration actually transferred from the buyer to the seller, either directly or indirectly. For example, if the parties to the contract agreed that the price for oil from a Federal or Indian lease will be reduced in exchange for a bonus price to be paid for other production from a fee lease, MMS would not treat that contract as arm's-length.

Many of the comments on the first draft final rule again focused on the definition of arm's-length contract. Most of the industry commenters believed that the reference to "reflects the total consideration actually transferred directly or indirectly from the buyer to the seller" did not belong in the definition of arm's-length contract. Rather, they stated that it properly should be dealt with as a "gross proceeds" issue. The States and Indians commented that a reference to adverse economic interests still was necessary. They also believed that there must be a requirement of a free and open market. Finally, the States and Indians thought that MMS should lower the control threshold to 10 percent and that MMS should have more flexibility to rebut presumptions of noncontrol. Many of these commenters also thought that the rules should state that the lessee has the burden of demonstrating that its contract is arm's-length.

The comments on the second draft final rule were similar to those already received. Many commenters raised questions about possible audit difficulties. The American Petroleum Institute supported the definition in the second draft final rule.

MMS Response: The MMS adopted many of the changes suggested for the originally proposed definition. The MMS agrees that the "total consideration" issue is properly a gross proceeds matter that does not reflect the affiliation of the parties. Thus, that phrase has been deleted from the arm's-length contract definition and the matter dealt with under the definition of "gross proceeds". The MMS did not adopt the concept of "free and open market" because that concept is highly subjective. However, MMS did include a requirement that the contract be arrived at "in the marketplace" in support of the concept that an arm's-length contract must be between nonaffiliated persons. Also, in furtherance of that concept, MMS included a provision that an arm's-length contract must be between persons with opposing economic interests regarding that contract which means that the parties are acting in their economic self-interest. Thus, although the parties may have common interests elsewhere, their interests must be opposing with respect to the contract in issue. In response to many comments on the second draft final rule, MMS has reduced the control threshold to 10 percent. The MMS can rebut

presumptions of noncontrol between 0 and 10 percent and lessees can rebut presumptions of control between 10 and 50 percent.

Many commenters thought that MMS's inclusion of joint venture in the definition of "person" improperly narrowed the definition of arm's-length contract. These commenters have misconstrued MMS's intent. The definition of "person" includes joint ventures because there are instances where joint ventures are established as separate entities. In those situations, if a party with a controlling interest in the joint venture buys production from the joint venture entity, that contract is non-arm's-length. However, MMS is aware that it also is common for companies to jointly contribute resources to develop a lease and then share the production proportionately. In a situation where four totally unaffiliated companies share the production, if one of the companies buys all of the production from the other three, those three contracts would be considered arm's-length. The company's purchase from its affiliate of course would be non-arm's-length.

The MMS also has included in the arm's-length definition a provision whereby if one person has less than a 10-percent interest in another person which creates a presumption of noncontrol, MMS can rebut that presumption if it demonstrates actual or legal control, including the existence of interlocking directorates. For example, there may be situations where ownership of 5 percent of a very large corporation could give a person sufficient control to direct the activities of that corporation. Where there is evidence of actual control, MMS can rebut the presumption of noncontrol.

Finally, in response to those commenters who believed that the lessee has the burden of demonstrating that its contract is arm's-length, MMS has included such a provision in the valuation sections, discussed below. The MMS also believes that these sections satisfy the request that the rules prescribe that the lessee has the burden of proving nonaffiliation because one of the requirements for demonstrating that a contract is an arm's-length contract is to demonstrate the degree of affiliation between the contracting parties.

The MMS may require a lessee to certify ownership in certain situations. Documents that controllers or financial accounting departments of individual companies file with the Securities and Exchange Commission concerning significant changes in ownership (e.g., 5 percent) must be made available to MMS upon request.

The final rule also provides that, to be considered arm's-length for any specific production month, a contract must meet the definition's requirements for that production month as well as when the contract was executed. Some industry commenters objected to this provision stating that, if the contract was arm's-length when executed, it should satisfy MMS.

MMS Response: When the parties to a contract no longer have opposing economic interests, the reliability of that contract as an accurate indicator of value becomes suspect. In such circumstances, MMS will not rely on a contract price to conclusively establish value.

The MMS asked for comments on whether the term "relatives" needed further definition. Many useful comments were received. The MMS has decided, however, that further explanation of the meaning of relatives is better suited to guidelines which will be prepared after these rules are adopted.*

"Audit"—Only a few comments were received on this proposed definition. All the comments focused on the portion of the definition which followed the first sentence. Generally, these comments suggested that the proposed definition limited the scope of MMS's authority, particularly with regard to Indian leases.

MMS Response: It is MMS's intention that the definition not be limited. Therefore, the final rule deletes everything following the first sentence of the proposed definition because the succeeding sentences were only intended to be explanatory.

"Condensate"—One industry comment advocated adding the phrase "beyond normal lease separation procedures" after the word "processing" in the first sentence of the definition in order to clarify that "liquid hydrocarbons resulting from normal lease separation procedures are condensate" whereas "processing," in this context, refers to more sophisticated facilities that are generally located off lease.

MMS Response: This definition has been retained intact in the final rule. However, a definition of the word "processing" has been added for clarification purposes at § 206.101.

"Contract"—A comment from a State commenter recognized that "as a matter of law, oral contracts are enforceable." This commenter recommends that the words "oral or" be deleted because they argue that "there is no way that the terms of such contracts can be adequately verified to assure that all of the consideration and benefits under it have been honestly detailed by the lessee under proposed § 207.4. Thus, the government, in a situation involving an oral contract, must assure itself that it has all of the information relevant to the transaction; reliance on the 'contract' document—drafted by one party only—would be insufficient."

MMS Response: The MMS has retained this definition as proposed because, in accordance with § 207.4, oral contracts negotiated by the lessee must be placed in written form and retained by the lessee. If the MMS believes that the written documentation is not a truthful representation of the actual terms of the sales agreements, the lessee may be liable for penalties for submitting false, inaccurate, or misleading data.

"Gathering"—MMS included in the draft final rule a definition of gathering as the movement of lease production to a central accumulation or treatment point on the lease, unit, or communitized area, or to a central accumulation or treatment point off the lease, unit, or communitized area (if authorized by the BLM or MMS operations authority). In most instances, gathering is a cost of production or marketing for which MMS will not grant any deduction.

The MMS received numerous comments from industry concerning the phrase "or to a central accumulation or treatment point off the lease, unit or communitized area as approved by BLM or MMS OCS operations personnel for onshore and OCS leases, respectively." These commenters stated that the phrase was unclear and that it should be removed from the definition. Several industry commenters recommended limiting gathering to the lease or unit area so a transportation allowance may be obtained for all offlease movement.

MMS Response: The definition has been retained intact. The operational regulations of both BLM and MMS require that a lessee place all production in a marketable condition, if economically feasible, and that a lessee properly measure all production in a manner acceptable to the authorized officials of those agencies. Unless specifically approved otherwise, the requirements of the regulations must be met prior to the production leaving the lease. Therefore, when approval has been granted for the removal of production from a lease, unit, or communitized area for the purpose of treating the production or accumulating production for delivery to a purchaser prior to the requirements of the operational regulations having been met, MMS does not believe that any allowances should be granted for costs incurred by a lessee in these instances.

"Gross Proceeds"—MMS received many comments on the definition of "gross proceeds" from industry, States, Indian Tribes, and a State/tribal association.

One State agreed with the language of the proposed definition and supported its endorsement as follows: "Such a definition must be all inclusive. Any exceptions would only serve as precedents for carving more exceptions, and invite creative accounting mechanisms aimed at escaping royalty obligations."

One Indian commenter recommended replacing the word "entitled" with the phrase "accrued or accruing to" while another State commenter supported retaining the word "entitled" because it confirms the lessee's "obligation to act in the best interests of the lessor." This same commenter, however, pointed out: "In the Purpose and Background statement, MMS states that it is the intent of the regulations to include as royalty all of the benefits accruing, or that could accrue, to the lessee. However, the actual definition of gross proceeds does not encompass all potential benefits. For example, a lessee may accept a lower price for its production from a Federal lease for the opportunity to sell to the particular purchaser its production from other leases. Despite the difficulties of attributing a value to such an opportunity, it is a benefit accruing to the lessee under its sales contract. The language of the definition, however, suggests that 'gross proceeds' only encompasses consideration that has been stated in dollar terms. Thus, it technically does not include all of the benefits that could accrue under a sales contract."

A majority of those commenters that objected to the proposed definition expressed the same basic arguments in support of their position. Several industry commenters argued that the proposed definition contains language which is too expansive, claiming that the word "entitled" injects uncertainty and subjectivity into valuation. In addition, this term is considered objectionable by some because, as one commenter stated, "the intent of 'entitled' is not clearly understood, nor is it a clearly defined legal term. Lessees cannot know how either they or MMS auditors will, or should, apply the 'entitled' concept." They recommend deleting this term and abandoning the underlying concept altogether.

A few industry commenters suggested that the proposed definition does not conform to the terms of Federal and Indian oil and gas leases nor the statutes under which they were issued. They argue that the present definition "attempts to collect royalty on consideration received by the lessee [for] other than production saved, removed, or sold from the lease" and that it seeks to redefine "value" to include income or credits which are unrelated to such production.

Other industry commenters agreed with this overall approach, especially as it relates to reimbursements for "production costs" and "post-production costs." One commenter addressed this point at length: "This definition must be changed to limit the royalty to the value of the production at the lease. The current expansive definition allows MMS to reach far beyond that value to confiscate the value added by post-production activities. The MMS has misread the *The California Co. v. Udall* decision to require the lessee to do much more than place production in a marketable condition. If production could be sold at a lease but the lessee determines to enhance the value by retaining control and further processing it, the value added or reimbursements for the costs of such further handling are not appropriate for consideration in the value of the product for royalty purposes."

Many of the industry commenters objected to the "laundry list" of services they asserted are unrelated to production being included as part of "gross proceeds." One industry commenter urged MMS to adopt language which would specifically allow a variety of costs to be deducted from gross proceeds in order to arrive at the value of production.

A few industry commenters concluded that the definition, in its present form, is inconsistent with industry practice and not responsive to the "interaction of market forces."

One industry commenter noted that "some of the items specifically identified as subject to royalty under the gross proceeds concept are the subject of ongoing litigation and the MMS should not preempt judicial decision through regulation."

One State commenter asserted that the definition is only necessary as a determinant of minimum value and, in this sense, should be as expansive as possible. This commenter suggested that "the words 'but is not limited to' need to be added after the words 'gross proceeds, as applied to oil also includes.' " This language was thought to be needed because there is "no reason to restrict the term gross proceeds to encompass only those items listed." Furthermore, this commenter is concerned that the present language will "restrict the Secretary's authority to react if different types of sales arrangements arise in the future."

Another industry commenter asserted that there are "serious ambiguities and inconsistencies" in the definition of gross proceeds "as related to transportation deductions imposed by oil purchasers. These ambiguities and inconsistencies could be interpreted to preclude the use of a market-based value for royalty oil where oil purchasers in the area deduct actual transportation costs from their posted prices."

A large number of industry commenters recommended that MMS adopt the definition proposed by the RMAC Oil Valuation Panel which reads as follows: "Gross proceeds (for royalty payment purposes) means the consideration accrued to the lessee for production removed or sold from a Federal, Tribal, or Indian allotted lease."

Many of the comments on the second draft final rule addressed the gross proceeds definition, particularly industry comments. These comments again generally stated that the definition is too expansive.

MMS Response: In the draft final rule, MMS included a definition which was modified slightly from the original proposal. In the second draft final rule, MMS again made a modification discussed below, which has been retained in the final rule. The MMS retained the intent of the proposed language because gross proceeds to which a lessee is "entitled" means those prices and/or benefits to which it is legally entitled under the terms of the contract. If a lessee fails to take proper or timely action to receive prices or benefits to which it is entitled under the contract, it must pay royalty at a value based upon that legally obtainable price or benefit, unless the contract is amended or revised. As is discussed more fully below, gross proceeds under arm's-length contracts are a principal determinant of value. MMS cannot adopt that standard and then not require lessees to pay royalties in accordance with the express terms of those contracts. (See § 206.102(j).) It is MMS's intent that the definition be expansive to include all consideration flowing from the buyer to the seller for the oil, whether that consideration is in the form of money or any other form of value.

Lessees cannot avoid their royalty obligations by keeping a part of their agreement outside the four corners of the contract. Moreover, as noted earlier, many commenters stated that the "total consideration" concept properly belonged as part of gross proceeds, not in the definition of arm's-length contract.

Therefore, MMS purposefully has drafted the gross proceeds definition to be expansive and thus include all types of consideration flowing from the buyer to the seller. Toward that end, MMS has replaced the word "paid" used in the first draft final rule with the term "accruing." There may be certain types of consideration which are not actually paid by the buyer to the seller, but from which the seller benefits. The term "accruing" ensures that all such consideration is considered gross proceeds.

The so-called "laundry list" of services are all benefits that a lessee may be legally entitled to under the terms of the contract and are considered part of the value for the production from the lease. Costs of production and placing production in marketable condition are considered services that the lessee is obligated to perform at no cost to the Federal Government or Indian lessor.

"Indian Tribe"—MMS has corrected the typographical error in the proposed definition and has replaced the word "state" with the words "United States."

"Lease"—One Indian commenter focused on the following issue: "Inclusion of any contract, profit-sharing arrangement, joint venture, or other agreement in the term 'lease' as opposed to a more standardized Bureau of Indian Affairs (BIA) form lease may cause confusion. Most joint ventures and profit-sharing arrangements contain explicit provisions on payment of expenses and division of revenues."

MMS Response: Contracts, profit-sharing arrangements, and joint ventures are all examples of types of valid leases already in existence. All specify royalty provisions, some more detailed than others. Nonetheless, they all qualify under the definition of "lease." Therefore, MMS has retained the proposed definition in the final rule.

"Lessee"—The proposed definition of "lessee" generated comments from the industry and from States. By far the most significant issue raised is that the proposed definition is inconsistent with the statutory definition of "lessee" found in the Federal Oil and Gas Royalty Management Act of 1982 (FOGRMA). The originally proposed definition uses the phrase "or any person who has *assumed* an obligation" whereas the language in FOGRMA uses the word "*assigned*" in place of the word "assumed." The commenters argued that MMS's use of the word "assumed" expands the definition beyond the intent of Congress and "seeks to invalidate the lease provisions with respect to royalty payment * * *" They further asserted that there is no reason to redefine the term and recommended using the definition found in FOGRMA at section 3(7), 30 U.S.C. 1702(7).

Two industry commenters suggested that the definition be narrowed to "exclude persons who have assumed an obligation to make royalty and other payments required by the lease." Their argument focused on the difference in responsibilities between lessees and payors: "The payor is not necessarily a lessee and should not be defined as one. A lessee is bound by the terms of a lease agreement while a payor is not."

Two industry commenters suggested that the definition as provided in FOGRMA should be revised for the purposes of these regulations for the sake of clarity.

A State commenter objected to the proposed definition because it has the effect of spreading "the reporting and payment responsibility among numerous parties. With each of these parties reporting and paying separately, no single party has the responsibility to insure that 100 percent of all production is reported and 100 percent of the royalties are paid."

MMS Response: The MMS agrees with the comments regarding consistency with the definition found in FOGRMA and, therefore, has replaced the word "assumed" with the word "assigned." The term "assigned," as used in this part, is restricted to the assignment of an obligation to make royalty or other payments required by the lease. It is in no way related to lease "assignments" approved through the MMS, BLM, or BIA. It is MMS's intent that operators and others who pay royalties follow these regulations in determining the royalties due. The lessee of record is ultimately responsible if the operator or payor does not properly pay the royalties due the lessor.

"Like-quality lease products"—Several Indian commenters stated that the definition should not include any reference to legal characteristics. The concern of many of these commenters was that this criterion could result in State-imposed limitations on royalty values.

MMS Response: The MMS disagrees that reference to legal characteristics should be deleted. The term like-quality is used in the rules for comparability purposes. If oil is regulated, only oil in the same regulated category should be considered in a comparability analysis.

"Load Oil"—One industry commenter suggested that the word "fuel" be added as noted in the following proposed language: " *Load oil* means any oil which has been used with respect to the operation of oil or gas wells for *fuel*, stimulation, workover, chemical treatment, production or such other purposes as the operator may elect."

A State commenter recommended deleting the phrase "as the operator may elect" from the definition because: "There is no reason to institutionalize, in an enforceable regulatory form, a standard of lessee discretion."

MMS Response: Load oil is distinguished by MMS as oil used for the purposes of stimulating production through injection into the wellbore. Using oil for the purposes of enhancing the value of, or otherwise treating, lease production at the surface is not considered "load oil." Thus, oil used as fuel is not load oil. Also, in order to eliminate confusion, MMS has deleted the phrase "or such other purposes as the operator may elect."

"Marketable condition"—Only a few persons commented on this definition. A State commenter addressed the following concerns: "The definition states that product will be deemed marketable if it is 'in a condition that will be accepted by a purchaser under a sales contract typical for the field or area.' Such contracts, now or in the future, may provide that the purchaser bear the costs of the treatment necessary to place products in a marketable condition. Under the definition, as written, therefore, there would be a theoretical market for untreated product, and MMS would lose the benefit of the increased value attributable to requiring the lessee to perform the necessary conditioning.

"An additional problem exists because of the difficulty of determining what is 'typical' for the field or area. This is because of the same informational difficulties that disable MMS from adequately applying the majority portion analysis. Without full access to the range of sales arrangements that may exist for production in a given area, MMS will be forced to rely on lessee-selected documentation in order to determine what type of conditioning is 'typical' for the area."

Two industry commenters stated that the definition is too subjective and provides no guidance to the lessee.

MMS Response: The MMS believes it is highly unlikely that the oil industry would change the quality requirements for oil sales to avoid paying royalties on nonrecoverable marketing costs. If such an arrangement occurred, MMS would then need to determine if the arrangement is an attempt to avoid paying royalties on the market value of the oil, or a contract to not only purchase the oil, but to place it in

marketable condition as well. In either case, the costs for placing the product in marketable condition would not be an allowable deduction from the value for royalty purposes. (See § 206.102(i).)

"Marketing Affiliate"—MMS received several comments that sales to marketing affiliates who then resell the oil to third persons should not be treated under the rules as non-arm's-length sales. MMS has addressed this issue in the valuation rules discussed below, and is including a definition of marketing affiliate as an affiliate of the lessee whose function is to acquire only the lessee's production and to market that production. Some industry commenters stated that the term "only" should be deleted to include affiliates that purchase oil from other sources including other sellers in the same field.

MMS Response: The MMS is retaining the term only. If the affiliate of the lessee also purchases oil from other sources, then that affiliate's posted price or oil sales contract prices could be used in determining value if they satisfy the first benchmark. Also, deleting the term "only" from the definition may require the lessee to track production much farther downstream than the point at which it can be valued under the benchmarks.

"Net-back method"—Two State commenters objected to the proposed definition and industry commenters recommended adding clarifying language. The following discussion outlines the position of the two State commenters that found the proposed definition objectionable: "Briefly, our objections are twofold: 1. Net-back is a useful method to independently cross-check lessee declared values, and thus its use should not be restricted to those situations in which the 'first' sale, transfer, or use is downstream from the lease.

"Second, net-back should be allowed from any reasonable point at which a value can be ascribed to the product. There is no guarantee that the 'initial sales point' or 'first alternate point' will exhibit the open market conditions essential for attribution of a true value for the products.

"We therefore propose the following alternate definition: Net-back method means a procedure for valuing or verifying prices assigned to lease products or for independent cross checking of the validity of the gross proceeds of lease products or of prices posted or paid in a field or area. The procedure involves calculating back from any downstream point at which values for such products reasonably and fairly can be derived. In applying the net-back, consideration will be given to the reasonable costs of processing and transportation from the producing lease, unit or communitized area to arrive at a value for the products at the lease."

The industry commenter recommended that the following language be added to the proposed definition: "In net back calculation the alternate point used for value determination shall be the point which is the closest point to the lease at which a price for similar lease products can be established by alternate means. Such alternate means may include posted prices or published spot market prices."

MMS Response: Upon review, MMS determined that the originally proposed definition of net-back was too broad—it applied to any situation where lease production is sold at a point off the lease. MMS's intent is that a net-back method be used for valuation primarily where the form of the lease product has changed, and it is necessary to start with the sales prices of the changed product and deduct transportation and processing costs. An example would be where oil production from a Federal lease is used-on lease to generate electricity which is then sold. If the value of the oil cannot be determined through application of the first four benchmarks in the regulations (see § 206.102(c)), then a net-back method would involve beginning with the sale price of the electricity and then deducting the costs of generation and transportation, thus working back to a value at the lease. In the draft final rule, MMS used the phrase "ultimate proceeds" to try and refer to the downstream product. Many commenters thought the term would result in MMS doing a net-back from the farthest downstream product, even to the point of "Stainmaster Carpet" or "model airplanes." This was not MMS's intent. Therefore, the term "ultimate" was deleted and a reference included to starting the net-back at the first point at which reasonable values for any product may be determined by a sale pursuant to an arm's-length contract or by comparison to other sales of such products. Thus, if there are five different stages of chemical or fiber products between oil production and "Stainmaster Carpet," if the value of the second product can be determined through comparison with sales of other such products in the same market, MMS would begin the net-back from that product, not from the sale price of the carpet.

"Person"—One Indian commenter supported the inclusion of "joint venture" in the definition of "person" while two industry commenters recommended that "joint venture" be deleted. The rationale these two commenters rely on as the basis for recommending deletion is that the term "person" is used in the definition of "arm's-length contract" and if "that definition is not altered as suggested herein, then inclusion of a joint venture in the definition of person will further narrow the definition of arm's-length transaction by clouding the issue of control and the application of the definition [of] arm's-length to other joint venturer transactions." Another industry commenter advocated replacing the word "firm" with the word "company" because they believe that, in this context, it would be more appropriate. Another industry commenter recommended adding the phrase "when established as a separate entity" after the term joint venture.

MMS Response: The MMS has adopted the addition of the suggested phrase concerning joint ventures in the final definition. The MMS agrees that two unaffiliated parties jointly developing and producing a lease should not be viewed as one entity unless those parties have formally established a separate entity that involves them both.

"Posted price"—The proposed definition received only a few comments, two of which recommended expanding the definition of posted price to include the phrase "or at the specific onshore or offshore terminal(s) listed in the announcement" after the words "in the field." These industry commenters stated that there are "currently very few 'field postings,' rather there are terminal postings" and that expansion of the definition as noted above would avoid confusion in applying the definition.

Another industry commenter believed that the word "posted" is outdated and that some purchasers may not publish a price bulletin, instead providing price quotations or notices to any seller desiring to do business with the purchaser.

A State commenter recommended deleting the phrase "net of all deductions" for the following reasons: "The 'net of all deductions' language should be deleted. MMS has proposed a system of allowances, which as a practical matter makes the 'net of deduction' language unnecessary for the purposes of defining 'posted price.' This proposal could be interpreted to institutionalize the allowances without a mechanism of independent cross-check by MMS.

"Common industry deductions are for transportation and conditioning. Yet there are no restrictions upon what a poster can include as a deduction from the posted price. Thus MMS must retain

the power to scrutinize such matters, and add such deductions back into the value of the production when necessary."

This same commenter believed that the definition is too restrictive: "We also object to restricting the definition of posted price to formal price bulletins. Rather, the definition should be broader and include both prices posted and those regularly paid. It is not unusual for a buyer to come into the market and offer publicly a price for crude, which is like a posting but not necessarily a price bulletin. Such publicly announced offers to buy could be at a price higher than offered in a price bulletin, and are no less 'market determined' than supposedly are postings in bulletins. Price bulletins are, generally, only circulated by the major companies and thus reliance on them may give undue advantage to the ability of those companies to establish prices." A State commenter also recommended deleting the phrase "and location for oil in marketable condition" stating that this provision authorizes lessees to, in effect, deduct transportation costs without any review by MMS.

MMS Response: The MMS is expanding the definition in the final rule to include references to onshore and offshore "terminal postings" and "price notices." For clarification purposes, the word "condition" replaces the word "quality" which follows the word "marketable" in the first sentence. The phrase "net of all adjustments" has been revised to read "net of all adjustments to." As used in this definition, the term "adjustments" refers to deductions from the price of oil for quality adjustments such as API gravity and sulfur content. Adjustments for location also may be taken into account where appropriate. It would be unfair not to take into account price reductions which reflect location.

"Processing"—MMS has added a definition of "processing" as any process designed to remove elements or compounds (hydrocarbon and nonhydrocarbon) from gas, including absorption, adsorption, or refrigeration. Field processes such as natural pressure reduction, mechanical separation, heating, cooling, dehydration, and compression are not considered processing. Under this definition, the changing of pressures and/or temperatures in a reservoir is not considered processing.

Section 206.102 Valuation standards.

Section 206.102(a) sets the basic standard that the value for royalty purposes will be the value of the oil determined pursuant to this section less applicable allowances. One State commenter recommended that the phrase "less applicable transportation allowances" be deleted because it is unnecessary, confusing, and because it implies that the lessee can deduct the transportation allowance from the value received and report the resultant reduced value as a single line item.

MMS Response: The regulation as adopted refers to "applicable" allowances, which includes transportation allowances. It does not imply that any and all costs can be deducted. Also, it refers to "this Subpart" which includes § 206.105. That section provides complete details regarding transportation allowances. Therefore, this suggestion was not adopted.

Two Indian commenters recommended that the paragraph be modified by (1) deleting any reference to the transportation allowances because they are improper for Indian leases, and (2) adding the phrase "in marketable condition."

MMS Response: Transportation allowances are allowable under most Indian leases. It has been MMS's practice to grant such allowances. If an Indian lease restricts such allowances, then the lease terms will govern.

The MMS does not agree that the phrase "in marketable condition" should be inserted prior to the word "determined." Section 206.102(i) requires that oil be placed in marketable condition at no cost to the lessor. Thus, because § 206.102(a) provides that value be "determined pursuant to this section," the marketability requirement already is included.

The MMS is including in the final rule a new paragraph (a)(2) which states that for any Indian leases which provide that the Secretary may consider the highest price paid or offered for a major portion of production (major portion) in determining value for royalty purposes, MMS will, where data are available and where it is practicable, compare the value determined in accordance with the prescribed standards with the major portion. The rule provides that the value for royalty purposes will be based upon the higher of those two values. The draft final rule included a provision that, if MMS determined that the major portion results in an unreasonably high value, then it would not be used for royalty purposes. Many Indian commenters thought that, for their leases which include a specific reference to the major portion, value should establish a minimum value, and a major portion value in most instances will be reasonable because at least half the oil is sold at or above that price. MMS agrees and has made the change to the final rule.

Many Indian commenters raised concerns about the qualifications included in this paragraph. These commenters must recognize that, if data are not available, it is impossible to do a major portion analysis.

The MMS is also including in paragraph (a)(2) a description of how the major portion is computed. It will be determined using like-quality oil sold under arm's-length contracts because non-arm's-length contracts may not reflect market value. The production will be arrayed from highest price to lowest price (at the bottom). The major portion is that price at which 50 percent (by volume) plus one barrel of the oil (starting from the bottom up) is sold. An industry commenter recommended deletion of the reference to "area". However, because only arm's-length contracts are used in the analysis, the field may not yield a sufficiently reasonable sample in all cases. Generally, it will not be necessary to look beyond the field.

The MMS believes that, for these Indian leases, by comparing the major portion to values determined using arm's-length contract prices or the benchmarks for non-arm's-length contracts, and using the higher of the two, the Indians will be receiving royalties in accordance with their contract with the lessee.

One industry commenter was critical of the major portion analysis claiming that it could yield eratic results in some circumstances. An Indian commenter suggested that MMS use the Conservation Division Manual procedure for computing major portion which was claimed to be different from what was included in the rules.

MMS Response: The major portion analysis has been a part of valuation procedures for at least 45 years. The MMS considers it to be a workable procedure. The MMS maintains that the procedure contained in the final rules is consistent with the Conservation Division Manual (which no longer is in effect).

Section 206.102(b) provides the valuation procedure for valuing oil sold pursuant to arm's-length contracts. Many comments were received regarding the concept of valuing oil on the basis of gross proceeds received under an arm's-length contract. They were about equally divided in number as to those in favor and those opposed.

Several State and Indian commenters, and one State/Indian association disagreed with the concept of valuing oil on the basis of gross proceeds received

under an arm's-length contract. The commenters contend that, historically, gross proceeds has been regarded as a minimum value and that it has long been recognized that a market value clause in a lease "is distinctly and substantially different from a gross proceeds clause." They were concerned that the concept establishes an industry honor system. Also, concern was expressed that the proposed regulations be consistent with the provisions of the Indian lease agreement, and they questioned whether the proposed regulation permits the Secretary to discharge his/her responsibilities to the Indian lessors. These commenters maintained that whether an arm's-length transaction yields market value depends upon the definition of arm's-length contract.

Two State and two Indian commenters expressed concern that the proposed regulations will institutionalize an industry "honor system" for valuation of Federal royalty production. The commenters stated that the rules provide no mechanism for independent oversight and cross-check of lessee declarations of value and impose such impossible information burdens on government that they can only result in total reliance on lessee-generated information. They stated further that whether an arm's-length transaction yields market value depends upon the definition of "arm's-length" and whether independent price checks confirm the receipt of proceeds.

The commenters pointed out that many sales arrangements may appear to be arm's-length on the surface, but in actuality the producers are "captive shippers" subject to forced sale and the purchaser's take-it-or-leave-it price. This scenario is stated to be contrary to the common legal understanding of an arm's-length market-determined price. The commenters noted that MMS's definition of "arm's-length" does not even contain the minimum acceptable requirements, in a legal sense, necessary to assure that such contracts are, in fact, arm's-length. They argue that the use of an arm's-length/gross proceeds valuation method requires that such matters as open-market conditions and the relationships between parties, beyond mere affiliation, be investigated. Also, the commenters stated that MMS does not confine arm's-length to those contracts that involve only the consideration for the sale of lease products. Coupled with the proposed definition of gross proceeds, the commenters believe "this allows lessees the opportunity to manipulate the prices received for their production from a Federal lease by accepting a lower price in order to sell production from other non-Federal leases, possibly at a more profitable price."

MMS Response: In response to a large number of comments from the States, Indians, and industry, MMS has modified the regulations which govern the valuation of oil production sold pursuant to arm's-length contracts. For almost all such sales, the value for royalty purposes will continue to be the gross proceeds accruing to the lessee. Under MMS's existing regulations, the lessee's gross proceeds pursuant to an arm's-length contract are acceptable, though not conclusively, as the value for royalty purposes. The MMS believes that the gross proceeds standard should be applied to arm's-length sales for several reasons. MMS typically accepts this value because it is well grounded in the realities of the marketplace where, in most cases, the 7/8ths or 5/6ths owner will be striving to obtain the highest attainable price for the oil production for the benefit of itself; the royalty owner benefits from this incentive. It also adds more certainty to the valuation process for payors and provides them with a clear and equitable value on which to base royalties. Under the final regulations, in most instances the lessee will not need to be concerned that several years after the production has been sold MMS will establish royalty value in excess of the arm's-length contract proceeds, thereby imposing a potential hardship on the lessee.

Establishing gross proceeds under an arm's-length contract as the royalty value also has benefits for MMS and those States which assist MMS in the audit and enforcement effort. The gross proceeds standard will give auditors an objective basis for measuring lessee compliance. It will reduce audit workload and reduce the administrative appeal burden which results when valuation standards are too subjective, particularly when values are determined to be in excess of a lessee's arm's-length contract gross proceeds.

MMS recognizes, however, that there must be exceptions to the general rule that the lessee's arm's-length contract price should be accepted without question as the value for royalty purposes. One such situation is where the contract does not reflect all of the consideration flowing either directly or indirectly from the buyer to the seller. As an example, in return for Seller's reduced price for oil production from a Federal lease, Buyer may agree to reduce the price of gas it sells to the Seller from a non-Federal lease. This agreement is not reflected in the oil sales contract. In the event that MMS becomes aware of consideration that exists outside the four corners of the contract, MMS could accept the lessee's gross proceeds as value, adjusted to reflect the additional consideration. However, in some circumstances the additional consideration may not be easily calculable. Thus, even if the parties are not affiliated and the contract is "arm's-length," MMS may require in paragraph (b)(1)(ii) that the oil production be valued in accordance with paragraph (c), the standards used to value oil disposed of under non-arm's-length contracts. Under these standards, the lessee's gross proceeds still may determine value, but the lessee will be required to demonstrate comparability to other arm's-length contracts. Thus, despite several industry comments suggesting that this section be deleted, MMS is retaining it in the final rules.

MMS recognizes that some parties may have multiple contracts with one another. This fact alone would not cause a contract to be treated as non-arm's-length. Rather, there must be some indication that the contract in question does not reflect the full agreement between the parties.

Although many commenters disagreed with the requirement, the final regulations also include a provision whereby MMS may require a lessee to certify that the terms of its arm's-length contract reflect all the consideration flowing from the buyer to the seller for the gas. The commenters believed that values already were subject to audit and that was a sufficient safeguard. MMS is retaining this provision because there may be circumstances where an auditor could not reasonably be expected to find other consideration, yet there is good reason to believe it exists. Because of the potentially severe penalties for a false certification, this will assure that no other consideration exists once the certification is received.

In other situations it may not be apparent why an arm's-length contract price is unusually low, yet the lessor should not accept the arm's-length contract proceeds as value. It may be because of collusion between the buyer and seller or improper conduct by the seller, or it could be the result of negligence in negotiating a contract. Even if the contract is between unaffiliated persons and thus "arm's-length," pursuant to paragraph (b)(1)(iii), if MMS determines that the gross proceeds do not reflect the reasonable value of the production because of misconduct by the contracting parties or because the lessee otherwise has

breached its duty to the lessor to market the production for the mutual benefit of the lessee and the lessor, then MMS may require that the oil production be valued pursuant to the first applicable of paragraphs (c)(2), (c)(3), (c)(4), or (c)(5). Thus, MMS first must determine that a price is unreasonable; for example, by looking at comparable contracts and sales. Then MMS must determine that the unreasonably low price was the result of misconduct or a breach by the lessee of its duty to market the production for the mutual benefit of itself and the lessor.

A breach of the lessee's duty to market production to the mutual benefit of the lessee includes, but is not limited to, collusion between the producer/seller and buyer, pricing practices found by a court or regulatory authority to be incorrect or fraudently manipulated, or negligence in negotiating contracts.

The MMS believes that new § 206.102(b)(1) establishes a more definable standard than paragraph (b)(1) of the draft final rule at 52 FR 30857 ("whether there may be factors which would cause the contract not to be arm's-length"). Although MMS retains the discretion under this section not to accept an arm's-length contract price as value, which many commenters thought was a necessary provision in these regulations, there are limits on the exercise of that discretion.

Some commenters requested that the rules require MMS to give a lessee an opportunity to respond before making a finding under subsection (b)(1)(iii). Generally, the appeals regulations in 30 CFR Part 290 give the lessee such an opportunity before a final MMS decision is made. However, MMS will give a lessee an opportunity to comment. MMS has put such a provision in the rules.

If valuation in accordance with the fourth and fifth benchmarks in paragraph (c) is required, then the lessee also must follow the notification requirements of paragraph (e)(2).

One Indian commenter suggested that the lessee should certify that this is the highest price he could have received for that oil at the time of the sale. The same commenter also noted that MMS's regulations, at a minimum, must be consistent with the language of the Indian leases. Other Indian commenters stated that the concept of basing royalty on gross proceeds received under an arm's-length contract is not in accord with the responsibilities of the Secretary. One of these commenters stated that "the lease and regulations provide that value be determined, not gross proceeds. Gross proceeds is merely evidence of such value. Acceptance of gross proceeds as conclusive evidence of value is an abrogation of the Secretary's fiduciary duties, especially if the previous MMS practice of accepting reports from lessees without scrutiny continues."

MMS Response: The MMS believes that the regulations as adopted, with the changes discussed earlier, will permit the Secretary to discharge his/her responsibilities properly.

One State commenter objected to the whole approach of the regulations. It was suggested that auditors need to be given additional flexibility to disregard deflated prices. This commenter believed that "gross proceeds" should be set aside as a valuation method where "outside consideration" may have caused contract prices to be reduced.

MMS Response: The MMS has concluded that the final rules strike a reasonable balance between allowing MMS not to accept arm's-length contract prices in appropriate circumstances and giving the lessee some certainty that its arm's-length prices will be acceptable as value. No additional changes were made.

One State commenter objected to the phrase "monitoring, review, and audit" or similar phrases which appear throughout the proposed regulations because it suggests that the terms listed are synonymous. An MMS review or reconciliation is not the same as a full audit. The commenter suggested that the following paragraph be added:

"( ) Notwithstanding any provision in these regulations to the contrary, no review, reconciliation, monitoring or other like process that results in a redetermination by MMS of value under this section shall be considered final or binding as against the Federal Government, its beneficiaries, the Indian Tribes or allottees until after full audit."

Also, the commenter suggested that the words "lease terms, or relevant statutes" need to be added after the words "requirements of these regulations" in proposed § 206.102(b) and (d)(1), for purposes of clarification and precision.

MMS Response: The suggested additional paragraph language has been included in the final rule as § 206.102(k) with minor modifications. This paragraph reflects MMS's longstanding view that a value determination based on limited review does not estop the MMS from redetermining that value until an audit has been completed and the audit period formally closed. MMS intends, however, to prepare more detailed guidelines as to when an audit is closed. The phrase "lease terms, or relevant statutes" has not been added to § 206.102(b) because there is a provision in the regulations that in the event of conflict the lease terms govern. Likewise, all persons are subject to statutory requirements.

Two suggestions were made regarding the establishment of a floor value. One Indian commenter objected to the proposed regulations because they "* * * would permit MMS to rely upon an industry honor system for valuation of Federal royalty production." However, if MMS's proposed valuation approach is to be adopted, they suggested that § 206.102(b) be revised to read as follows:

"The value of oil which is sold pursuant to a contract shall be the gross proceeds accruing, or which could accrue to the lessee, *provided that* such proceeds do not fall more than 10 percent below the greater of the highest price paid or posted for similar oil in the same field or area. If such proceeds do fall more than 10 percent of such prices, the value of oil in that case shall be 10 percent below the greater of the highest price paid or posted for similar oil in the same field or area." It was stated that this approach will permit MMS to have a uniform and administratively simple benchmark to establish market value, rather than "evaluating each contract on a case-by-case basis in light of the many possible indicia of a sale at less than fair market value * * *."

Another Indian commenter stated that: "The proposed regulations would allow substantial manipulation and undervaluation of the royalty amount. Most centrally, it is unacceptable to allow lessees to use contract prices as the royalty value without adequate safeguards to assure a fair valuation for the public's resources. At a minimum, only prices under *genuine* arm's-length contracts should be acceptable for royalty purposes. The proposed regulations would allow collusive contracts to qualify as 'arm's-length contracts.' " It was also stated that if MMS remains intent upon accepting royalty on the basis of what the commenter considers to be below-value contract prices, "we urge that MMS at least impose a floor value, such as 80 percent of the value of production as determined under the 'value' criteria applicable to oil not sold under arm's-length contracts."

MMS Response: The MMS generally does not believe that establishment of a "floor value" (other than gross proceeds) is appropriate or equitable because it could result in royalty being assessed on a value greater than the lessee received under an acceptable arm's-length contract. Where an arm's-length contract operates to set the price at

which the lessee can sell the production, that contract likewise should set the royalty value in most circumstances. However, under the lease and the regulations, MMS has the authority to establish value for royalty purposes and will do so for non-arm's-length contracts where it is justified, even if such value is higher than the gross proceeds received by the lessee. Also, as explained above, for many Indian leases, because of the specific lease terms, MMS will compare values determined using arm's-length contract prices with the highest price paid for a major portion of production, and generally use the higher of the two.

One Indian commenter raised the question of what "which could accrue" means and also pointed out that, if the value of oil is to be based on gross proceeds, the regulations need to be more precise in stating which gross proceeds are to be used.

MMS Response: The regulations include a detailed definition of the term "gross proceeds." The MMS believes the definition is adequate. MMS has deleted the phrase "or which could accrue" from the final rule.

Many commenters approved of the concept of valuing oil on the basis of gross proceeds received under an arm's-length contract. Basic reasons for approval were stated in one comment as follows: "This standard is fair and reasonable; it will promote necessary certainty and consistency for the lessor and lessee alike; it is based on the lease language; it is administratively feasible; and it relies on an objective valuation mechanism—the market. It is appropriate in arm's-length situations because both the buyer and the seller have agreed to be bound by the best price each thought it could get for the duration of the contract. In such circumstances the royalty owner's interest in securing fair market value is protected by the arm's-length nature of the transaction." The 11 industry commenters also objected to use of the phrase "or which could accrue" in the first sentence. This objection can best be summarized in the following comment: "Use of the phrase creates uncertainty and subjectivity and should not be implemented in regulations which must have certainty as a foundation." Industry commenters stated that it is unfair for the lessor to determine after the fact that proceeds "could be accrued." Also, one of these commenters noted that lessees act in a competitive market and "in the absence of fraud, cannot fairly be held to a *post hoc* determination that proceeds could have accrued." One of these commenters summarized as follows: "In sum, the proposed definition of 'gross proceeds' is in need of substantial revision. The MMS should modify it to include only those monies actually received for the sale of production. Other regulations which would require payment of royalties on phantom proceeds should also be amended accordingly."

MMS Response: The MMS believes that gross proceeds under an arm's-length contract generally constitutes the market value of a commodity. This does not preclude MMS from establishing a value where necessary; e.g., the contract does not meet MMS's standards for an arm's-length contract, the lease agreement requires a different value, or the lessee has engaged in misconduct. The phrase, "or which could accrue," is deleted from the final rule. As noted above, many commenters thought that this phrase would allow MMS to second-guess the price which the lessee agreed to in its arm's-length contract by arguing that other persons selling oil may have received higher prices—thus, more proceeds "could have accrued" to the lessee. This was not MMS's purpose in including the "or which could accrue" language in the proposed rule. Rather, MMS's intent is to ensure that royalties are paid on the full amount to which the lessee is entitled under its contract, not just on the amount of money it may actually receive from its purchaser. However, MMS is satisfied that the phrase "the gross proceeds accruing to the lessee" properly includes all consideration to which the lessee is entitled under its contract, not necessarily just what it receives from the buyer. Therefore, the "or which could accrue" phrase was unnecessary. Because it caused confusion as to MMS's intent, it was deleted from the final rule.

Many comments were received regarding the proposed benchmark system in § 206.102(c). They were about equally divided in number as to those in favor and those opposed.

Several States, Indians, and one State/Indian association objected to the proposed benchmark system. Most of these commenters supported highest posted prices using the net-back procedure as verification. One of their objections to the benchmark system is that the proposed methodologies are unworkable and provide no reasonable method of verification. Another objection is that the proposed system would impair effective oversight and reduce royalties. Also, these objectors state that in their view the proposed procedures would severely burden the audit program and, as a practical matter, would preclude adequate verification of the "lessee's declarations." In addition, they stated that the use of the net-back procedure is unduly restricted, and, to the contrary, should be used frequently for independent verification. They believe that more readily verifiable methods should be used to ensure that fair-market value is being received.

One of these commenters summarized a number of objections as follows: "Historically, gross proceeds has been regarded as minimum value; however, the proposed benchmarks appear to be primarily aimed at converting gross proceeds as *the* value. Gross proceeds is not necessarily fair market value. Published gross proceeds are not always all consideration received, for example, drilling advances and special equipment lease agreements." Also, "* * * no mechanisms are provided to cross-check * * * values reported under the first three benchmarks; since MMS has taken the notion that it does not have the authority to obtain access to other arm's-length contracts from producers not obligated to report to MMS, comparisons could not be made." It was also stated that "The most effective benchmark, net back calculation, would never be used because of the prioritized order of other valuation methods."

Some commenters stated that the benchmarks should not be prioritized. Rather, value should be determined by using the most applicable benchmark. These same commenters recommended modifying the first benchmark to require comparison with other posted prices or contract prices in the field.

MMS Response: The MMS believes that a prioritized benchmark system is workable and fair. Obviously, for OCS leases, MMS has access to information regarding all posted prices and contracts (if any). In addition, the majority of onshore fields with Federal lands are comprised of a significant percentage of such lands (if not the majority) so that needed price information is readily available. In many instances, Indian lands comprise a significant portion of an oil field. Where necessary, information sometimes can be obtained from the appropriate State agency. Although price and field boundary data are available for most onshore leases, the acquisition of volume data associated with an arm's-length sale has been difficult to obtain. Accordingly, MMS has added § 206.102(d) which provides that any Federal or Indian lessee will make available upon request to the authorized MMS, State and Indian representatives, and others, arm's-length sales and volume data for like-quality production in the field or area or nearby fields or areas. Undoubtedly, there will

be a few instances where it will be difficult to obtain needed information, but this is true of any procedure adopted.

The MMS believes that, in the vast majority of cases, gross proceeds constitute market value. In those cases where this is not true, MMS will establish an appropriate value for royalty purposes. "Arm's-length" sales will not be accepted without question. The MMS will obtain needed information to ascertain that they are truly arm's-length as defined in the regulations.

In response to comments that the first benchmark should not accept a lessee's posted prices without some comparison of other postings in the field, MMS has modified the first benchmark. Under this benchmark, the value still will be the lessee's contemporaneous posted prices or oil sales contract prices used in arm's-length transactions for purchases or sales of significant quantities of like-quality oil in the same field (or, if necessary to obtain a reasonable sample, from the same area). However, the lessee also must demonstrate that those prices are comparable to other contemporaneous posted prices or oil sales contract prices for purchases or sales of significant quantities of like-quality oil in the same field (or area). To evaluate comparability, the factors include price, duration, market or markets served, terms, quality of oil, volume, and such other factors as may be appropriate to reflect the value of the oil.

MMS received many industry comments suggesting that the first benchmark exclude the requirement that the lessee's own posted price or oil sales contract prices be comparable to posted prices or oil sales contract prices of others. Because sales data of other persons often is not available, the commenters believe that uncertainty has unnecessarily been introduced into the process. One industry commenter believed that the benchmark, as revised, would be workable and provide sufficient flexibility.

MMS Response: The MMS believes that the first benchmark will be retained, as revised, in the second draft final rule. This benchmark best ensures that the lessee's non-arm's-length prices are reasonable determinants of value.

One Indian commenter criticized the benchmark system as follows: "The utter failure of MMS to recognize its obligation to maximize tribal royalties is evidenced also in the provisions governing valuations where arm'slength contracts do not exist. Each of the three alternative methods require a determination that the lessee's sales price is similar to that for purchases of significant quantities of like oil in the same field or area. The MMS, however, relies on lessee-generated information for that determination and, moreover, relies upon the truthfulness of that information. For example, under alternative number one, MMS proposes to look at the lessee's contemporary posted prices. Posted prices in the oil industry, however, are generated by the purchasers and not the sellers. Either MMS had made an error in its drafting or this benchmark plainly is so ridden with potential conflicts of interest that it can not possibly be urged as consistent with the Federal fiduciary duty to maximize Indian oil and gas resource returns."

Another Indian commenter suggested that the desired goal of certainty can be accomplished by use of the highest price paid method: "MMS' embracement of the contract price approach in its drive towards certainty in value can be as easily achieved through the highest price paid method. It would also encourage producers when negotiating contracts to come as close to that figure as possible knowing that is what they will have to pay the royalty on. The contract sales approach proposed by MMS does not encourage obtaining the maximum value for the resource by the purchaser [lessee]."

MMS Response: In many instances the lessee, being a purchaser, has published a posted price bulletin. Posted price bulletins are generally available. In addition, the lessee must retain all data which are subject to audit. From experience, MMS does not believe that basing all royalties on the highest price in the field or area is fair or in the best interests of the Federal or Indian lessor. Therefore, such a standard was not adopted.

One State commenter noted that the modifier "contemporaneous" in three of the sections is vague and undefined. "For a purchase under a posting or contract to be used as an indicia of value for the monthly reporting period, it should relate to production during the same reporting period."

MMS Response: MMS has added § 206.102(c)(6) to the final rule which defines "contemporaneous" as postings or prices in effect at the time the royalty obligation is incurred. This means the postings or contract prices in effect at the time oil is removed, sold, or otherwise disposed of in a manner which results in royalty being due on the oil.

According to one State commenter, "It is difficult to establish an alternative system to calculate fair market value * * *. The MMS should use the posted price criteria of the benchmark system verified by a ne-tback analysis to assure the credibility of posted prices."

MMS Response: The MMS believes that the use of a routine net-back analysis on a routine basis to verify oil value is impractical and unnecessary.

Two Indian commenters expressed concern about the prioritized benchmark system. They argued that restricting the Secretary's ability to use different methodologies in any order the Secretary chooses will tie the Secretary's hands in dealing with difficult situations.

MMS Response: The MMS believes that the regulations adopted will permit the Secretary to discharge his/her responsibilities to the Tribes and allottees and will provide certainty in the valuation process to both the lessees and lessors. Although a prioritized benchmark system does limit flexibility, this drawback is outweighed by the benefits of certainty.

One State commenter thought there is a lack of guidance in administering the prioritized benchmark system and that MMS does not indicate what kind of evidence will be sufficient to permit an auditor to continue down the list of benchmarks.

MMS Response: The MMS will require that the lessee make a reasonable effort to apply a benchmark before proceeding to the next. Auditors must be satisfied that lessee information is sufficiently accurate and complete to implement a benchmark. The addition of § 206.102(d), whereby lessees must provide arm's-length sales and volume information, will assist in the enforcement of these "comparability" requirements. It would be impossible for MMS to attempt to implement a procedure where government has to make all the decisions. Such a procedure would impose a tremendous administrative burden which would be very costly.

Some industry and State commenters expressed concern regarding the lack of an adequate definition of the terms "significant quantities" and "field or area", and the administrative problems that will result therefrom. One State commenter stated that the term "significant quantities" is vague and undefined. An industry commenter recommended that the term "significant quantities" be deleted because (1) posted prices in an open marketplace "are for no other purpose than determining market value", and (2) the lessee has no way of knowing the quantity of volumes purchased by other purchasers in the area.

MMS Response: As was discussed in the preamble to the proposed rules (52 FR 1858, January 15, 1987), the term "significant quantities" is variable depending on the sales volumes from the field and the volume of production. What constitutes significant production from an onshore field may not be significant for an OCS field. Therefore, "significant quantities" will vary case by case.

One Indian commenter stated that "* * * many posted prices are artificially low because there is low demand, but there is still a threshold low amount where a company will purchase more than their demand" and recommended that "* * * the totality of the circumstances should be utilized (and set forth in the regulations), including spot markets, highest posted prices, and to some extent, posting for similar oil in other fields."

MMS Response: The current regulations, which are being revised in response to heavy criticism, list the various criteria with no specific priority. The purpose of the benchmark system is to provide all concerned with a reasonable degree of certainty as to criteria to be used in valuing oil.

One Industry commenter stated that the prioritized benchmark system "imposes a prejudicial valuation on an affiliated lessee" because a nonaffiliate receiving the same price as an affiliate would pay on actual proceeds received, whereas the affiliate may have to pay a higher royalty under, for example, benchmark 206.102(c)(2). The recommendation was made that "* * * the first applicable of the following subsections "* * * language in § 206.102(c) be replaced with "* * * any of the applicable subsections."

MMS Response: The situation described could occur. However, MMS believes that, generally, posted prices for like-quality oil in the same field or area will be comparable. Thus, there likely will be little or no disparity in the values in most situations.

Many industry commenters, a Federal agency, and an individual approved of the proposed benchmark system. One industry commenter stated that they "* * * strongly support the adoption of clear and consistent standards of valuation for royalty oil based upon the true value of the product—the price received in the marketplace for the sale of that oil. The valuation proposal * * * recognizes the interaction of competing market forces and recognizes that a seller of oil will normally negotiate the best deal it can to further its own interests. The use of a price that is generally available to all sellers is a much more reasonable approach to the determination of 'value' for a given supply of oil than the arbitrary selection of a price that one seller may have received under circumstances that do not include all sellers. Where an arm's-length contract does not exist, the benchmark system of valuation permits an objective procedure for arriving at the valuation based upon posted prices which have been the basis for sales of oil for many years." Another industry commenter supported both the benchmarks and their prioritization because both will add certainty to valuation determinations. Also, the use of the lessee's contemporaneous posting will provide a "benchmark valuation for many major producers." One industry commenter noted that "This ordering of the benchmarks is the result of extensive public comment which showed that, for valuation of oil, posted prices should be moved closer to the top of the hierarchy insofar as posted prices account for the vast majority of oil transactions."

MMS Response: The MMS believes that the proposed benchmark system is a valid and realistic system for determining the value of oil not sold pursuant to an arm's-length contract. The benchmarks are primarily based on posted prices which are the normal basis for oil sales and which reflect the price of oil in a free and open market. Posted price information for significant quantities of like-quality oil sold from a field or area will normally be available. The addition of § 206.102(d) will permit necessary information on arm's-length sales to be obtained. In other situations, the benchmarks provide for use of spot sale prices, net-back, or any other reasonable method.

One industry commenter noted that most, if not all, posted prices are prices posted by a purchasing, marketing, or transporting entity, some of which may have producing lessee affiliates. "However, taken literally, there will not be a *lessee's* posted price."

MMS Response: MMS has added a new § 206.102(c)(6) which defines lessee, for purposes of this section, as including a designated purchasing agent.

One State commenter noted that proposed § 206.102(c)(1) fails to anticipate that a lessee could make purchases at different postings within the same reporting period and suggests that, in such a case, "the volume weighted average would seem to be appropriately specified, because it could be easily computed by the payor and would be less susceptible to manipulation by the payor."

MMS Response: The MMS concurs with this change and has included language to implement it in § 206.102(c)(1).

One Indian commenter stated that the use of this benchmark (contemporaneous posted prices) rather than the major-portion analysis provided for in existing oil and gas regulations represents a breach of the Secretary's trust obligations.

MMS Response: The MMS believes that the regulations as adopted will permit the Secretary to discharge his/her responsibilities. Major portion analysis will be used under the final regulations, where appropriate.

Some industry commenters recommended that legal characteristics of the oil be included in the comparability criteria in paragraph (c)(1).

MMS Response: This addition is unnecessary because the section already refers to like-quality oil, which is defined as including legal characteristics.

One industry commenter recommended that paragraph (c)(2) be modified by adding the phrase "known to the lessee" after the word "prices" so that the first part of the sentence would read, "The arithmetic average of contemporaneous posted prices, known to the lessee, used in arm's-length transactions * * * ."

MMS Response: This suggestion was not adopted because it results in too great a degree of subjectivity.

One industry commenter supported the use of "arithmetic average" as a benchmark, but suggested that there should either be an agreement between the lessees and MMS as to which companies' postings are to be used, or that MMS publish a list of the companies whose postings may be used to calculate an arithmetic average. The commenter pointed out that in the case of South Louisiana (used for offshore) there are at least one dozen companies that post oil prices and there could be price changes in one month on different dates by all of the companies.

MMS Response: The MMS may decide, upon request, on the basis of an individual case, to designate postings to be used in calculating an arithmetic average. It is not considered practical to do this continuously.

Three Indian commenters objected to the use of "arithmetic average" and recommended that a "weighted average" be used instead. Another commenter stated that use of "arithmetic average will not yield a true market value because the lessee is given the opportunity to manipulate prices by selling some oil at extremely depressed prices."

MMS Response: Paragraph (c)(2) requires consideration of postings of persons other than the lessee. Although the postings are available to the lessee and to MMS, volumes often are not. Thus, requiring a weight averaging of third party data is not practical.

To make this benchmark "more workable and administratively feasible" one industry commenter recommended using the average of all postings of the relevant type of oil in an area.

MMS Response: The MMS has found that postings do not always indicate a purchaser's willingness to buy. Therefore, any average which includes all postings may become skewed because of posted prices which are not market responsive. Pursuant to § 206.102(c) (1), (2), and (3), there must be significant quantities of oil sold before a posting or contract price can be averaged in.

One industry commenter recommended that paragraph (c)(3) be modified by adding the phrase "known to the lessee" after the word "contracts", and by replacing the phrase "area or nearby areas" with the phrase "field or area" for reasons of "clarification."

MMS Response: The addition of the phrase "known to the lessee" was not adopted because it would result in inserting too great a degree of subjectivity. The term "field or area" was not adopted because the intent is to utilize a larger area than "field or area" in reviewing arm's-length contract prices.

One industry commenter suggested that MMS should publish a list of postings to be used to compute the arithmetic average required by subsections (2) and (3). It was thought that the large number of postings creates a monitoring and auditing/validation burden.

MMS Response: MMS recognizes that in some cases there may be several postings which will be required to be averaged. However, the information is available and it is not that burdensome for lessees. In fact, MMS expects that in certain fields lessees will be able to work together to compute averages which may be applicable to all of them.

One State commenter stated that "Subparts (iii) and (iv) attempt to distinguish between arm's-length contracts and spot sales. But, there is no basis for saying arm's-length spot sales are not also arm's-length contracts under the definitions. Additionally, there is no requirement (and there should be) that only spot sales which are genuinely arm's-length should qualify as indicia of royalty value."

MMS Response: The MMS concurs that the spot sales used in the benchmark should be arm's-length spot sales and will insert the term "arm's-length" immediately preceding "spot sales" in the final rule, § 206.102(c)(4). With regard to the first comment, if a spot sale is for a significant quantity of oil, it could be considered under paragraph (c)(3).

Some States and Indians stated that when applying benchmarks, it should not be necessary in all circumstances to consider all other sales in the field. In other instances, it may be necessary to look beyond the field. MMS agrees that the size of the sample cannot be predetermined but must depend upon the terms of the applicable benchmark and the actual circumstances in the field or area.

Most of the State and Indian commenters who opposed the benchmark system supported highest posted price with the use of a net-back method for verification of values used. One of the State commenters, in describing MMS's proposed use of net-back in proposed § 206.102(c)(5) as too restrictive, made the following statements: "* * * the government would carry the burden of establishing that none of the preceeding benchmarks can be applied before it would [be] authorized to use net-back * * * In effect, net-back will rarely, if ever, be used. At the same time it is the only method of valuation proposed by MMS that can be applied independently from lessee submitted documentation."

MMS Response: The MMS agrees that there will be infrequent use of the net-back method. It is believed, however, that the other benchmarks which have higher priority will result in a reasonable value for royalty purposes and obviate the need to undertake a labor-intensive net-back method. The MMS routinely will verify lessee-generated information used in applying the benchmarks during its monitoring process and through audit.

One State commenter articulated the viewpoint of a large number of other commenters by recommending an alternative method of valuation, namely use of the highest posted price paid or offered in the field or area with the net-back procedure used as verification or backup.

The commenter also stated that "* * * the approach we suggest—highest posted or a refined product value net-back—serves the twin goals of assuring the collection of fair market value and providing certainty to the lessee. Highest [price] posted or paid is more easily determined than the arm's-length nature of a contract, and a refined product value can be calculated by the lessee itself or provided by the government. It also is an approach that is independent of lessee generated information and thus meets Congress' intent that independent methods of verification be employed. Gross proceeds would continue as the absolute minimum acceptable value."

MMS Response: The MMS believes that gross proceeds received under arm's-length contracts and posted prices used to purchase significant quantities of oil in arm's-length transactions generally represent the market value of oil and does not agree that it is necessary to perform a refined product net-back analysis to verify them.

One industry commenter expressed approval of the concept in proposed paragraph (e)(1) that prior MMS approval generally need not be obtained where value is determined pursuant to paragraph (c). One Indian commenter expressed concern that "once approval is granted, follow-up audits are unlikely", and recommended that "There should be provisions mandating routine MMS audits of valuation methods occurring at intervals not greater than one year." One industry commenter objected to the fact that MMS will not be giving prior approval stating that this subsection places "the burden * * * on the producer to prove the determination of value." One State commenter stated that the regulation should specify that the lessee retain "all data relevant to determination of royalty value," instead of "all available data to support its determination of value." That State commenter stated that the regulation should specify that MMS "will" order compliance when incorrect payments are discovered, rather than stating "MMS may direct a lessee to use a different value."

MMS Response: Although MMS will be making periodic audits, it is not appropriate to specify the scheduling, type, and timing of audits in these regulations. With regard to the second comment, the lessee is responsible to comply fully with the regulations by properly valuing the oil, for royalty purposes, in accord with the appropriate benchmark and to retain all relevant data. The MMS has adopted the suggestion that the phrase "all data relevant to determination of royalty value" be substituted for "all available data to support its determination of value" in § 206.102(e)(1). Also, the word "will" has been substituted for the word "may" in the last sentence.

Many industry commenters stated that the requirements of § 206.102 (d) and (e) to make all data available to

MMS are too broad and should be limited to fee lands within the boundaries of approved Federal units or communitized areas. They argued that lessees should not be required to provide information on their other sales prices or volumes.

MMS Response: Because lessees, in many instances, will be determining value for Federal or Indian production by reference to other sales in the field or area, MMS must have access to the data to the same extent as the lessee to determine whether the lessee's valuation was in accordance with the regulations.

Section 206.102(f) was proposed as § 206.102(e) and provides that lessees will pay additional royalties and interest if the lessees improperly determine value. One industry commenter recommended that any "retroactive valuation determinations" on the part of MMS "be limited to fraudulent and noncompliance situations." That commenter went on to suggest that if MMS determines that a lessee underpaid royalties, then the interest associated with those royalties should only accrue from the date of that determination until royalties are paid.

MMS Response: The lessee is responsible for properly determining value for royalty purposes in accordance with the lease terms, regulations, and appropriate instructions and court decisions. Accordingly, if royalty is underpaid, the lessee is responsible for the additional royalty due plus any interest from the time such payment(s) should have been made. MMS has adopted this section as it was proposed.

Another industry commenter agreed that underpayment of royalties was subject to interest, but recommended that MMS likewise should pay the lessee/payor any interest "statutorily authorized" on reimbursed credits or royalty offsets when royalty overpayments are discovered.

MMS Response: The MMS is barred by law from paying interest on royalty overpayments, but is required by law (i.e., FOGRMA) to collect interest on late payments.

Section 206.102(g) was proposed as § 206.102(f) and prescribes a procedure for a lessee to request a value determination from MMS. Some industry commenters suggested that there be a time limit of 120 days for MMS valuation responses. Some of these commenters also recommended that there be no penalties or accrual of interest for any underpayment of royalties during this period (which would not be known until after MMS's decision).

MMS Response: The MMS will make every effort to respond timely, but this is necessarily dependent upon available resources. MMS cannot agree to a regulatory time limit. Because the lessee is responsible for proper valuation, interest is assessed if the lessee makes an improper valuation. The MMS believes a lessee should be able to request a valuation determination at any time. One of the changes to this section clarifies that, when MMS makes a value determination, it may use any of the valuation criteria authorized by the rules. This gives MMS the necessary flexibility to deal with unusual situations which otherwise do not fit the regulations.

One commenter suggested that there should be opportunity for review of a value determination by the affected royalty recipient (State, Tribe, etc.) before a final decision is made because, without such review, the cooperative audit role is rendered meaningless.

MMS Response: The MMS does not consider it practical to require a review by a State or an Indian lessor when a value determination is made. The MMS will attempt to coordinate its value determinations with States doing audits under section 205 of FOGRMA and Indian Tribes doing audits under section 202 of FOGRMA. This does not make the cooperative audit role, in accordance with FOGRMA, less meaningful or effective.

One industry commenter recommended that the provision be clarified that an MMS rejection of a proposed valuation determination is appealable to either the Director or Interior Board of Land Appeals (IBLA).

MMS Response: This modification is not necessary because all MMS final orders or decisions arising from the regulations in Titles 25, 30, and 43 are appealable pursuant to 30 CFR Parts 243 and 290.

One Indian commenter recommended that lessors also should be able to request MMS determinations. They also recommended that the regulations should require MMS to notify Tribes/allottees of any changes in valuation determinations.

MMS Response: The regulations as adopted in § 206.102(g) do not provide a specific procedure for the Indian lessor to request a valuation determination from MMS. However, MMS always is available to discuss with Indian lessors any valuation issue regarding their leases.

One State commenter recommended that the third sentence be modified by adding the word "all" before "available data", and replacing "to support its proposal" with "relevant to the valuation of its production". Also, the phrase "subject to audit" should be added.

MMS Response: The MMS has made some of these changes for purposes of clarity and comprehensiveness.

Section 206.102(h) was proposed as § 206.102(g). It provides that the value for royalty purposes cannot be less than the gross proceeds accruing to the lessee for lease production, less applicable allowances. Several industry respondents considered the phrase "or which could accrue" objectionable and urged its deletion. The main reason given for their position is that the language creates uncertainty and subjectivity, contrary to MMS's stated objective of gaining certainty and precision in royalty accounting.

MMS Response: MMS has deleted the phrase "which could accrue" from the final rule. As explained above, with respect to § 206.102(b), MMS is satisfied that the term "accruing" includes all consideration to which the lessee is entitled pursuant to its contract, not just what it actually receives.

Industry commenters suggested that some off-lease post production costs (such as those carried out on leases in "especially hostile or remote environments") and certain onlease post-production costs (such as those deemed to be "extraordinary" for onshore leases, the cost of submerged gathering lines, the cost of environmental compliance, and the cost of post-production facilities installed on leases in water depths greater than 400 feet for offshore leases) should be shared by the lessor and counted as deductions from royalty payments along with transportation allowances. One stated rationale for this suggestion is that some "post-production" costs enhance the value of the oil and, therefore, the costs should be shared by both lessee and lessor, as are the benefits. One commenter simply stated that the phrase "and other deductions" should be added to the "less applicable transportation allowances" language.

MMS Response: The MMS has modified § 206.102(h) to refer to deductions for any applicable allowance. As explained below, however, MMS has not adopted a rule which would provide for deduction of certain extraordinary costs.

State commenters objected to the deduction of transportation allowances from value and particularly from the gross proceeds, especially if gross proceeds is considered a "minimum value." One of the commenters stated that the "less transportation allowances" language is particularly

confusing because "it suggests that lessees can deduct the allowance from the value determination" rather than as a separate line item as required by § 206.105(c)(4) of the final rule.

MMS Response: Section 206.102(a) provides that the value for royalty purposes is the value determined in accordance with § 206.102 (i.e., arm's-length gross proceeds or a value determined using benchmarks) less applicable allowances. The purpose of § 206.102(h) is to make it clear that, no matter what valuation method is used, the value for royalty purposes cannot be less than the lessee's gross proceeds less applicable allowances. Therefore, if a benchmark-derived value less applicable allowances is less than gross proceeds less applicable allowances, gross proceeds less applicable allowances is to be used as the value for royalty purposes. In either event, the lessee may be entitled to deduct transportation allowances to determine value, for royalty purposes, at the lease (unless the benchmark-derived value already is a value at the lease—in that even no further transportation allowance would be authorized.)

Section 206.102(i) was proposed as § 206.102(h). This section addresses the lessee's obligation to place lease production in marketable condition. Five industry commenters opposed the concept that the lessee is responsible for placing the product in marketable condition at no cost to the lessor and recommended specific deletion of language in the proposed regulation to accomplish this. One industry commenter recommended that the language "unless otherwise provided in the lease agreement" be added at the end of the first sentence, and another industry commenter pointed out that the lessor does share in marketable condition costs under net-profit-share leases.

The MMS specifically requested comment on a provision in the draft final rules which would provide an allowance for certain production related costs in extraordinary situations. Many comments were received from industry supporting this provision and suggesting that it be broadened.

MMS Response: Historically, MMS's policy and practice is that the lessee is responsible for placing the lease product in marketable condition at no cost to the lessor. This practice has been upheld by court decision. The MMS has adopted the suggestion that the language "unless otherwise provided in the lease agreement" be added at the end of the first sentence because there are a few leases in which the lessor shares in such costs. Also, as noted earlier, MMS received many comments that so-called post-production costs should be allowed as a deduction in determining value for royalty purposes. Generally, these costs are not allowed as a deduction because they are necessary to make production marketable.

The MMS received many comments on the section added to the draft final rules that provided for certain extraordinary cost allowances. State and some Indian commenters thought that this section was an unwarranted exception from the requirement that the lessee is obligated to bear the costs of placing oil in marketable condition or that further restrictions should be included, while one Indian commenter endorsed the principle introduced by this new section. Industry commenters generally thought that the new section was a step in the right direction, but thought that the dual qualification process was too rigid. They suggested that the extraordinary allowance be granted if a lessee could meet the requirements of either paragraphs (2)(i) or (2)(ii). Industry commenters also suggested that the reference to 400 meters be changed to 400 feet because that is the point at which costs begin to escalate significantly. They also thought that use of the term "unique" was inappropriate because it would limit the applicability to only the first lessee with a particular type of extraordinary operation. Some commenters also requested that once approved, the allowance should extend beyond one year.

MMS Response: After carefully considering all of the comments on this issue, MMS has decided not to retain the extraordinary cost allowance provision in the final rules. It was concluded that the burdens placed on the lessee by the environment in which it must operate were matters taken into account at the time the lease was issued, affecting the amounts of bonus bids and in some cases the royalty rate. The MMS has determined that if a lessee is entitled to further economic relief, it is inappropriate to provide that relief by adjusting the value of the production by methods which are inconsistent with MMS's historical practice and interpretation of the lessee's express obligation to place production in marketable condition at no cost to the lessor. Rather, the more appropriate mechanism is for the Department to consider royalty rate relief in circumstances where it is warranted for existing leases, and for lessees to consider such factors when entering leases in the future.

Section 206.102(j) was proposed as § 206.102(i). There were several comments on this section from industry, States, and Indians. The majority of the comments were negative in some respect; only two commenters (one industry and one State) concurred with the proposed regulation as written. State and industry commenters recommended deleting the regulation in its entirety, indicating that the regulation is inappropriate in the context of oil sales because the majority of oil is sold under monthly posted prices and is not normally subject to contractual price escalations or increments. They suggested that the regulation is more appropriate to gas sales contracts and does not belong as an oil valuation standard.

One industry commenter argued that MMS has neither the authority nor the expertise to determine "the highest price a prudent lessee can receive through legally enforceable claims under its contract." The commenter also suggested deleting most of this section with the exception of the third sentence (of the second draft final rule) and the requirement that the lessee must pay royalties on all volumes of production which are sold.

MMS Response: Although the large majority of oil is sold under posted price bulletins, the division order, which sets forth the division of proceeds and is signed by all interest owners, is considered to constitute the "contract" for purposes of these regulations.

Several modifications, many taking issue with the "prudent operator" concept, were suggested as follows:

Two industry commenters suggested deleting the first sentence ("Value shall be based on the highest price a prudent operator can receive under its contract") because (1) it countermands the use of the actual proceeds benchmark system established in § 206.102 (b) and (c); and (2) the requirement of a lessee to obtain the highest theoretical price, regardless of the cost involved in obtaining that price, may contradict the definition of "prudent operator" found in the draft coal regulations at § 206.5(nn) and, therefore, ignores "the realities of the marketplace and the courthouse and unfairly precludes the lessee from exercising sound business judgment."

One industry commenter recommended revising the paragraph to conform to the reasonable value standard of § 206.102 generally. Here the commenter argued that the "highest price" standard of this subsection is in direct opposition to the reasonable value standards of previous subsections, thus causing the proposed rulemaking to be contradictory.

MMS Response: The MMS has modified the first sentence of the final rule to read "Value shall be based on the highest price a prudent lessee can receive through legally enforceable claims under its contract." As noted in the preamble to the proposed rule, this section prescribes a diligence concept. As discussed above, with regard to the concept of gross proceeds "accruing" to a lessee, MMS requires a lessee to pay royalty on that value which it was entitled to get. These regulations reflect MMS's willingness generally to accept arm's-length contract prices as value, but there is a concomitant obligation on the part of the lessee to obtain all to which the lessee is entitled under its contract. If it fails to take such reasonable measures, MMS will assess royalty on the prices which reasonably could have been obtained in accordance with the contract.

One industry commenter suggested changing the fourth sentence to read "the lessee will owe no additional royalty *unless or* until monies are * * * received" in cases of disputed payments.

MMS Response: The MMS has adopted this suggested modification as consistent with its intent. However, this provision does not permit a lessee to avoid paying royalties where a purchaser has failed to pay, in whole or in part or timely, for a quantity of oil.

One State respondent suggested that an explicit provision for the assessment of interest for delayed payments should be added, with such a requirement being an equitable compromise for the lessor's agreement to delay enforcement of its rights to the timely payment of full royalties.

MMS Response: When a matter is being legally contested between the parties, and the lessee has taken appropriate legal action, MMS's policy is not to require payment of the amount in dispute until the lessee actually receives it. If a purchaser fails completely to pay for a volume of production, royalties still are due the month following the month of sale or other disposition. In all cases, interest is due if the royalties are paid late. However, in the case of disputed price increments, the royalties are not due until the end of the month following the month that the lessee receives them.

An Indian commenter also suggested that the last sentence should be clarified to make explicit that the bankruptcy of a purchaser of oil should not permit a lessee to avoid its royalty payment obligation.

MMS Response: The MMS believes that the language already encompasses a bankruptcy situation and recognizes that the lessee still has an obligation to pay its royalties.

Section 206.102(k) provides that no redetermination of value by MMS as the result of review, reconciliation, monitoring or a like process is final or binding against the lessor until the audit period is formally closed. MMS intends to issue additional guidelines as to when an audit period is closed.

Several industry commenters thought that any determinations by MMS should be binding.

MMS Response: The MMS is adopting this section. The MMS cannot be bound by a preliminary determination which may not be based on a full array of information as would be available during an audit.

Section 206.102(l) was proposed as § 206.102(j). Comments were received from three State and six Indian representatives objecting to the restrictive terms/effect of this paragraph. In general, the comments pointed out that the requirement to obtain valuation information through Freedom of Information Act (FOIA) requests would inhibit Indian Tribes, allottees, and States from gaining access to the information required to assure that valuations are properly determined. In particular, "The second sentence of the proposed regulation appears to be an unlawful effort to preclude the exercise of departmental discretion under FOIA to voluntarily release nonproprietary data to royalty owners on a case-by-case basis. The third sentence appears to prohibit tribes and allottees from requesting such information through the BIA." It was generally recommended that the paragraph should be clarified to indicate that all valuation information should be available to States, Indian Tribes, and allottees without going through FOIA procedures. (Two Indian commenters offered specific language that could be appended to the paragraph to clarify its intent regarding the sharing of information with authorized parties.)

MMS Response: The intent of this paragraph was not to preclude access allowed by law, but rather to ensure the lessee that disclosure of proprietary information is in accordance with established procedures. There are statutory restrictions on providing certain types of information to persons outside the Department of the Interior, and MMS must act in accordance with those limitations. States and Indians with FOGRMA delegations and cooperative agreements will have broader access to information which otherwise could not be released. This section is not intended to limit in any manner an Indian lessor's right to obtain information directly from the lessor or from MMS to the extent provided in lease terms or applicable law.

In the draft final rule, MMS changed the phrase "will be maintained" to "may be maintained." Many industry commenters were concerned that this change would allow MMS to release proprietary information. This was not MMS's intent, and to avoid any confusion the term "will" has been substituted for "may."

Section 206.103 Point of royalty settlement.

Several industry representatives and a few States commented on this section. The State commenters recommended that § 206.103 be strengthened by defining standards for establishing the point of royalty settlement and thereby minimizing pipeline losses. Lease or unit boundaries were suggested as the point of royalty settlement for onshore production, and the entrance to the first onshore facility was suggested for OCS production.

MMS Response: These regulations pertain to the valuation of oil and are not concerned with the criteria for the point of royalty settlement. The point of royalty settlement is authorized by MMS operations offices for Federal OCS leases and by BLM for onshore Federal and Indian leases.

Two industry commenters addressed the clarity and intent of § 206.103(a)(2). One of these commenters pointed out that the reference to an adjustment for differences in quality and quantity (such as for basic sediment and water) was unclear, asking what adjustments would apply and how these would be made. The other commenter recommended deleting the paragraph altogether because only the quantity and quality actually measured at the point of royalty settlement should be used for royalty computations.

MMS Response: The paragraph cannot be deleted because there are situations, usually onshore, where the gross proceeds accruing to a lessee are based upon the quantity and quality of oil at a point that is different than the point of royalty settlement specified by BLM to be used in calculating Federal or Indian royalty, usually at the tank battery on the lease. In this situation, the quantity and quality criteria measured at the tank battery on the lease must be used to determine the proper value, which, because the quantity of oil at the contractual sales point is less, will be greater than the lessee's gross proceeds.

Many commenters from industry objected to the provision of § 206.103(b)

disallowing actual or theoretical losses between the point of royalty settlement and the actual delivery point. They pointed out that pipeline losses are an integral part of transportation over which the lessees/operators have no control and thus should be an allowable component of transportation deductions. They also pointed out that disallowance of losses is contrary to the concept of accepting gross proceeds under arm's-length transactions because the lessor's royalty may be calculated on a different basis than what the lessee is paid by the purchaser.

MMS Response: The issue addressed here deals with volume and quality measurements upon which royalty must be based. The issue of line losses being included as a component of transportation deductions is addressed in the section of the regulations dealing with transportation (§§ 206.104 and 206.105).

One industry commenter suggested that § 206.103(b) be clarified regarding load oil, and recommended that the section be modified to specifically exclude load oil from royalty obligation.

MMS Response: The determination of whether or not load oil is considered to be royalty-bearing is a function of lease terms and the origin of the oil so used, and is generally the responsibility of the BLM and MMS OCS operations personnel for onshore and OCS leases, respectively. As such, no specific language was added to address this issue.

Section 206.104 Transportation allowances—general.

Comments on transportation allowances that did not relate to any specific section of the regulations were classified in the General section of the oil transportation regulations. Although there were comments on a wide variety of subjects, they have been grouped as follows: Post-production costs, validity issues, adequacy/inadequacy issues, cost issues, Royalty-In-Kind (RIK) issues, and issues relating to the definition of terms.

Many commenters addressed the issue of whether or not MMS should allow lessees to deduct all post-production costs from royalty payments. Transportation costs are one type of post-production cost. MMS will not respond to that issue again in this section because it was fully addressed in the discussion of § 206.102(i). Moreover, because the final rules provide an allowance for transportation costs, it is unnecessary to consider whether such costs also are to be considered "post-production costs."

Many commenters addressed the validity of any transportation allowances whatsoever and proposed that MMS should not consider transportation allowances as valid deductions from royalty computations, or only consider such allowances if transportation is necessary for lease development or results in a higher royalty.

Six State and five Indian commenters stated that transportation allowances should not be granted unless necessary to sell the product or to promote development, or unless the transportation results in a higher royalty value. Six Indian and one State commenter stated that MMS should not grant any transportation allowances under any circumstances.

One Indian commenter stated that the regulations should not be allowed to change the lease terms. According to this commenter, the granting of transportation allowances is, in effect, a change to the lease terms.

Two Indian commenters stated that MMS must take into account its responsibility to Tribes and allottees in preparing the regulations and must determine the fairness and reasonableness of all transportation allowances.

One industry commenter stated that the reason that MMS grants allowances is because certain Interior Board of Land Appeals (IBLA) decisions required that transportation be considered when determining product value on which royalty is based. Another industry commenter stated that MMS should grant a transportation allowance even if the product value is determined at the lease, if the sales contract required the lessee to incur the expense of transporting the oil to the point of sale.

MMS Response: On the basis of decisions by the Interior Board of Land Appeals (IBLA), Solicitor's opinions, and judicial decisions, it has been longstanding MMS policy to grant transportation allowances when oil is transported to a sales point off the lease in order to calculate the value of the product at the lease. Furthermore, the IBLA has ruled that transportation allowances must be granted for Indian leases. *Kerr-McGee Corp.*, 22 IBLA 124 (1975). Therefore, the regulations being adopted are consistent with past practice and are consistent with the Secretary's responsibility to the Indians. The MMS believes that royalty should be free of production and marketing costs. However, values may have to be adjusted for transportation and/or processing in determining value at the lease.

The MMS agrees that the proposed procedure for determining a transportation allowance places a great deal of reliance on the oil industry. However, this program will be under continuous review and oversight by MMS. There is nothing in the final oil transportation allowance regulations that would change the terms of any Indian lease. The MMS believes that the policy of granting transportation allowances is appropriate and should continue.

Another issue centered around the adequacy or inadequacy of the proposed oil transportation regulations in general. Some commenters believed that the regulations are completely flawed, while others pointed to specific instances where changes should be made to improve their specific applicability.

One industry commenter suggested that MMS should approve the use of contract prices which are net of transportation costs. Another industry commenter stated that the regulations should be revised to eliminate the alleged bias against frontier and deep-water areas. They also recommended the elimination of the ceiling on transportation allowances. Another industry commenter stated that the regulations should be modified to embrace both traditional and nontraditional transportation arrangements.

Two industry commenters stated that, in their view, the proposed regulations serve as a disincentive for companies to build and operate transportation facilities. One industry commenter stated that the oil transportation regulations should be revised to achieve certainty by adopting a more rational and realistic approach.

MMS Response: In response to comments received, MMS has changed the regulations to recognize that, in arm's-length situations where the specified price is reduced by a transportation factor, the lessee does not have to report the transportation factor as a transportation allowance. The MMS also recognizes that transportation costs for frontier and deep-water areas may be extraordinarily high and may exceed 50 percent of the value of oil. Because of this concern, MMS has adopted a provision in the final regulations to permit the transportation allowance to exceed the 50-percent limitation with approval from MMS. As the general rule, however, the transportation allowance authorized by the regulations may not exceed 50 percent of the value of the oil at the point of sale on the basis of a selling arrangement. The MMS has

decided that pre-approval of all transportation allowances is not a cost-effective procedure. The 50-percent threshold merely gives MMS the ability to monitor more closely the situation where the allowance, based on reasonable actual costs, will exceed that limit.

The MMS received a number of comments relating to transportation allowances for RIK oil. Industry commenters stated that MMS should grant a transportation allowance for onshore RIK oil. Another industry commenter suggested that the regulations should clearly state that the lessee is not required to transport RIK oil from the lease. Other industry commenters stated that this section was in conflict with § 208.8 of the proposed RIK regulations.

MMS Response: The suggestion that MMS should grant a transportation allowance for onshore RIK oil was not adopted because the onshore lease terms provide that the in-kind oil will be made available to the lessor on the lease at no cost to the lessor. The MMS believes that there is no need to state explicitly that the lessee is not required to transport onshore RIK oil. Many of these issues will be addressed in MMS's revisions to the RIK regulations (See 52 FR 2202, January 20, 1987).

Another issue discussed by several commenters concerns the definition of terms used in the regulations. Several respondents commented on the use of the term "reasonable" to describe transportation costs. One State commenter recommended that the term "reasonable" was too vague and should be defined. Three industry commenters recommended that the term "reasonable" be deleted. Six commenters were concerned about the term "remote from the lease." Two Indian and two State respondents commented that the phrase "remote from the lease" should be defined. Two industry commenters stated that the phrase "remote from the lease" should be changed to "the first available market."

MMS Response: The term "reasonable" is defined by the Merriam-Webster New Collegiate Dictionary as "moderate, fair." The MMS intends that this same definition apply in the determination of a transportation allowance and includes the requirement that the transportation costs be necessary to market the oil. The MMS agrees that the phrase "remote from the lease" caused confusion and has replaced it with the phrase "off the lease."

The MMS received comments from a large number of respondents on § 206.104(b). This proposed regulation established a 50-percent limit on transportation allowances.

Most of the comments on this paragraph related to one major topic, the limitation of 50 percent on oil transportation allowances. Comments were also received on the proposal not to allow royalty payments to be reduced to zero. Comments on the 50-percent allowance issue were also divided between those commenters who wanted to retain the limit and add additional qualifications, those who wanted to raise the limit, and those who wanted to lower the limit.

Most industry commenters stated that MMS should abolish the 50-percent limitation for one or more of the following reasons: If the proposed limit is retained, the exception to the 50-percent limitation may not be exercised freely enough; the 50-percent limit could impose a serious economic deterrent to the exploration and development of frontier areas and could serve as a disincentive to the building of transportation systems; the limitation figure is strictly arbitrary and totally unjust to the lessee/working interest owners; it would be a rare case when an oil transportation cost would come close to the proposed 50-percent cap, much less exceed it; the proposed 50-percent cap is a deviation from the stated intent of MMS to base royalty valuation on "gross proceeds."

Industry commenters stated that MMS should approve requests for transportation allowances exceeding the 50-percent limitation upon submission of adequate documentation by the lessee for the following reason: If the actual cost of transportation can be reasonably justified, it should be permitted if a lessee can adequately demonstrate that a higher allowance is in the best interest of the lessor.

One Indian commenter stated MMS should change the 50-percent limitation to a 20-percent limitation because the 50-percent limit is excessively high.

Industry and State commenters stated that MMS should clarify the exception criteria which would allow transportation allowances to exceed the 50-percent limitation. The proposed "best interest of the lessor" criteria was described as vague and unclear and could be interpreted to exclude all cases. Criteria for approval should allow a lessee to more objectively plan development of oil and gas prospects.

Several industry respondents stated that MMS should allow lessees to carry forward transportation costs otherwise allowable (except for the 50-percent limitation) from the current year to subsequent years. This procedure should be applied to all transportation systems, but it would be especially important in the frontier areas.

A State, a State/Tribal association, and a few industry commenters stated that MMS should retain the 50-percent limitation in the proposed regulations for the following reasons: The limit should apply in all cases with no distinction made between circumstances where transportation is a component of price and where transportation costs are incurred directly by the lessee; the 50-percent limit is acceptable as a guideline but MMS should freely exercise its authority to allow transportation costs in excess of 50 percent of the value of the lease product; the 50-percent limitation provides incentive to keep costs under control while allowing some relief for legitimate hardship conditions.

One industry respondent and one State commenter stated that royalty payments should not be reduced to zero. The State respondent commented that it is a privilege to use public lands and it should not be possible to take production from it royalty-free. Two industry respondents stated that royalty payments should be allowed to go to zero for marginal production and for cases where reservoir maintenance is a concern.

MMS Response: The MMS has decided generally that the 50-percent limitation should be retained in the final rule. The transportation allowance for oil is limited to 50 percent of the value of the oil on the basis of a selling arrangement. A lessee may request, and MMS may approve, a transportation allowance in excess of 50 percent if the lessee demonstrates that the costs incurred were reasonable, actual, and necessary. In no event, however, can the transportation allowance exceed 100 percent of the value of the oil.

MMS received comments that a transportation allowance in excess of 50 percent should be allowed only when it is in the "best interests of the lessor." MMS did not include this standard because it is too subjective. The requirement that the costs be "reasonable, actual, and necessary" are sufficient to protect the lessor's interests.

The MMS received several comments from industry on § 206.104(c) which requires allocation of transportation costs among all products transported. One commenter stated that for transportation allowances, MMS should allocate costs on the basis of relative value rather than on the basis of relative volume. Two commenters recommended that costs associated with the transportation of nonroyalty-bearing

products (i.e., water) should be deductible. It was also stated that to the extent transportation for certain nonroyalty-bearing products cannot be avoided, the costs should be equally as deductible as the oil transportation. Four commenters recommended deleting the requirement that transportation costs must be allocated among all products for one or more of the following reasons: Allocation would be a labor-intensive process and an onerous burden inflicted upon reporting parties; allocation would be impractical because, in many instances, volumes are not available; and it would require significant additional effort to complete additional Forms MMS–4110.

Other industry commenters recommended that allowances be granted for nonroyalty-bearing substances up to 30 percent of the volume of the transported stream.

MMS Response: The MMS has considered the comments regarding allocating costs on the basis of relative value. The MMS does not agree with the proposal that the costs of transporting nonroyalty-bearing substances should be included in a transportation allowance in all instances. However, upon review, MMS has recognized that there could be circumstances where it is appropriate to provide an allowance which includes the costs of transporting certain nonroyalty-bearing substances such as waste products, including water. For example, there may be circumstances where transportation of water along with the oil is necessary in order to transport the oil. For other than waste products, the final rule provides, however, that prior MMS approval is required before an allowance may be taken for the cost of transporting nonroyalty-bearing substances.

The MMS is aware that the allocation of transportation costs in situations where more than one product is involved could be burdensome. However, it is MMS's experience that the allocation requirement would not be difficult in most instances.

Section 206.105 Determination of transportation allowances.

(a) *Arm's-length transportation contracts.*

Although there were comments on a wide variety of subjects, they have been grouped under nine issues as follows: Acceptance of FERC-approved tariffs and arm's-length transportation agreements, excessive penalty and retroactive approvals, MMS's approval of the transportation allowances, acceptance of transportation reduced prices, status of currently approved allowances, required filing every 12 months, allowance on nonroyalty-bearing production, allocation of transportation costs, and period for filing a proposed allocation method.

(1) Acceptance of FERC-approved tariffs and arm's-length transportation agreements as an accurate indicator of reasonable, actual costs.

Several industry commenters responded that the oil transportation allowance regulations should be written to support the use of FERC-approved tariffs and arm's-length transportation agreements as an accurate indicator of reasonable, actual costs.

Indian commenters expressed serious concern about the validity of using arm's-length contracts as an indicator of value. One Indian commenter stated that arm's-length contracts are not a bona fide indicator of reasonable, actual costs. Another Indian commenter expressed doubt that there can even be an arm's-length contract between companies in the oil industry. One Indian commenter stated that arm's-length contracts should not be accepted unless a thorough analysis of lessee/purchaser affiliations is undertaken. Another Indian respondent expressed considerable doubt that the criteria used by MMS would assure that an arm's-length contract is present in any given case. An Indian commenter also stated that MMS should establish appropriate criteria to determine the accuracy and reasonableness of allowances granted under arm's-length and non-arm's-length contract situations.

MMS Response: The MMS currently uses FERC-approved tariffs and arm's-length transportation agreements as an accurate indicator of reasonable, actual costs. In these final rules, for non-arm's-length and no-contract situations, MMS generally will permit only the reasonable, actual expenses incurred by the lessee as the allowance. For lessees who have tariffs approved by FERC or a State regulatory agency, MMS is creating an exception to this policy, discussed below in regard to § 206.105(b). MMS has added a sentence to § 206.105(a)(1) clarifying that the lessee has the burden of demonstrating that its contract is arm's-length.

MMS also has added two new paragraphs to address situations where a contract, though arm's-length, should be treated as non-arm's-length pursuant to § 206.105(b). The first situation is where MMS determines that the transportation contract reflects more than the consideration transferred from the lessee to the transporter for the transportation; i.e., the transportation cost has been inflated. The second situation is where the MMS determines that there has been misconduct by or between the contracting parties, or the lessee otherwise has breached its duty to the lessor to market the production for the mutual benefit of the lessee and the lessor. The types of misconduct or breach of duty which would trigger application of these provisions are essentially the same as those discussed above in the valuation section.

(2) The disallowance of a transportation deduction for a reporting period not covered by a Form MMS–4110, Oil Transportation Allowance Report.

The MMS received responses from several industry respondents stating that the disallowance of a transportation deduction for a reporting period not covered by a Form MMS–4110 is an excessive penalty for what they consider to be a minor infraction of the rules. The point was also made that the lessee does not always have the data to timely file a Form MMS–4110 before the Form MMS–2014 is filed. However, one State commenter agreed with the proposed regulation disallowing the deduction for any period in which the Form MMS–4110 was not received.

Many industry commenters responded on this paragraph stating that the regulations should have a provision allowing retroactive transportation deductions. The general consensus was that a lessee does not always have the details on transportation worked out before production begins, and sometimes it is necessary to go back and revise data related to an allowance after agreements are reached because of the fast changing nature of current oil and gas markets.

MMS Response: The MMS considered the comments on retroactive requests and has revised the regulations, § 206.105 (a)(1) and (b)(1), to allow lessees to request transportation allowances retroactively for a period of not more than 3 months. Pursuant to § 206.105(d), if a lessee takes a deduction without complying with the regulations, interest only must be paid until the date that appropriate forms are filed. However, the lessee will be required to repay the amount of any deduction disallowed owing to the limitation on retroactivity.

(3) Prior MMS approval of transportation allowances.

Industry respondents expressed approval of the self-implementing procedure in the transportation allowance regulations. This was regarded as a method of relieving a considerable administrative burden on both industry and MMS. One Indian commenter disagreed with the self-

implementing nature of the regulations because it was regarded as a method of establishing the 50-percent limitation as a floor for transportation allowances.

State and Indian commenters stated that MMS should pre-approve all transportation allowances and should provide approval only on a showing of necessity to promote development or a showing that a higher value could be obtained for the oil at a point of sale away from the lease. It was also stated that neither the MMS nor the States and Indian Tribes have the resources to audit all leases and if these allowances are not monitored "up front" they will never be audited.

MMS Response: The MMS has determined that it is not necessary to preapprove all transportation allowances. The MMS will monitor and review transportation allowances for regulatory compliance and reasonableness. Therefore, most allowances under § 206.105(a) and (b) do not require prior MMS approval.

(4) Acceptance of transportation-reduced prices without requiring the filing of Form MMS–4110 for both arm's-length and non-arm's-length situations.

Industry commenters responded that MMS should accept transportation-reduced prices without requiring the filing of Form MMS-4110 for both arm's-length and non-arm's-length situations. This policy was regarded as reducing the administrative burden on industry and MMS. However, one commenter disagreed with this proposal because it was regarded as a potential technique to exceed the 50-percent limitation provision of the regulation. One commenter stated that neither industry nor MMS could administer trucking-rate transportation allowances on the basis of lease-by-lease and, therefore, MMS will probably be forced to accept transportation-reduced values where trucking is involved.

MMS Response: The MMS considered these comments and determined that § 206.105(a)(5) of the final rule should provide that transportation factors specified in arm's-length contracts are to be considered as reductions in value rather than transportation allowances. The use of Form MMS–4110 for the transportation factors is not required. However, so as not to provide a means of avoiding the 50-percent limit on transportation allowances, the final rules provide that the transportation factor may not exceed 50 percent of the base price of the product without MMS approval.

(5) Should current approved transportation allowances remain in effect until they expire?

Two industry commenters responded that it would be administratively easier if the regulations would allow a current approved transportation allowance to remain in effect until it expires. Seven industry commenters stated that the transportation allowance reported on Form MMS–4110 should continue until the applicable contract or rate terminates or is modified or amended. State commenters stated that, owing to some allowances currently being taken without written MMS approval, only those lessees with documented approval should be allowed to continue without submission of the Form MMS–4110.

MMS Response: The MMS considered these comments and has revised the regulations at § 206.105(c)(1)(v) and (c)(2)(v) to provide that transportation allowances in effect on the date these regulations become effective will be allowed to continue until they terminate, subject to audit. However, MMS is limiting this provision only to those allowances that have written approval from MMS. Because the regulations are being revised to remove any prior approval by MMS before a deduction can be taken, and the submission of Form MMS–4110 is to increase MMS's ability to monitor the allowances being taken, MMS believes that the intent of the final rules will be best served by requiring all allowances to be deducted under the new rules documented as of the effective date.

(6) Should MMS require the filing of Form MMS–4110 every 12 months?

Industry commenters stated that there is no benefit to MMS in submitting a form that duplicates information on file when a change has not occurred. Two industry commenters responded that there is no apparent reason for MMS requiring the filing of Form MMS–4110 every 12 months.

MMS Response: The MMS requires the annual filing of Form MMS–4110 for use in monitoring costs and volumes associated with a multi-million dollar transportation allowance program. The regulation is being adopted as proposed.

(7) Should MMS allow transportation allowances for production which is not royalty bearing?

An industry commenter recommended that a transportation allowance should include costs associated with moving water because some water is retained in pipeline oil. Another industry respondent recommended deletion of the last sentences of § 206.105(a)(2) and (b)(3) which prohibit disallowances for transporting lease production which is not royalty-bearing.

MMS Response: As discussed earlier, MMS has decided that it is appropriate to provide an allowance which includes the costs of transporting certain production, including waste products, which is not royalty bearing.

(8) Allocation of a cost applicable to more than one product.

Two industry commenters stated that allocation of costs presents a burdensome administrative task, but if allocation of costs is deemed necessary, it should be allocated on the basis of relative value rather than on the basis of relative volume. One industry commenter suggested that MMS provide an alternative allocation procedure for situations which would require a variance from the proposed allocation method.

One State commenter suggested that MMS provide guidance on what will be an acceptable method of allocation in situations that involve the transportation of both gaseous and liquid products. One industry commenter suggested that the rules could be further enhanced by allowing for the adoption of an allocation procedure contained in a different arm's-length transportation contract where similar conditions and products exist.

MMS Response: The MMS has added a new paragraph which provides that, upon request of the lessee, MMS will approve the allocation of costs on the basis of the values of the products transported unless such allocation method is not consistent with the purposes of the regulations in Part 206. It would be difficult for MMS to provide guidance on acceptable methods of allocation because of the many different situations involving the transportation of both gaseous and liquid products. The MMS believes that the most advantageous procedure is to have the lessee submit an allocation proposal to MMS in these situations. Thus, § 206.105(a)(3) and (b)(4) require the lessee to submit such an allocation proposal within prescribed timeframes.

(9) The MMS should extend the period to submit a proposed allocation method.

Two commenters stated that the requirement to submit a proposed allocation method within 60 days will create a significant workload and burden, and a more reasonable provision of time would be 120 days. Others requested an even longer period.

MMS Response: The MMS determined that 3 months is a reasonable time period to submit a proposed allocation method and § 206.105(a)(3) and (b)(4) have been revised accordingly.

(b) *Non-arm's length or no contract.*

The MMS received many comments on § 206.105(b), which applies to non-arm's-length or no-contract

transportation situations, from industry, industry trade groups, States, Indian Tribes, and a Federal agency. Most of the negative comments actually addressed § 206.104(a), and those comments generally expressed the belief that no transportation allowance of any kind should be granted by MMS.

The comments received on these paragraphs have been grouped into nine issues as follows: Acceptance of State or FERC tariffs, acceptance of comparable arm's-length contracts, use of a benchmark system, penalties, increase in estimated allowances, prior approval of allowances, allowable costs, rate of return, and retaining Alternatives 1 and 2 for return on capital.

(1) Should MMS accept published State or FERC tariffs instead of using actual costs as the basis for approving transportation allowances?

Industry commenters stated that MMS should accept published State or FERC tariffs as the transportation allowance in non-arm's-length and no-contract situations. These commenters believed that MMS should "rightfully rely on the expertise of FERC and State agencies which set pipeline tariffs to determine fair and reasonable transportation charges." It was also stated that if MMS does not rely on FERC and/or State tariffs, there would be a wasteful duplication of effort between FERC, State agencies, and MMS. One industry commenter stated that FERC tariffs should be accepted as an allowable deduction regardless of whether the transportation contract is arm's-length or non-arm's-length because the tariff represents the recognized value of the service.

One industry commenter stated that MMS should accept as a transportation allowance either a FERC tariff or the actual cost including a reasonable profit, whichever is higher. This would give the lessee an option that would be more fair than the single method prescribed by MMS.

Two industry commenters stated that MMS should require actual costs only when there was no pipeline or published tariff. The use of internal cost accounting to determine the value of a transportation allowance was believed to be at odds with the interests of the lessee.

MMS Response: After careful consideration, MMS has decided that, generally, for non-arm's-length or no-contract situations, the fairest and best way to determine transportation allowances is to allow actual, reasonable costs plus, if appropriate, an acceptable cost for the lessee's undepreciated capital equipment. However, MMS has concluded that where a lessee has a tariff approved by FERC or a State agency, it is unnecessarily burdensome and duplicative to recompute costs. Therefore, MMS will recognize FERC tariffs (for both Federal and Indian leases) and tariffs approved by a State regulatory agency (for Federal leases) as a valid cost in computing a transportation allowance when it is an actual out-of-pocket expense pursuant to an arm's-length transportation contract. Existence of such tariffs for a transportation system also will authorize MMS to grant an exception to the requirement to use actual costs for non-arm's-length or nocontract situations. See discussion below.

(2) Should MMS accept comparable arm's-length contracts for determining transportation allowances?

Several industry respondents stated that MMS should accept comparable arm's-length contract costs as the transportation allowance. The costs incurred under comparable arm's-length contracts were described as the best indicator of the value of that service provided by the lessee in transporting oil to a market or to any other point where it could be sold.

MMS Response: It is MMS's past and present practice generally to allow only those costs which are directly related to the transportation of lease production. Costs incurred under "comparable arm's-length contracts" may include costs such as Federal and State income taxes, or socioeconomic costs incurred by the lessee in order to obtain State or county land access such as the construction of schools or city sewer facilities. The MMS considered these comments in revising the regulations and decided that it was in the best interests of the Government, States, and Indians to base oil transportation allowances on actual, reasonable costs plus return on investment.

However, in an effort to simplify procedures for both the lessee and MMS, the regulations at § 206.105(b)(5) will provide an exception to the requirement to compute actual costs where the lessor's interest is adequately protected. The lessee must apply to MMS for the exception, and MMS will grant the exception only if the lessee has a tariff for the system approved by FERC (for both Federal and Indian leases) or a State regulatory agency (for Federal leases). However, the rules contain protection from unreasonably high tariffs. The MMS will deny the exception request if it determines that the tariff is excessive as compared to arm's-length transportation charges by pipelines, owned by the lessee or others, providing similar transportation services in that area. If there are no such arm's-length transportation charges to use for comparison, MMS will deny the exception request if no FERC or State regulatory analysis exists and the FERC or State regulatory agency has declined to investigate pursuant to MMS's timely objections upon filing, and the tariff significantly exceeds the lessee's actual costs for transportation as determined under the regulations in subsection (b)(2).

(3) Should the transportation allowance be based on the market value of transportation service as determined under a benchmark system?

Many industry respondents stated that MMS should allow transportation deductions based on a benchmark system. These commenters suggested that MMS allow the lessee the market value of the transportation service on the basis of a benchmark system featuring arm's-length contracts and tariffs with cost accounting being used only as a last resort.

MMS Response: The MMS considered the benchmark valuation system featuring arm's-length contracts and FERC tariffs with cost accounting being used as a last resort. The MMS has not adopted this recommendation for the same reasons as cited in issue no. 2 above.

(4) Should a penalty be imposed for late submission of the Form MMS–4110?

An industry respondent commented that requiring lessees to file Forms MMS–4110 and MMS–2014 at the same time would impose an unfair penalty on lessees for being unable to complete Form MMS–4110 prior to the Form MMS–2014 reporting deadline and that there is no need to cancel all currently approved allowances. Two other industry commenters suggested that submittal of Form MMS–4110 be only on the basis of as-needed, pursuant to contract changes.

MMS Response: The MMS has reconsidered the reporting requirement that would deny the transportation allowance for those periods for which no Form MMS–4110 was filed. Pursuant to § 206.105(b)(1) of the final rules, a lessee may claim a transportation allowance retroactively for a period of 3 months from the first day of the month that the Form MMS–4110 is filed. However, if the lessee has taken an allowance before filing the form, it must pay interest from the date the allowance was taken until the form is filed. The lessee will also be required to repay the amount of any allowance which is disallowed owing to the 3-month limitation on retroactivity. See

§ 206.105(d). The proposal to retain all current allowances in effect until they expire was considered and it was decided that approved allowances (i.e., allowances approved in writing by MMS) in effect on the effective date of these rules will be allowed to continue in effect until they expire. See §§ 206.105(c)(1)(v) and 206.105(c)(2)(v).

(5) Should the estimated rate reported on Form MMS–4110 be allowed to increase over the prior period, if justified?

One industry commenter requested that the estimated rate be allowed to increase over the prior period, if justified. This respondent also recommended that the initial allowance be effective for a period greater or lesser than the 12 months to allow industry to convert to calendar year reporting. This would ease the administrative burden. Another industry commenter questioned the cost effectiveness of the two-step submission of estimates and corrections. This commenter recommended that any adjustment, plus or minus, be made prospectively only.

MMS Response: The recommendation to allow an estimated rate to increase over the actual rate for the prior period, if justified, has been addressed in the final regulations. Pursuant to § 206.105(c)(2)(iii), the lessee may use an estimate higher or lower than the previous year's actual rate if the lessee believes it is appropriate when submitting Form MMS–4110. The recommendation to adjust the initial reporting period to allow industry to convert to calendar year reporting has been considered and the regulations at § 260.105(c) have been revised to provide for calendar-year reporting.

(6) Should MMS require prior approval for allowances?

Industry respondents commented that they were in support of the self-implementing feature of the regulations which would not require prior approval of each allowance by MMS before the allowance could be claimed. Two State commenters proposed that MMS should require prior approval on non-arm's-length contract or no-contract deductions for transportation because adequate audit resources are not available to audit the allowances, and it is very likely that many leases will never be audited. One Indian commenter proposed that MMS require prior approval and audit to prevent abuse in the claiming of depreciation and overhead costs.

MMS Response: The MMS currently reviews and approves all transportation allowance requests and has considered pre-approval and pre-audit of transportation allowances. It has been decided that a more effective use of resources can be attained by doing exception processing on allowances and selectively reviewing certain allowances in depth to determine the propriety of the allowance reported by lessees on Form MMS–4110. Therefore, with limited exceptions, no prior approval of allowances will be required.

(7) Should costs other than reasonable actual costs be considered in calculating the transportation allowance?

A few industry respondents stated that MMS should revise the regulations to make an allowance for debt service and State and Federal income taxes. Three industry commenters recommended that MMS provide for a complete recovery of costs plus an acceptable profit for assuming the risks involved in undertaking the service function of transportation. One industry commenter recommended that MMS allow for administrative overhead beyond that which is directly associated with, or attributable to, the transportation system.

MMS Response: The MMS views income taxes to be an apportionment of profit rather than a valid operating expense. However, interest on money borrowed for operations would be considered as a valid operating expense. Interest on money borrowed to build a transportation facility is not considered allowable. A return on investment is given in lieu of interest on capital investments. The proposal to extend the amount of overhead beyond that which is directly allocable or attributable to transportation is not acceptable. Administrative overhead or any other costs not directly associated with transportation are not allowed.

(8) What rate of return should be used to calculate return on depreciable investment?

Most industry respondents opposed the use of Moody's Aaa corporate bond rate as unrealistic and too low. One industry commenter stated that "There is no reason to equate pipeline risks with the highest rated, most secure debt rate." Two industry commenters stated that the proposed rate is very conservative and arbitrary and the general consensus of the parties was that the rate of return should be adequate to reflect the risks involved in the oil and gas business. Seven respondents stated that the Aaa rate is the absolute lowest borrowing rate available only to a few "blue chip" companies.

One industry respondent suggested four alternatives to Moody's Aaa bond rate: (1) Prime rate plus 5 percent; (2) one and one-half times the average 20-year treasury bill rate; (3) 150 percent of Moody's Aaa rate; or (4) the rate of return methodology adopted by FERC in Opinion No. 154-B. This industry commenter also stated that industry's position supports a rate of return plus additional points to reflect risk factors, and two other industry commenters suggested that the rate of return should include Federal income tax.

Several industry respondents recommended a rate of return based upon the cost of debt and equity financing. One party stated that "Assets are not financed by debt alone; equity financing must be included in the calculation of an actual and reasonable cost of capital * * *" and suggested a rate to account for equity financing and an alternative method for extraordinary circumstances based on the weighted-average cost of capital. Another industry commenter suggested that the proposed rate "* * * would not include any return on equity which is a significant portion of the capitalization of the pipeline." One industry commenter suggested "* * * a true rate of return for the risk involved and the cost of capital for both debt and equity." Another respondent suggested a rate based on "* * * both cost of credit and equity capital." One industry respondent stated that "Most firms receive funds from both debt and equity sources."

Two industry commenters proposed the prime rate plus 5 percent in accordance with the RMAC panel. Two industry respondents suggested the average 20-year Treasury Bill rate times 150 percent. Seven industry commenters recommended either the average 20-year Treasury Bill rate times 150 percent or the prime rate plus 5 percent as proposed by the Oil Valuation and Gas Valuation Panels, respectively. One industry respondent recommended the prime rate plus 7 percent. Another industry respondent suggested Moody's 20-year Baa rate plus 9 percent as an equitable rate of return. One industry commenter preferred the Treasury Bill rate times 150 percent if MMS fixes the rate at the time of initial investment, or the prime rate plus 5 percent if MMS redetermines the rate yearly. Another industry respondent suggested a 23-percent pre-tax rate of return. One industry commenter suggested that a risk component of from 5 to 7 points above the Aaa rate be adopted.

Two industry commenters stated that the limitation on the rate of return serves as an economic disincentive for lessees to invest in high-risk ventures, such as the frontier areas. Three industry respondents commented that a lessee affiliated with the pipeline would

be at a disadvantage under the proposed rate of return because it would not be competitive with other producers deducting a transportation allowance that includes risk factors.

MMS Response: The MMS has examined several options relating to rate of return and decided that a rate of return should be closely associated with the cost of money necessary to construct transportation facilities. The MMS has examined the use of the corporate bond rate very carefully and has concluded that such rates are representative of the loan rates on sums of money comparable to that expected for the construction of transportation facilities.

There is no doubt that there are some very high risks involved with some oil and gas ventures, such as wildcat drilling. However, the risk associated with building and developing a pipeline to move oil that has already been discovered is a much different risk. The risk of default (financial risk) is considered in corporate bond rates. Considering the risks related to transportation systems, a rate of return that is based on an applicable corporate bond rate would be appropriate for transportation systems.

The MMS has considered the prime rate, the prime rate plus 5 points, one and one-half times the average 20-year Treasury Bill rate, the Moody's bond rate, and Standard and Poor's bond rate.

The MMS believes that the use of an appropriate rate of return based on the corporate bond rate adequately considers the risk associated with a transportation system and that there is no rational basis for increasing a rate of return by arbitrarily adding percentage points simply to increase the allowance granted to a lessee. After carefully considering the comments and the options available, MMS determined that the rate of return should be based on Standard and Poor's BBB industrial bond rate. Section 206.105(b)(2)(v) has been revised accordingly in the final rule. However, because of the substantial and diverse comments on this issue, including several comments on the draft final rule that the BBB bond rate is not much better than the first proposal, MMS will issue a notice of proposed rulemaking to reconsider the applicable rate of return for purposes of these regulations.

The MMS does not consider State and Federal income taxes as an appropriate expense that should be included in a transportation allowance and does not agree that the rate of return should be increased to allow for income tax liability.

(9) Should MMS retain the provisions of both Alternative 1 and Alternative 2?

Some industry respondents commented that MMS should retain both Alternative 1 and Alternative 2 in proposed § 206.105(b)(5)(iv). One industry commenter recommended that both Alternatives 1 and 2 be included in any cost-based methodology for determination of a transportation allowance. Another industry commenter recommended that both alternatives be made available for use at the lessee's election on the basis of an individual transportation arrangement because adoption of this approach would assure the flexibility necessary to adapt to unforeseen changes in the business and transportation environments. Two industry respondents stated that MMS should retain Alternative 1. One industry commenter stated that it endorsed use of the first alternative because it gives lessees some latitude in choosing the depreciation method.

One industry respondent commented that MMS should not retain Alternative 2. The commenter stated that this alternative would encourage third parties to become involved in the pipeline business, in which case MMS would absorb the full market cost of transportation provided.

Several industry respondents commented that MMS should adopt Alternative 2 and apply it to all existing and future transportation facilities. One commenter stated that limiting Alternative 2 (return on initial capital investment) to new or newly acquired transportation systems is unsupported in the proposed rules and Alternative 2 should be available without the limitation imposed by the MMS. Two industry commenters stated that they presumed Alternative 2 has no limit on the deduction under this alternative. Both industry commenters stated that although Alternative 1 specifically states that a transportation system may be depreciated only once, there is no mention of such a cap on Alternative 2 and, therefore, it is presumed that this option has no limit. One industry commenter stated that it believed it was appropriate to include both Alternative 1 and Alternative 2 in any cost-based methodology for determination of a transportation allowance.

One industry respondent recommended that MMS permit the depreciation schedule to be adjusted to reflect additional capital investment of a subsequent purchaser because, if additional capital is invested, there is no double recoupment of capital investment.

Several industry commenters stated that MMS's proposal to disallow recapitalization is inequitable. One commenter stated that because this proposal would only recognize the original capital costs, the additional capital costs which may have been invested by the new owner may not be recovered.

Some industry respondents stated that, although they agreed with the concept of allowing a rate of return on the transportation facilities, the application of the allowance is unfair insofar as a company using Alternative 1 (i.e., one with existing facilities) would only be receiving a return on investment for the undepreciated investment (or net book value).

Some industry respondents stated that MMS should not tie the rate of return to a diminishing value. Both commenters stated that because the intention is to provide the lessee with a rate of return for his invested capital he should not be penalized by a diminishing return caused by tying the return into a depreciation option.

Several industry commenters stated that MMS should allow a lessee to add estimated abandonment costs to its depreciable capital investment value. One industry commenter stated that, although MMS has set out that the proposed regulations require recognition of salvage values, often the cost of abandonment exceeds any salvage value; consequently, it was suggested that the estimated cost of abandonment of the transportation system be included as an expense of operation to the lessee.

An industry commenter stated that a transportation system should be depreciated only once. The commenter suggested that the regulation state "A change in ownership of a transportation system shall not alter the depreciation schedule established by the original transporter/lessee for purposes of the allowance calculation. With or without a change in ownership, a transportation system shall be depreciated only once."

MMS Response: The MMS has reviewed the comments received regarding both Alternative 1 and Alternative 2 in proposed § 206.105(b)(5)(iv) and concluded that both alternatives should be retained. However, under the final rule, § 206.105(b)(2)(iv), Alternative 2 can only be used for transportation facilities first placed in service after the effective date of these regulations.

The MMS has considered the issue of recapitalization and decided that it was appropriate for the Government to pay its share for the depreciation of a system transporting royalty-bearing oil only once.

The MMS has carefully considered the issue of basing the rate of return on a diminishing value and has decided that

this procedure is consistent with longstanding Government policy on allowances and that MMS should continue this policy for transportation facilities in operation on the effective date of these regulations.

The MMS has taken the position that, because it does not participate in the profit or losses that could result from the sale of transportation facilities, no costs for dismantling and abandonment should be included in transportation allowances.

The final rules provide that a transportation system may be depreciated only once, and that the depreciation schedule established by the original transporter/lessee may not be altered by a change in ownership.

(c) *Reporting requirements.*

The MMS received many comments from industry and Indians on the reporting requirements, § 206.105(c), in addition to the comments already discussed above. The two major issues of concern relating to the reporting requirements were (1) usage of Form MMS–4110, and (2) the terms of the allowance and reporting periods.

(1) Should MMS require the filing of Form MMS–4110?

Several industry and Indian commenters opposed the use of Form MMS–4110. One Indian commenter stated that there should be more monitoring of deductions taken from royalty and requested that MMS retain an approval process instead of the mere filing of Form MMS–4110. One industry commenter stated that Form MMS–2014 will show the transportation allowance taken and that Form MMS–4110 is unnecessary. Two industry commenters recommended the filing of an "Intent to Deduct Transportation." One industry commenter stated that the transportation costs under arm's-length contracts should be part of the value and Form MMS–4110 should be filed only for non-arm's-length transportation.

Many industry commenters stated that it would be burdensome to file a new Form MMS–4110 each time a trucking charge or similar net change occurred in a contract price. One industry commenter stated that price postings have been amended as often as three times per month. One industry commenter suggested that Addendum No. 15 be incorporated into the new regulations and expanded to include offshore leases. One industry commenter stated that the regulations are not clear about whether or not a Form MMS–4110 must be filed for prices net of transportation. This industry commenter also stated that in some situations the lessee may not know a price is being netted of transportation in time to file Form MMS–4110.

One Indian commenter stated that the information on Form MMS–4110 should be clear and uncomplicated and should be available to the Indians.

MMS Response: The MMS believes that Form MMS–4110 must be required in order for MMS to monitor the transportation allowance program. The MMS believes it can monitor the transportation allowance deductions more effectively than with the pre-approval of the allowances. The MMS has made the information on Form MMS–4110 as clear and uncomplicated as possible considering the complex nature of transportation allowances. The information on these forms will be made available to the Indians upon proper request. The filing of a Form MMS–4110 equates to an "intent to deduct transportation." The transportation costs under an arm's-length contract are separate from the value determination under such a contract so a Form MMS–4110 should be filed for transportation costs determined under both arm's-length and non-arm's-length contracts.

In arm's-length situations where the purchaser is reducing the posted price for a transportation cost and the lessee is incurring no out-of-pocket expense, filing a Form MMS–4110 is unnecessary. In these situations, the point of sale is at the point the purchaser acquires the oil and, because the reduction in price represents a cost incurred past the point of first sale, a transportation allowance would not be allowed by the regulations. However, in determining the value of the oil, the reduction of price for the transportation costs past the point of sale would be considered. Section 206.105(a)(5) of the final rule incorporates the necessary regulatory language.

(2) Term of the allowance periods and the timetable for reporting.

One industry commenter endorsed the 12-month term for both onshore and offshore leases. Another industry commenter strongly suggested that all transportation allowances based on cost accounting be determined on the basis of calendar-year reporting. This industry respondent also suggested that all existing transportation allowances based on cost accounting be extended until April 1, 1988, when data for the 1987 allowance would be submitted.

Other industry commenters opposed the termination of all current allowances and recommended continuing allowances in effect for a period of time beyond the effective date of the regulations to allow for smooth transition. The general consensus was that it would be an administrative burden to require the filing of Form MMS–4110 immediately upon passage of the rulemaking. In addition, two of these four industry respondents proposed that the transportation allowances remain in effect for an additional 90 days beyond the issuance date of the regulations. One of these commenters suggested filing new forms only when the current allowance expires.

One industry commenter recommended a grace period for filing all allowances. Another industry commenter proposed a 90-day filing period for new Forms MMS–4110 that are submitted for contract revisions.

MMS Response: The MMS concurs with a 12-month term and the final regulations, in § 206.105(c), have been changed to provide that a Form MMS–4110 will be filed by calendar year. The MMS considered extending current allowances and § 206.105 (c)(1)(v) and (c)(2)(v) now provide that certain allowances will continue in effect until they expire. These are limited to allowances approved in writing by MMS. In regard to a grace period for filing, the regulations have been revised to allow a grace period of 3 months for all non-arm's-length and no-contract situations. The regulations in § 206.105(c)(2)(iii) allow the lessee 3 months after the end of the previous reporting period to file the Form MMS–4110, during which period the lessee will continue to use its previous allowance. Also, the final regulations at § 206.105 (a)(1) and (b)(1) have been revised to allow for transportation allowances to be claimed retroactively for a period of not more than 3 months prior to the first day of the month that Form MMS–4110 is filed with MMS. Therefore, even if the lessee is not able to file the Form MMS–4110 timely, the lessee could file the Form MMS–4110 and claim the transportation allowance on a corrected Form MMS–2014 at a later date. The rules also have been modified to include in paragraphs (c)(i)(vi) and (c)(2)(vii) a provision to allow MMS to establish reporting requirements different from those specified in the rules where circumstances warrant.

The MMS has received some comments on the Form MMS–4110. Those comments will be considered in revising the final forms.

(d) *Adjustments.*

Several industry respondents commented on § 206.105(e), which was proposed as § 206.105(d), and pertains to adjustments. Four principal issues were identified.

(1) Should MMS require retroactive adjustments to transportation allowances?

It was the general consensus in the comments that adjustments were a very large burden on both industry and the MMS and that some way should be found to eliminate the need for the many adjustments that result from differences between actual and estimated transportation allowances. Six industry commenters recommended that positive or negative differences between estimated and actual costs should be rolled forward into the transportation rate for the subsequent period because this would greatly relieve the administrative burden on MMS and industry. Three industry commenters recommended that actual data from one period be used as the allowance for the subsequent period, eliminating the need for adjustments. It was stated also that this procedure would relieve the burden on MMS and industry associated with the requirement to make adjustments to each account, each month, for each year.

MMS Response: To ease the burden resulting from the adjustments requirement, MMS has eliminated the need for many retroactive adjustments by accepting arm's-length-contract transportation costs when the lessee timely files the Form MMS–4110. For non-arm's-length and no-contract situations, MMS did not eliminate the need for adjustments between actual and estimated transportation allowances. The MMS considered alternatives such as (1) rolling forward differences into subsequent periods, or (2) using actual data from one period to be used as the next period's actual allowance, but determined that either procedure could be inequitable to lessees, MMS, Indian Tribes, and Indian allottees. However, because many lessees now will be able to use FERC tariffs for non-arm's-length transportation allowances, retroactive adjustments will be further reduced.

(2) Should MMS require refunds to be requested under the refund procedure requirement of section 10 of the Outer Continental Shelf (OCS) Lands Act?

An industry commenter stated that refunds for estimates tendered in excess of actual costs should not be judged as refunds of a payment of royalty under section 10 of the OCS Lands Act, 43 U.S.C. 1339, because estimates are not "actual" payments of royalty. Overpayments could then be treated as line-item adjustments not subject to the refund process. Two industry respondents emphasized that the requirement to submit written requests for refunds for under-deducted transportation costs in accordance with section 10 of the OCS Lands Act will be an extraordinarily difficult financial and reporting burden to industry and MMS. Two industry commenters stated that the current long review and audit process is now causing lessees to lose the time value of money in the refunds which are due the lessees under section 10 of the OCS Lands Act. Audits on such refunds were described as fruitless and wasteful and the suggestion was made that MMS should consider transportation allowance adjustments to be exceptions to the refund requirements of Section 10 of the OCS Lands Act. Overpayments would be recovered through line-item adjustments on Form MMS–2014.

Two industry commenters suggested that the submission of Form MMS–4110 should constitute the tolling of the 2-year statute of limitations period defined in section 10 of the OCS Lands Act. These parties believed that this should be put in the regulations to avoid burdensome refund procedures.

MMS Response: It would not be proper for these rules to prescribe the refund procedures. MMS is examining the issue and will provide guidance to lessees.

(3) Payment of interest.

Industry commenters stated that the MMS-proposed procedure for handling interest payments was not fair. These commenters believed that, if the lessee must pay any difference plus interest, MMS should also pay any difference plus any interest statutorily authorized.

MMS Response: MMS has no legal authority to pay interest.

(f) *Actual or theoretical losses.*

The MMS received over 15 industry comments on § 206.105(f), which was proposed as § 206.105(e). All commenters basically stated that MMS should amend or delete this paragraph to allow actual or theoretical losses as a transportation cost.

Nine industry respondents stated that line losses are actual transportation costs which should be allowed by MMS. The basic premise of these comments was that all costs resulting from line losses should be deductible because, if MMS does not absorb its pro rata share of such transportation costs, an inequity results.

As a variation of this issue, eight industry commenters declared that only certain oil losses should be deductible from royalty. Other industry respondents commented that line losses in arm's-length contracts and FERC tariffs should be allowed. One of these commenters stated that, if a loss provision is a part of an arm's-length contract or a FERC tariff, MMS should accept such a provision, just as it accepts the dollars-and-cents rates in the contract or tariff. In other words, the losses are part of the total cost of the transportation arrangement and should be deductible. Three industry commenters stated that MMS should allow those line losses not attributable to negligence. One of these commenters stated that a credit should be allowed for line losses not attributable to negligence and such change would conform to Section 308 of the FOGRMA, which specifies that a lessee is liable for royalty payments on oil and gas lost or wasted from a lease site when such loss or waste is because of negligence on the part of the operator of the lease.

One industry commenter stated that producer-owned pipelines should include transportation losses as part of operating expenses in the formulation of an allowance.

MMS Response: All of the issues of theoretical and actual line losses have been considered at length by MMS. The MMS will include, as part of a transportation allowance under an arm's-length contract, amounts required to be paid in cash or in-kind for line losses. However, because of the difficulty of demonstrating that losses are valid and not the result of meter error or other difficult-to-measure causes, MMS has decided not to treat line losses as valid costs for purposes of computing transportation allowances in non-arm's-length or no-contract situations. However, if any tariff approved by FERC or a State regulatory agency is authorized to be used for a non-arm's-length transportation allowance situation, any component of that tariff for actual or theoretical losses will be allowed.

(g) *Other transportation cost determinations.*

Only a few comments were received on § 206.105(g), which was proposed as § 206.105(f). This section allows use of the transportation allowance rules where transportation is a component of a valuation procedure such as a net-back.

The major concern raised about this paragraph was the application of the transportation allowance regulations to a net-back valuation. Two industry commenters stated that the use of restrictive cost-based transportation allowances is inequitable when the net-back valuation procedure is used and recommended that the section be reworded to recognize total "actual costs" incurred to move or improve the hydrocarbon for sale downstream.

MMS Response: The MMS has reviewed and analyzed the comments relating to the procedure for netting

costs back to the lease to determine a value for royalty purposes. The MMS remains convinced that the cost-based allowance procedure for determining oil transportation allowances is appropriate for determining value under a netback procedure. If there is an applicable FERC tariff, upon application by the lessee, that could be used instead.

Section 207.5 Contract and sales agreement retention.

Two comments were received regarding § 207.5 (formerly proposed as § 207.4), one from industry and one from a State. The State commenter suggested several modifications to clarify and insure that sufficient documentation on oil sales is maintained and made available to FOGRMA-authorized State auditors and other authorized personnel.

The industry commenter suggested that the regulations should limit the audit period, and thus the time for record retention, to six years. This would avoid "an unnecessary administrative burden" upon industry to maintain records for an indefinite period.

MMS Response: The MMS has modified the final rule to require lessees to maintain and make available all documents relevant to the valuation of production.

This subpart is not the appropriate place to address record retention requirements. The record retention provisions are found at § 212.51 (a) and (b).

Section 3162.7–4 Royalty rates on oil; sliding and step-scale leases (public land only).

This section was proposed as § 202.101. The Bureau of Land Management (BLM) advised that "the redesignation into 43 CFR must be accomplished prior to finalization of the proposed MMS regulations under 30 CFR Part 202 because the well count regulations (43 CFR Part 3100) must be referenced in the new 30 CFR Part 202." The BLM recommended extensive changes in this part "regardless of whether these regulations remain under 30 CFR or are reassigned to 43 CFR."

MMS Response: No changes to the proposed section will be made in the final rule. However, because this regulation is the responsibility of the BLM, it is being redesignated as 43 CFR 3162.7–4. After redesignation, BLM may elect to make certain revisions. MMS has corrected typographical errors which appeared in the proposed rule.

V. Procedural Matters

Executive Order 12291

The Department of Interior (DOI) has determined that this document is not a major rule and does not require a regulatory analysis under Executive Order 12291. This rulemaking consolidates Federal and Indian oil royalty valuation regulations; clarifies DOI oil royalty valuation and oil transportation allowance policy; and provides for consistent royalty valuation policy among all leasable minerals.

Regulatory Flexibility Act

Because this rule primarily consolidates and streamlines existing regulations for consistent application, there are no significant additional requirements or burdens placed upon small business entities as a result of the implementation of this rule. Therefore, the DOI has determined that this rulemaking will not have a significant economic effect on a substantial number of small entities and does not require a regulatory flexibility analysis under the Regulatory Flexibility Act (5 U.S.C. 601, *et seq.*).

Lessee reporting requirements will increase approximately $4 million. All oil posted price bulletins or sales contracts will be required to be submitted only upon request, or only in support of a lessee's valuation proposal in unique situations rather than routinely, as under the existing regulations.

Paperwork Reduction Act of 1980

The information collection and recordkeeping requirements located at §§ 206.105, 207.5, and 210.54 of this rule have been approved by the Office of Management and Budget (OMB) under 44 U.S.C. 3504(h), and assigned OMB Clearance Number 1010–0061.

National Environmental Policy Act of 1969

It is hereby determined that this rulemaking does not constitute a major Federal action significantly affecting the quality of the human environment and a detailed statement pursuant to Section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)) is not required.

List of Subjects

30 CFR Part 202

Coal, Continental shelf, Geothermal energy, Government contracts, Indian lands, Mineral royalties, Natural gas, Petroleum, Public lands-mineral resources, Reporting and recordkeeping requirements.

30 CFR Part 203

Coal, Continental shelf, Geothermal energy, Government contracts, Indian lands, Mineral royalties, Natural gas, Petroleum, Public lands-mineral resources, Reporting and recordkeeping requirements.

30 CFR Part 206

Coal, Continental shelf, Geothermal energy, Government contracts, Indian lands, Mineral royalties, Natural gas, Petroleum, Public lands-mineral resources, Reporting and recordkeeping requirements.

30 CFR Part 207

Coal, Continental shelf, Geothermal energy, Government contracts, Indian lands, Mineral royalties, Natural gas, Petroleum, Public lands-mineral resources, Reporting and recordkeeping requirements.

30 CFR Part 210

Coal, Continental shelf, Geothermal energy, Government contracts, Indian lands, Mineral royalties, Natural gas, Petroleum, Public lands-mineral resources, Reporting and recordkeeping requirements.

30 CFR Part 241

Coal, Continental shelf, Geothermal energy, Government contracts, Indian lands, Mineral royalties, Natural gas, Penalties, Petroleum, Public lands-mineral resources, Reporting and recordkeeping requirements.

43 CFR Part 3100

Government contracts, Land Management Bureau, Mineral royalties, Oil and gas exploration, Public lands-mineral resources, Reporting and recordkeeping requirements, Surety bonds.

43 CFR Part 3160

Government contracts, Indian-lands, Land Management Bureau, Mineral royalties, Oil and gas exploration, Penalties, Public lands-mineral resources, Reporting and recordkeeping requirements.

Date: January 6, 1988.

J. Steven Griles,

Assistant Secretary—Land and Minerals Management.

For the reasons set out in the preamble, 30 CFR Parts 202, 203, 206, 207, 210, 241, and 43 CFR Parts 3100 and 3160 are amended as follows:

TITLE 30—MINERAL RESOURCES

PART 202—ROYALTIES

1. The authority citation for Part 202 is revised to read as follows:

Authority: 25 U.S.C. 396 *et seq.*; 25 U.S.C. 396a *et seq.*; 25 U.S.C. 2101 *et seq.*; 30 U.S.C. 181 *et seq.*; 30 U.S.C. 351 *et seq.*; 30 U.S.C. 1001 *et seq.*; 30 U.S.C. 1701 *et seq.*; 43 U.S.C. 1301 *et seq.*; 43 U.S.C. 1331 *et seq.*; and 43 U.S.C. 1801 *et seq.*

2. Part 202 is amended by revising the Part title and the titles of Subparts B, C, D, E, F, G, and H to read as follows:

PART 202—ROYALTIES

Subpart B—Oil, Gas, and OCS Sulfur, General

Subpart C—Federal and Indian Oil

Subpart D—Federal and Indian Gas—[Reserved]

Subpart E—Solid Minerals, General—[Reserved]

Subpart F—Coal—[Reserved]

Subpart G—Other Solid Minerals—[Reserved]

Subpart H—Geothermal Resources—[Reserved]

3. A new Subpart I is added to read:

Subpart I—OCS Sulfur—[Reserved]

§§ 202.100, 202.101, 202.102, 202.103 [Removed]

§§ 202.150, 202.151 and 202.152 [Redesignated as §§ 202.100, 202.53 and 202.52 respectively]

4. Sections 202.100, 202.101, 202.102 and 202.103 under old Subpart C are removed. Sections 202.150, 202.151 and 202.152 under old Subpart D are redesignated as new §§ 202.100 under new Subpart C, 202.53 and 202.52 under new Subpart B, respectively.

5. Subpart B is revised to read as follows:

Subpart B—Oil, Gas, and OCS Sulfur, General

Sec.
202.51 Scope and definitions.
202.52 Royalties.
202.53 Minimum royalty.

Subpart B—Oil, Gas, and OCS Sulfur, General

§ 202.51 Scope and definitions.

(a) This subpart is applicable to Federal and Indian (Tribal and allotted) oil and gas leases (except leases on the Osage Indian Reservation, Osage County, Oklahoma) and OCS sulfur leases.

(b) The definitions in Subparts C, D, and I of Part 206 of this Title are applicable to Subparts B, C, D, and I of this part.

§ 202.52 Royalties.

(a) Royalties on oil, gas, and OCS sulfur shall be at the royalty rate specified in the lease, unless the Secretary, pursuant to the provisions of the applicable mineral leasing laws, reduces, or in the case of OCS leases, reduces or eliminates, the royalty rate or net profit share set forth in the lease.

(b) For purposes of this subpart, the use of the term "royalty(ies)" includes the term "net profit share(s)".

§ 202.53 Minimum royalty.

For leases that provide for minimum royalty payments, the lessee shall pay the minimum royalty as specified in the lease.

6. Subpart C is revised to read as follows:

Subpart C—Federal and Indian Oil

Sec.
202.100 Royalty on oil.
202.101 Standards for reporting and paying royalties.

Subpart C—Federal and Indian Oil

§ 202.100 Royalty on oil.

(a) Royalties due on oil production from leases subject to the requirements of this part, including condensate separated from gas without processing, shall be at the royalty rate established by the terms of the lease. Royalty shall be paid in value unless MMS requires payment in-kind. When paid in value, the royalty due shall be the value, for royalty purposes, determined pursuant to Part 206 of this title multiplied by the royalty rate in the lease.

(b)(1) All oil (except oil unavoidably lost or used on, or for the benefit of, the lease, including that oil used off-lease for the benefit of the lease when such off-lease use is permitted by the MMS or BLM, as appropriate) produced from a Federal or Indian lease to which this part applies is subject to royalty.

(2) When oil is used on, or for the benefit of, the lease at a production facility handling production from more than one lease with the approval of the MMS or BLM, as appropriate, or at a production facility handling unitized or communitized production, only that proportionate share of each lease's production (actual or allocated) necessary to operate the production facility may be used royalty-free.

(3) Where the terms of any lease are inconsistent with this section, the lease terms shall govern to the extent of that inconsistency.

(c) If BLM determines that oil was avoidably lost or wasted from an onshore lease, or that oil was drained from an onshore lease for which compensatory royalty is due, or if MMS determines that oil was avoidably lost or wasted from an offshore lease, then the value of that oil shall be determined in accordance with 30 CFR Part 206.

(d) If a lessee receives insurance compensation for unavoidably lost oil, royalties are due on the amount of that compensation. This paragraph shall not apply to compensation through self-insurance.

(e)(1) In those instances where the lessee of any lease committed to a federally approved unitization or communitization agreement does not actually take the proportionate share of the agreement production attributable to its lease under the terms of the agreement, the full share of production attributable to the lease under the terms of the agreement nonetheless is subject to the royalty payment and reporting requirements of this title. Except as provided in paragraph (e)(2) of this section, the value, for royalty purposes, of production attributable to unitized or communitized leases will be determined in accordance with 30 CFR Part 206. In applying the requirements of 30 CFR Part 206, the circumstances involved in the actual disposition of the portion of the production to which the lessee was entitled but did not take shall be considered as controlling in arriving at the value, for royalty purposes, of that portion as though the person actually selling or disposing of the production were the lessee of the Federal or Indian lease.

(2) If a Federal or Indian lessee takes less than its proportionate share of agreement production, upon request of the lessee MMS may authorize a royalty valuation method different from that required by paragraph (e)(1) of this section, but consistent with the purposes of these regulations, for any volumes not taken by the lessee but for which royalties are due.

(3) For purposes of this subchapter, all persons actually taking volumes in excess of their proportionate share of production in any month under a unitization or communitization agreement shall be deemed to have taken ratably from all persons actually taking less than their proportionate share of the agreement production for that month.

(4) If a lessee takes less than its proportionate share of agreement production for any month but royalties are paid on the full volume of its proportionate share in accordance with the provisions of this section, no additional royalty will be owed for that lease for prior periods when the lessee subsequently takes more than its proportionate share to balance its account or when the lessee is paid a sum of money by the other agreement participants to balance its account.

(f) For production from Federal and Indian leases which are committed to federally-approved unitization or communitization agreements, upon request of a lessee MMS may establish the value of production pursuant to a method other than the method required by the regulations in this title if: (1) The proposed method for establishing value is consistent with the requirements of the applicable statutes, lease terms, and agreement terms; (2) persons with an interest in the agreement, including, to the extent practical, royalty interests, are given notice and an opportunity to comment on the proposed valuation method before it is authorized; and (3) to the extent practical, persons with an interest in a Federal or Indian lease committed to the agreement, including royalty interests, must agree to use the proposed method for valuing production from the agreement for royalty purposes.

§ 202.101 Standards for reporting and paying royalties.

Oil volumes are to be reported in barrels of clean oil of 42 standard U.S. gallons (231 cubic inches each) at 60°F. When reporting oil volumes for royalty purposes, corrections must have been made for Basic Sediment and Water (BS&W) and other impurities. Reported American Petroleum Institute (API) oil gravities are to be those determined in accordance with standard industry procedures after correction to 60°F.

PART 203—RELIEF OR REDUCTION IN ROYALTY RATE

1. The authority citation for Part 203 is revised to read as follows:

Authority: 25 U.S.C. 396 *et seq.*; 25 U.S.C. 396a *et seq.*; 25 U.S.C. 2101 *et seq.*; 30 U.S.C. 181 *et seq.*; 30 U.S.C. 351 *et seq.*; 30 U.S.C. 1001 *et seq.*; 30 U.S.C. 1701 *et seq.*; 43 U.S.C. 1301 *et seq.*; 43 U.S.C. 1331 *et seq.*; and 43 U.S.C. 1801 *et seq.*

2. Part 203 is amended by revising the titles of Subparts B, C, D, E, F, G, and H to read as follows:

Subpart B—Oil, Gas and OCS Sulfur, General

Subpart C—Federal and Indian Oil—[Reserved]

Subpart D—Federal and Indian Gas—[Reserved]

Subpart E—Solid Minerals, General—[Reserved]

Subpart F—Coal

Subpart G—Other Solid Minerals—[Reserved]

Subpart H—Geothermal Resources—[Reserved]

3. A new Subpart I is added to read:

Subpart I—OCS Sulfur—[Reserved]

§ 203.100 [Removed]

§ 203.150 [Redesignated as § 203.50]

§ 203.200 [Redesignated as § 203.250]

4. Section § 203.100 under old Subpart C is removed. Section 203.150 under old Subpart D is redesignated as § 203.50 under new Subpart B. Section 203.200 under old Subpart E is redesignated as § 203.250 under new Subpart F.

PART 206—PRODUCT VALUATION

1. The authority citation for Part 206 continues to read as follows:

Authority: 25 U.S.C. 396 *et seq.*; 25 U.S.C. 396a *et seq.*; 25 U.S.C. 2101 *et seq.*; 30 U.S.C. 181 *et seq.*; 30 U.S.C. 351 *et seq.*; 30 U.S.C. 1001 *et seq.*; 30 U.S.C. 1701 *et seq.*; 43 U.S.C. 1301 *et seq.*; 43 U.S.C. 1331 *et seq.*; and 43 U.S.C. 1801 *et seq.*

2. Part 206 is amended by revising the titles of Subparts B, C, D, E, F, G, and H to read as follows:

Subpart B—Oil, Gas, and OCS Sulfur, General—[Reserved]

Subpart C—Federal and Indian Oil

Subpart D—Federal and Indian Gas—[Reserved]

Subpart E—Solid Minerals, General—[Reserved]

Subpart F—Coal—[Reserved]

Subpart G—Other Solid Minerals—[Reserved]

Subpart H—Geothermal Resources

3. A new Subpart I is added to read:

Subpart I—OCS Sulfur—[Reserved]

§§ 206.300 and 206.301 [Redesignated as §§ 206.350 and 206.351]

4. Sections 206.300 and 206.301 under old Subpart G are redesignated as new §§ 206.350 and 206.351 under new Subpart H, respectively.

§ 3162.7-4 [Redesignated as 3167.7-5]

§ 206.103 [Removed]

§ 206.104 [Redesignated as 3162.7-4]

5. 43 CFR 3162.7-4 is redesignated as 43 CFR 3167.7-5. 30 CFR 206.103 is removed and 30 CFR 206.104 is redesignated as new 43 CFR 3162.7-4.

6. Subpart C is amended by adding new §§ 206.103 and 206.104 and by revising §§ 206.100, 206.101, 206.102, and 206.105 to read as follows:

§ 206.100 Purpose and scope.

(a) This subpart is applicable to all oil production from Federal and Indian (Tribal and allotted) oil and gas leases (except leases on the Osage Indian Reservation, Osage County, Oklahoma). The purpose of this subpart is to establish the value of production, for royalty purposes, consistent with the mineral leasing laws, other applicable laws, and lease terms.

(b) If the specific provisions of any statute, treaty, or settlement agreement between the United States (or Indian lessor) and a lessee resulting from administrative or judicial litigation, or oil and gas lease subject to the requirements of this subpart are inconsistent with any regulation in this subpart, then the statute, treaty, lease provision or settlement agreement shall govern to the extent of that inconsistency.

(c) All royalty payments made to MMS or to any Tribe or allottee are subject to audit and adjustment.

(d) The regulations in this subpart are intended to ensure that the trust responsibilities of the United States with respect to the administration of Indian oil and gas leases are discharged in accordance with the requirements of the governing mineral leasing laws, treaties, and lease terms.

§ 206.101 Definitions.

For the purposes of this subpart:

"Allowance" means an approved or an MMS-initially accepted deduction in determining value for royalty purposes. "Transportation allowance" means an allowance for the reasonable, actual costs incurred by the lessee for moving oil to a point of sale or point of delivery off the lease, unit area, or communitized area, excluding gathering, or an approved or MMS-initially accepted deduction for costs of such transportation, determined pursuant to this subpart.

"Area" means a geographic region at least as large as the defined limits of an oil and/or gas field in which oil and/or gas lease products have similar quality, economic, and legal characteristics.

"Arm's-length contract" means a contract or agreement that has been arrived at in the market place between independent, nonaffiliated persons with opposing economic interests regarding that contract. For purposes of this subpart, two persons are affiliated if one person controls, is controlled by, or is under common control with another person. For purposes of this subpart, based on the instruments of ownership of the voting securities of an entity, or based on other forms of ownership:

(a) Ownership in excess of 50 percent constitutes control;

(b) Ownership of 10 through 50 percent creates a presumption of control; and

(c) Ownership of less than 10 percent creates a presumption of noncontrol which MMS may rebut if it demonstrates actual or legal control, including the existence of interlocking directorates.

Notwithstanding any other provisions of this subpart, contracts between relatives, either by blood or by marriage, are not arm's-length contracts. The MMS may require the lessee to certify ownership control. To be considered arm's-length for any production month, a contract must meet the requirements of this definition for that production month, as well as when the contract was executed.

"Audit" means a review, conducted in accordance with generally accepted accounting and auditing standards, of royalty payment compliance activities of lessees or other interest holders who pay royalties, rents, or bonuses on Federal and Indian leases.

"BIA" means the Bureau of Indian Affairs of the Department of the Interior.

"BLM" means the Bureau of Land Management of the Department of the Interior.

"Condensate" means liquid hydrocarbons (normally exceeding 40 degrees of API gravity) recovered at the surface without resorting to processing. Condensate is the mixture of liquid hydrocarbons that results from condensation of petroleum hydrocarbons existing initially in a gaseous phase in an underground reservoir.

"Contract" means any oral or written agreement, including amendments or revisions thereto, between two or more persons and enforceable by law that with due consideration creates an obligation.

"Field" means a geographic region situated over one or more subsurface oil and gas reservoirs encompassing at least the outermost boundaries of all oil and gas accumulations known to be within those reservoirs vertically projected to the land surface. Onshore fields are usually given names and their official boundaries are often designated by oil and gas regulatory agencies in the respective States in which the fields are located. Outer Continental Shelf (OCS) fields are named and their boundaries are designated by MMS.

"Gathering" means the movement of lease production to a central accumulation or treatment point on the lease, unit, or communitized area, or to a central accumulation or treatment point off the lease, unit, or communitized area as approved by BLM or MMS OCS operations personnel for onshore and offshore leases, respectively.

"Gross proceeds" (for royalty payment purposes) means the total monies and other consideration accruing to an oil and gas lessee for the disposition of the oil. Gross proceeds includes, but is not limited to, payments to the lessee for certain services such as dehydration, measurement, and/or gathering to the extent that the lessee is obligated to perform them at no cost to the Federal Government or Indian lessor. Gross proceeds, as applied to oil, also includes, but is not limited to reimbursements, including, but not limited to, reimbursements for harboring or terminalling fees. Tax reimbursements are part of the gross proceeds accruing to a lessee even though the Federal or Indian royalty interest may be exempt from taxation. Payment or credits for advanced exploration or development costs or prepaid reserve payments that are subject to recoupment through credits against the purchase price, or through reduced prices in later sales and which are made before production commences, become part of gross proceeds as of the time of first production. Monies and other consideration, including the forms of consideration identified in this paragraph, to which a lessee is contractually or legally entitled but which it does not seek to collect through reasonable efforts are also part of gross proceeds.

"Indian allottee" means any Indian for whom land or an interest in land is held in trust by the United States or who holds title subject to Federal restriction against alienation.

"Indian Tribe" means any Indian Tribe, band, nation, pueblo, community, rancheria, colony, or other group of Indians for which any land or interest in land is held in trust by the United States or which is subject to Federal restriction against alienation.

"Lease" means any contract, profit-share arrangement, joint venture, or other agreement issued or approved by the United States under a mineral leasing law that authorizes exploration for, development or extraction of, or removal of lease products—or the land area covered by that authorization, whichever is required by the context.

"Lease products" means any leased minerals attributable to, originating from, or allocated to Outer Continental Shelf or onshore Federal or Indian leases.

"Lessee" means any person to whom the United States, an Indian Tribe, or an Indian allottee issues a lease, and any person who has been assigned an obligation to make royalty or other payments required by the lease. This includes any person who has an interest in a lease as well as an operator or payor who has no interest in the lease but who has assumed the royalty payment responsibility.

"Like-quality lease products" means lease products which have similar chemical, physical, and legal characteristics.

"Load oil" means any oil which has been used with respect to the operation of oil or gas wells for wellbore stimulation, workover, chemical treatment, or production purposes. It does not include oil used at the surface to place lease production in marketable condition.

"Marketable condition" means lease products which are sufficiently free from impurities and otherwise in a condition that they will be accepted by a purchaser under a sales contract typical for the field or area.

"Marketing affiliate" means an affiliate of the lessee whose function is to acquire only the lessee's production and to market that production.

"Minimum royalty" means that minimum amount of annual royalty that the lessee must pay as specified in the lease or in applicable leasing regulations.

"Net-back method" (or workback method) means a method for calculating market value of oil at the lease. Under this method, costs of transportation, processing, or manufacturing are deducted from the proceeds received for the oil and any extracted, processed, or manufactured products, or from the value of the oil or any extracted, processed, or manufactured products at the first point at which reasonable values for any such products may be determined by a sale pursuant to an arm's-length contract or comparison to other sales of such products, to ascertain value at the lease.

"Net profit share" (for applicable Federal and Indian lessees) means the specified share of the net profit from

production of oil and gas as provided in the agreement.

"Oil" means a mixture of hydrocarbons that existed in the liquid phase in natural underground reservoirs and remains liquid at atmospheric pressure after passing through surface separating facilities and is marketed or used as such. Condensate recovered in lease separators or field facilities is considered to be oil. For purposes of royalty valuation, the term tar sands is defined separately from oil.

"Oil shale" means a kerogen-bearing rock (i.e., fossilized, insoluble, organic material). Separation of kerogen from oil shale may take place in situ or in surface retorts by various processes. The kerogen, upon distillation, will yield liquid and gaseous hydrocarbons.

"Outer Continental Shelf (OCS")" means all submerged lands lying seaward and outside of the area of lands beneath navigable waters as defined in Section 2 of the Submerged Lands Act (43 U.S.C. 1301) and of which the subsoil and seabed appertain to the United States and are subject to its jurisdiction and control.

"Person" means any individual, firm, corporation, association, partnership, consortium, or joint venture (when established as a separate entity).

"Posted price" means the price specified in publicly available posted price bulletins, offshore or onshore terminal postings, or other price notices net of all adjustments for quality (e.g., API gravity, sulfur content, etc.) and location for oil in marketable condition.

"Processing" means any process designed to remove elements or compounds (hydrocarbon and nonhydrocarbon) from gas, including absorption, adsorption, or refrigeration. Field processes which normally take place on or near the lease, such as natural pressure reduction, mechanical separation, heating, cooling, dehydration, and compression are not considered processing. The changing of pressures and/or temperatures in a reservoir is not considered processing.

"Section 6 lease" means an OCS lease subject to section 6 of the Outer Continental Shelf Lands Act, as amended, 43 U.S.C. 1335.

"Selling arrangement" means the individual contractual arrangements under which sales or dispositions of oil are made. Selling arrangements are described by illustration in the MMS Royalty Management Program (Oil and Gas or Solid Minerals) Payor Handbook.

"Spot sales agreement" means a contract wherein a seller agrees to sell to a buyer a specified amount of oil at a specified price over a fixed period, usually of short duration, which does not normally require a cancellation notice to terminate, and which does not contain an obligation, nor imply an intent, to continue in subsequent periods.

"Tar sands" means any consolidated or unconsolidated rock (other than coal, oil shale, or gilsonite) that either contains a hydrocarbonaceous material with a gas-free viscosity greater than 10,000 centipoise at original reservoir temperature, or contains a hydrocarbonaceous material and is produced by mining or quarrying.

§ 206.102 Valuation standards.

(a)(1) The value of production, for royalty purposes, of oil from leases subject to this subpart shall be the value determined pursuant to this section less applicable allowances determined pursuant to this subpart.

(2)(i) For any Indian leases which provide that the Secretary may consider the highest price paid or offered for a major portion of production (major portion) in determining value for royalty purposes, if data are available to compute a major portion, MMS will, where practicable, compare the value determined in accordance with this section with the major portion. The value to be used in determining the value of production, for royalty purposes, shall be the higher of those two values.

(ii) For purposes of this paragraph, major portion means the highest price paid or offered at the time of production for the major portion of oil production from the same field. The major portion will be calculated using like-quality oil sold under arm's-length contracts from the same field (or, if necessary to obtain a reasonable sample, from the same area) for each month. All such oil production will be arrayed from highest price to lowest price (at the bottom). The major portion is that price at which 50 percent (by volume) plus 1 barrel of the oil (starting from the bottom) is sold.

(b)(1)(i) The value of oil which is sold pursuant to an arm's-length contract shall be the gross proceeds accruing to the lessee, except as provided in paragraphs (b)(1)(ii) and (b)(1)(iii) of this section. The lessee shall have the burden of demonstrating that its contract is arm's-length. The value which the lessee reports, for royalty purposes, is subject to monitoring, review, and audit. For purposes of this section, oil which is sold or otherwise transferred to the lessee's marketing affiliate and then sold by the marketing affiliate pursuant to an arm's-length contract shall be valued in accordance with this paragraph based upon the sale by the marketing affiliate.

(ii) In conducting reviews and audits, MMS will examine whether the contract reflects the total consideration actually transferred either directly or indirectly from the buyer to the seller for the oil. If the contract does not reflect the total consideration, then the MMS may require that the oil sold pursuant to that contract be valued in accordance with paragraph (c) of this section. Value may not be less than the gross proceeds accruing to the lessee, including the additional consideration.

(iii) If the MMS determines that the gross proceeds accruing to the lessee pursuant to an arm's-length contract do not reflect the reasonable value of the production because of misconduct by or between two contracting parties, or because the lessee otherwise has breached its duty to the lessor to market the production for the mutual benefit of the lessee and the lessor, then MMS shall require that the oil production be valued pursuant to the first applicable of paragraph (c)(2), (c)(3), (c)(4), or (c)(5) of this section. When MMS determines that the value may be unreasonable, MMS will notify the lessee and give the lessee an opportunity to provide written information justifying the lessee's value. If the oil production is then valued pursuant to paragraph (c)(4) or (c)(5) of this section, the notification requirements of paragraph (e) of this section shall apply.

(2) The MMS may require a lessee to certify that its arm's-length contract provisions include all of the consideration to be paid by the buyer, either directly or indirectly, for the oil.

(c) The value of oil production from leases subject to this section which is not sold pursuant to an arm's-length contract shall be the reasonable value determined in accordance with the first applicable of the following paragraphs:

(1) The lessee's contemporaneous posted prices or oil sales contract prices used in arm's-length transactions for purchases or sales of significant quantities of like-quality oil in the same field (or, if necessary to obtain a reasonable sample, from the same area); provided, however, that those posted prices or oil sales contract prices are comparable to other contemporaneous posted prices or oil sales contract prices used in arm's-length transactions for purchases or sales of significant quantities of like-quality oil in the same field (or, if necessary to obtain a reasonable sample, from the same area). In evaluating the comparability of posted prices or oil sales contract prices, the following factors shall be considered: Price, duration, market or markets served, terms, quality of oil,

volume, and other factors as may be appropriate to reflect the value of the oil. If the lessee makes arm's-length purchases or sales at different postings or prices, then the volume-weighted average price for the purchases or sales for the production month reported on Form MMS–2014 will be used;

(2) The arithmetic average of contemporaneous posted prices used in arm's-length transactions by persons other than the lessee for purchases or sales of significant quantities of like-quality oil in the same field (or, if necessary to obtain a reasonable sample, from the same area);

(3) The arithmetic average of other contemporaneous arm's-length contract prices for purchases or sales of significant quantities of like-quality oil in the same area or nearby areas;

(4) Prices received for arm's-length spot sales of significant quantities of like-quality oil from the same field (or, if necessary to obtain a reasonable sample, from the same area), and other relevant matters, including information submitted by the lessee concerning circumstances unique to a particular lease operation or the saleability of certain types of oil;

(5) A net-back method or any other reasonable method to determine value;

(6) For purposes of this paragraph, the term lessee includes the lessee's designated purchasing agent, and the term contemporaneous means postings or contract prices in effect at the time the royalty obligation is incurred.

(d) Any Federal or Indian lessee will make available, upon request to the authorized MMS, State, or Indian representatives, to the Office of the Inspector General of the Department of the Interior, or other persons authorized to receive such information, arm's-length sales and volume data for like-quality production sold, purchased, or otherwise obtained by the lessee from the field or area or from nearby fields or areas.

(e)(1) Where the value is determined pursuant to paragraph (c) of this section, the lessee shall retain all data relevant to the determination of royalty value. Such data shall be subject to review and audit, and MMS will direct a lessee to use a different value if it determines that the reported value is inconsistent with the requirements of these regulations.

(2) A lessee shall notify MMS if it has determined value pursuant to paragraph (c)(4) or (c)(5) of this section. The notification shall be by letter to the MMS Associate Director for Royalty Management or his/her designee. The letter shall identify the valuation method to be used and contain a brief description of the procedure to be followed. The notification required by this paragraph is a one-time notification due no later than the end of the month following the month the lessee first reports royalties on a Form MMS–2014 using a valuation method authorized by paragraph (c)(4) or (c)(5) of this section and each time there is a change from one to the other of these two methods.

(f) If MMS determines that a lessee has not properly determined value, the lessee shall pay the difference, if any, between royalty payments made based upon the value it has used and the royalty payments that are due based upon the value established by MMS. The lessee shall also pay interest on the difference computed pursuant to 30 CFR 218.54. If the lessee is entitled to a credit, MMS will provide instructions for the taking of that credit.

(g) The lessee may request a value determination from MMS. In that event, the lessee shall propose to MMS a value determination method and may use that value for royalty payment purposes until MMS issues a value determination. The lessee shall submit all available data relevant to its proposal. MMS shall expeditiously determine the value based upon the lessee's proposal and any additional information MMS deems necessary. In making a value determination, MMS may use any of the valuation criteria authorized by this subpart. That determination shall remain effective for the period stated therein. After MMS issues its determination, the lessee shall make the adjustments in accordance with paragraph (f) of this section.

(h) Notwithstanding any other provision of this section, under no circumstances shall the value of production, for royalty purposes, be less than the gross proceeds accruing to the lessee for lease production, less applicable allowances determined pursuant to this subpart.

(i) The lessee is required to place oil in marketable condition at no cost to the Federal Government or Indian lessor unless otherwise provided in the lease agreement or this section. Where the value established pursuant to this section is determined by a lessee's gross proceeds, that value shall be increased to the extent that the gross proceeds have been reduced because the purchaser, or any other person, is providing certain services the cost of which ordinarily is the responsibility of the lessee to place the oil in marketable condition.

(j) Value shall be based on the highest price a prudent lessee can receive through legally enforceable claims under its contract. Absent contract revision or amendment, if the lessee fails to take proper or timely action to receive prices or benefits to which it is entitled, it must pay royalty at a value based upon that obtainable price or benefit. Contract revisions or amendments shall be in writing and signed by all parties to an arm's-length contract. If the lessee makes timely application for a price increase or benefit allowed under its contract but the purchaser refuses, and the lessee takes reasonable measures, which are documented, to force purchaser compliance, the lessee will owe no additional royalties unless or until monies or consideration resulting from the price increase or additional benefits are received. This paragraph shall not be construed to permit a lessee to avoid its royalty payment obligation in situations where a purchaser fails to pay, in whole or in part or timely, for a quantity of oil.

(k) Notwithstanding any provision in these regulations to the contrary, no review, reconciliation, monitoring, or other like process that results in a redetermination by the MMS of value under this section shall be considered final or binding as against the Federal Government, its beneficiaries, the Indian Tribes, or allottees until the audit period is formally closed.

(l) Certain information submitted to MMS to support valuation proposals, including transportation allowances or extraordinary cost allowances, is exempted from disclosure by the Freedom of Information Act, 5 U.S.C. 552, or other Federal law. Any data specified by law to be privileged, confidential, or otherwise exempt, will be maintained in a confidential manner in accordance with applicable laws and regulations. All requests for information about determinations made under this part are to be submitted in accordance with the Freedom of Information Act regulation of the Department of the Interior, 43 CFR Part 2. Nothing in this section is intended to limit or diminish in any manner whatsoever the right of an Indian lessor to obtain any and all information to which such lessor may be lawfully entitled from MMS or such lessor's lessee directly under the terms of the lease, 30 U.S.C. 1733, or other applicable law.

§ 206.103 Point of royalty settlement.

(a)(1) Royalties shall be computed on the quantity and quality of oil as measured at the point of settlement approved by BLM or MMS for onshore and offshore leases, respectively.

(2) If the value of oil determined pursuant to § 206.102 of this subpart is based upon a quantity and/or quality different from the quantity and/or quality at the point of royalty settlement

approved by the BLM for onshore leases or the MMS for offshore leases, the value shall be adjusted for those differences in quantity and/or quality.

(b) No deductions may be made from the royalty volume or royalty value for actual or theoretical losses. Any actual loss that may be sustained prior to the royalty settlement metering or measurement point will not be subject to royalty provided that such actual loss is determined to have been unavoidable by BLM or MMS, as appropriate.

(c) Except as provided in paragraph (b) of this section, royalties are due on 100 percent of the volume measured at the approved point of royalty settlement. There can be no reduction in that measured volume for actual losses beyond the approved point of royalty settlement or for theoretical losses that are claimed to have taken place either prior to or beyond the approved point of royalty settlement. Royalties are due on 100 percent of the value of the oil as provided in this part. There can be no deduction from the value of the oil for royalty purposes to compensate for actual losses beyond the approved point of royalty settlement or for theoretical losses that are claimed to have taken place either prior to or beyond the approved point of royalty settlement.

§ 206.104 Transportation allowances—general.

(a) Where the value of oil has been determined pursuant to § 206.102 of this subpart at a point (e.g., sales point or point of value determination) off the lease, MMS shall allow a deduction for the reasonable, actual costs incurred by the lessee to:

(1) Transport oil from an onshore lease to the point off the lease; provided, however, that for onshore leases, no transportation allowance will be granted for transporting oil taken as Royalty-In-Kind (RIK); or

(2) Transport oil from an offshore lease to the point off the lease; provided, however, that for oil taken as RIK, a transportation allowance shall be provided for the reasonable, actual costs incurred to transport that oil to the delivery point specified in the contract between the RIK oil purchaser and the Federal Government or Indian lessor.

(b)(1) Except as provided in paragraph (a)(2) of this section, the transportation allowance deduction on the basis of a selling arrangement shall not exceed 50 percent of the value of the oil at the point of sale as determined pursuant to § 206.102 of this subpart. Transportation costs cannot be transferred between selling arrangements or to other products.

(2) Upon request of a lessee, MMS may approve a transportation allowance deduction in excess of the limitation prescribed by paragraph (b)(1) of this section. The lessee must demonstrate that the transportation costs incurred in excess of the limitation prescribed in paragraph (b)(1) of this section were reasonable, actual, and necessary. An application for exception shall contain all relevant and supporting documentation necessary for the MMS to make a determination. Under no circumstances shall the value, for royalty purposes, under any selling arrangement, be reduced to zero.

(c) Transportation costs must be allocated among all products produced and transported as provided in § 206.105. Transportation allowances for oil shall be expressed as dollars per barrel.

(d) If, after a review and/or audit, MMS determines that a lessee has improperly determined a transportation allowance authorized by this subpart, then the lessee shall pay any additional royalties, plus interest determined in accordance with 30 CFR 218.54, or shall be entitled to a credit, without interest.

§ 206.105 Determination of transportation allowances.

(a) *Arm's-length transportation contracts.* (1)(i) For transportation costs incurred by a lessee pursuant to an arm's-length contract, the transportation allowance shall be the reasonable, actual costs incurred by the lessee for transporting oil under that contract, except as provided in paragraphs (a)(1)(ii) and (a)(1)(iii) of this section, subject to monitoring, review, audit, and adjustment. The lessee shall have the burden of demonstrating that its contract is arm's-length. Such allowances shall be subject to the provisions of paragraph (f) of this section. Before any deduction may be taken, the lessee must submit a completed page one of Form MMS–4110 (and Schedule 1), Oil Transportation Allowance Report, in accordance with paragraph (c)(1) of this section. A transportation allowance may be claimed retroactively for a period of not more than 3 months prior to the first day of the month that Form MMS–4110 is filed with MMS, unless MMS approves a longer period upon a showing of good cause by the lessee.

(ii) In conducting reviews and audits, MMS will examine whether the contract reflects more than the consideration actually transferred either directly or indirectly from the lessee to the transporter for the transportation. If the contract reflects more than the total consideration, then the MMS may require that the transportation allowance be determined in accordance with paragraph (b) of this section.

(iii) If the MMS determines that the consideration paid pursuant to an arm's-length transportation contract does not reflect the reasonable value of the transportation because of misconduct by or between the contracting parties, or because the lessee otherwise has breached its duty to the lessor to market the production for the mutual benefit of the lessee and the lessor, then MMS shall require that the transportation allowance be determined in accordance with paragraph (b) of this section.

(2)(i) If an arm's-length transportation contract includes more than one liquid product, and the transportation costs attributable to each product cannot be determined from the contract, then the total transportation costs shall be allocated in a consistent and equitable manner to each of the liquid products transported in the same proportion as the ratio of the volume of each product (excluding waste products which have no value) to the volume of all liquid products (excluding waste products which have no value). Except as provided in this paragraph, no allowance may be taken for the costs of transporting lease production which is not royalty-bearing without MMS approval.

(ii) Notwithstanding the requirements of paragraph (i), the lessee may propose to MMS a cost allocation method on the basis of the values of the products transported. The MMS shall approve the method unless it determines that it is not consistent with the purposes of the regulations in this part.

(3) If an arm's-length transportation contract includes both gaseous and liquid products, and the transportation costs attributable to each product cannot be determined from the contract, the lessee shall propose an allocation procedure to MMS. The lessee may use the oil transportation allowance determined in accordance with its proposed allocation procedure until MMS issues its determination on the acceptability of the cost allocation. The lessee shall submit all available data to support its proposal. The initial proposal must be submitted by June 30, 1988 or within 3 months after the last day of the month for which the lessee requests a transportation allowance, whichever is later (unless MMS approves a longer period). The MMS shall then determine the oil transportation allowance based upon the lessee's proposal and any additional information MMS deems necessary.

(4) Where the lessee's payments for transportation under an arm's-length contract are not on a dollar-per-unit basis, the lessee shall convert whatever consideration is paid to a dollar value equivalent for the purposes of this section.

(5) Where an arm's-length sales contract price, or a posted price, includes a provision whereby the listed price is reduced by a transportation factor, MMS will not consider the transportation factor to be a transportation allowance. The transportation factor may be used in determining the lessee's gross proceeds for the sale of the product. The transportation factor may not exceed 50 percent of the base price of the product without MMS approval.

(b) *Non-arm's-length or no contract.* (1) If a lessee has a non-arm's-length transportation contract or has no contract, including those situations where the lessee performs transportation services for itself, the transportation allowance will be based upon the lessee's reasonable, actual costs as provided in this paragraph. All transportation allowances deducted under a non-arms-length or no-contract situation are subject to monitoring, review, audit, and adjustment. Before any estimated or actual deduction may be taken, the lessee must submit a completed Form MMS–4110 in its entirety in accordance with paragraph (c)(2) of this section. A transportation allowance may be claimed retroactively for a period of not more than 3 months prior to the first day of the month that Form MMS–4110 is filed with MMS, unless MMS approves a longer period upon a showing of good cause by the lessee. The MMS will monitor the allowance deductions to determine whether lessees are taking deductions that are reasonable and allowable. When necessary or appropriate, MMS may direct a lessee to modify its estimated or actual transportation allowance deduction.

(2) The transportation allowance for non-arms-length or no-contract situations shall be based upon the lessee's actual costs for transportation during the reporting period, including operating and maintenance expenses, overhead, and either depreciation and a return on undepreciated capital investment in accordance with paragraph (b)(2)(iv)(A) of this section, or a cost equal to the initial capital investment in the transportation system multiplied by a rate of return in accordance with paragraph (b)(2)(iv)(B) of this section. Allowable capital costs are generally those for depreciable fixed assets (including costs of delivery and installation of capital equipment) which are an integral part of the transportation system.

(i) Allowable operating expenses include: Operations supervision and engineering; operations labor; fuel; utilities; materials; ad valorem property taxes; rent; supplies; and any other directly allocable and attributable operating expense which the lessee can document.

(ii) Allowable maintenance expenses include: Maintenance of the transportation system; maintenance of equipment; maintenance labor; and other directly allocable and attributable maintenance expenses which the lessee can document.

(iii) Overhead directly attributable and allocable to the operation and maintenance of the transportation system is an allowable expense. State and Federal income taxes and severance taxes and other fees, including royalties, are not allowable expenses.

(iv) A lessee may use either depreciation or a return on depreciable capital investment. After a lessee has elected to use either method for a transportation system, the lessee may not later elect to change to the other alternative without approval of the MMS.

(A) To compute depreciation, the lessee may elect to use either a straight-line depreciation method based on the life of equipment or on the life of the reserves which the transportation system services or on a unit-of-production method. After an election is made, the lessee may not change methods without MMS approval. A change in ownership of a transportation system shall not alter the depreciation schedule established by the original transporter/lessee for purposes of the allowance calculation. With or without a change in ownership, a transportation system shall be depreciated only once. Equipment shall not be depreciated below a reasonable salvage value.

(B) The MMS shall allow as a cost an amount equal to the initial capital investment in the transportation system multiplied by the rate of return determined pursuant to paragraph (b)(2)(v) of this section. No allowance shall be provided for depreciation. This alternative shall apply only to transportation facilities first placed in service after March 1, 1988.

(v) The rate of return shall be the industrial rate associated with Standard and Poor's BBB rating. The rate of return shall be the monthly average rate as published in *Standard and Poor's Bond Guide* for the first month of the reporting period for which the allowance is applicable and shall be effective during the reporting period. The rate shall be redetermined at the beginning of each subsequent transportation allowance reporting period (which is determined pursuant to paragraph (c) of this section).

(3)(i) The deduction for transportation costs shall be determined on the basis of the lessee's cost of transporting each product through each individual transportation system. Where more than one liquid product is transported, allocation of costs to each of the liquid products transported shall be in the same proportion as the ratio of the volume of each liquid product (excluding waste products which have no value) to the volume of all liquid products (excluding waste products which have no value) and such allocation shall be made in a consistent and equitable manner. Except as provided in this paragraph, the lessee may not take an allowance for transporting lease production which is not royalty-bearing without MMS approval.

(ii) Notwithstanding the requirements of paragraph (i), the lessee may propose to the MMS a cost allocation method on the basis of the values of the products transported. The MMS shall approve the method unless it determines that it is not consistent with the purposes of the regulations in this part.

(4) Where both gaseous and liquid products are transported through the same transportation system, the lessee shall propose a cost allocation procedure to MMS. The lessee may use the oil transportation allowance determined in accordance with its proposed allocation procedure until MMS issues its determination on the acceptability of the cost allocation. The lessee shall submit all available data to support its proposal. The initial proposal must be submitted by June 30, 1988 or within 3 months after the last day of the month for which the lessee requests a transportation allowance, whichever is later (unless MMS approves a longer period). The MMS shall then determine the oil transportation allowance on the basis of the lessee's proposal and any additional information MMS deems necessary.

(5) A lessee may apply to the MMS for an exception from the requirement that it compute actual costs in accordance with paragraphs (b)(1) through (b)(4) of this section. The MMS will grant the exception only if the lessee has a tariff for the transportation system approved by the Federal Energy Regulatory Commission (FERC) (for both Federal

and Indian leases) or a State regulatory agency (for Federal leases). The MMS shall deny the exception request if it determines that the tariff is excessive as compared to arm's-length transportation charges by pipelines, owned by the lessee or others, providing similar transportation services in that area. If there are no arm's-length transportation charges, MMS shall deny the exception request if: (i) No FERC or State regulatory agency cost analysis exists and the FERC or State regulatory agency, as applicable, has declined to investigate pursuant to MMS timely objections upon filing; and (ii) the tariff significantly exceeds the lessee's actual costs for transportation as determined under this section.

(c) *Reporting requirements.* (1) Arm's-length contracts. (i) With the exception of those transportation allowances specified in paragraphs (c)(1)(v) and (c)(1)(vi) of this section, the lessee shall submit page one of the initial Form MMS–4110 (and Schedule 1), Oil Transportation Allowance Report, prior to, or at the same time as, the transportation allowance determined, pursuant to an arm's-length contract, is reported on Form MMS–2014, Report of Sales and Royalty Remittance. A Form MMS–4110 received by the end of the month that the Form MMS–2014 is due shall be considered to be timely received.

(ii) The initial Form MMS–4110 shall be effective for a reporting period beginning the month that the lessee is first authorized to deduct a transportation allowance and shall continue until the end of the calendar year, or until the applicable contract or rate terminates or is modified or amended, whichever is earlier.

(iii) After the initial reporting period and for succeeding reporting periods, lessees must submit page one of Form MMS–4110 (and Schedule 1) within 3 months after the end of the calendar year, or after the applicable contract or rate terminates or is modified or amended, whichever is earlier, unless MMS approves a longer period (during which period the lessee shall continue to use the allowance from the previous reporting period).

(iv) The MMS may require that a lessee submit arm's-length transportation contracts, production agreements, operating agreements, and related documents. Documents shall be submitted within a reasonable time, as determined by MMS.

(v) Transportation allowances which are based on arm's-length contracts and which are in effect at the time these regulations become effective will be allowed to continue until such allowances terminate. For the purposes of this section, only those allowances that have been approved by MMS in writing shall qualify as being in effect at the time these regulations become effective.

(vi) The MMS may establish, in appropriate circumstances, reporting requirements which are different from the requirements of this section.

(2) Non-arm's-length or no contract. (i) With the exception of those transportation allowances specified in paragraphs (c)(2)(v), (c)(2)(vii) and (c)(2)(viii) of this section, the lessee shall submit an initial Form MMS–4110 prior to, or at the same time as, the transportation allowance determined pursuant to a non-arm's-length contract or no-contract situation is reported on Form MMS–2014. A Form MMS–4110 received by the end of the month that the Form MMS–2014 is due shall be considered to be timely received. The initial report may be based upon estimated costs.

(ii) The initial Form MMS–4110 shall be effective for a reporting period beginning the month that the lessee first is authorized to deduct a transportation allowance and shall continue until the end of the calendar year, or until transportation under the non-arm's-length contract or the no-contract situation terminates, whichever is earlier.

(iii) For calendar-year reporting periods succeeding the initial reporting period, the lessee shall submit a completed Form MMS–4110 containing the actual costs for the previous reporting period. If oil transportation is continuing, the lessee shall include on Form MMS–4110 its estimated costs for the next calendar year. The estimated oil transportation allowance shall be based on the actual costs for the previous reporting period plus or minus any adjustments which are based on the lessee's knowledge of decreases or increases that will affect the allowance. MMS must receive the Form MMS–4110 within 3 months after the end of the previous reporting period, unless MMS approves a longer period (during which period the lessee shall continue to use the allowance from the previous reporting period).

(iv) For new transportation facilities or arrangements, the lessee's initial Form MMS–4110 shall include estimates of the allowable oil transportation costs for the applicable period. Cost estimates shall be based upon the most recently available operations data for the transportation system or, if such data are not available, the lessee shall use estimates based upon industry data for similar transportation systems.

(v) Non-arm's-length contract or no-contract transportation allowances which are in effect at the time these regulations become effective will be allowed to continue until such allowances terminate. For the purposes of this section, only those allowances that have been approved by MMS in writing shall qualify as being in effect at the time these regulations become effective.

(vi) Upon request by MMS, the lessee shall submit all data used to prepare its Form MMS–4110. The data shall be provided within a reasonable period of time, as determined by MMS.

(vii) The MMS may establish, in appropriate circumstances, reporting requirements which are different from the requirements of this section.

(viii) If the lessee is authorized to use its FERC-approved tariff as its transportation cost in accordance with paragraph (b)(5) of this section, it shall follow the reporting requirements of paragraph (c)(1) of this section.

(3) The MMS may establish reporting dates for individual lessees different from those specified in this subpart in order to provide more effective administration. Lessees will be notified of any change in their reporting period.

(4) Transportation allowances must be reported as a separate line item on Form MMS–2014, unless MMS approves a different reporting procedure.

(d) *Interest assessments for incorrect or late reports and for failure to report.* (1) If a lessee deducts a transportation allowance on its Form MMS–2014 without complying with the requirements of this section, the lessee shall pay interest only on the amount of such deduction until the requirements of this section are complied with. The lessee also shall repay the amount of any allowance which is disallowed by this section.

(2) If a lessee erroneously reports a transportation allowance which results in an underpayment of royalties, interest shall be paid on the amount of that underpayment.

(3) Interest required to be paid by this section shall be determined in accordance with 30 CFR 218.54.

(e) *Adjustments.* (1) If the actual transportation allowance is less than the amount the lessee has estimated and taken during the reporting period, the lessee shall be required to pay additional royalties due plus interest

computed pursuant to 30 CFR 218.54, retroactive to the first month the lessee is authorized to deduct a transportation allowance. If the actual transportation allowance is greater than the amount the lessee has estimated and taken during the reporting period, the lessee shall be entitled to a credit without interest.

(2) For lessees transporting production from onshore Federal and Indian leases, the lessee must submit a corrected Form MMS–2014 to reflect actual costs, together with any payment, in accordance with instructions provided by MMS.

(3) For lessees transporting production from Federal OCS leases, if the lessee's estimated costs were more than the actual costs, the lessee must submit a corrected Form MMS2014 to reflect actual costs together with its payment, in accordance with instructions provided by MMS. If the lessee's estimated costs were less than its actual costs, the refund procedure will be specified by MMS.

(f) *Actual or theoretical losses.* Notwithstanding any other provisions of this subpart, for other than arm's-length contracts, no cost shall be allowed for oil transportation which results from payments (either volumetric or for value) for actual or theoretical losses. This section does not apply when the transportation allowance is based upon a FERC or State regulatory agency approved tariff.

(g) *Other transportation cost determinations.* The provisions of this section shall apply to determine transportation costs when establishing value using a netback valuation procedure or any other procedure that requires deduction of transportation costs.

30 CFR Part 207 is revised to read as follows:

PART 207—SALES AGREEMENTS OR CONTRACTS GOVERNING THE DISPOSAL OF LEASE PRODUCTS

Subpart A—General Provisions

Sec.

207.1 Required recordkeeping.
207.2 Definitions.
207.3 Contracts made pursuant to new form leases.
207.4 Contracts made pursuant to old form leases.
207.5 Contract and sales agreement retention.

Subpart B—Oil, Gas and OCS Sulfur, General [Reserved]

Subpart C—Federal and Indian Oil [Reserved]

Subpart D—Federal and Indian Gas [Reserved]

Subpart E—Solid Minerals, General [Reserved]

Subpart F—Coal [Reserved]

Subpart G—Other Solid Minerals [Reserved]

Subpart H—Geothermal Resources [Reserved]

Subpart I—OCS Sulfur [Reserved]

Authority: 25 U.S.C. 396 et seq.; 25 U.S.C. 396a et seq.; 25 U.S.C. 2101 et seq.; 30 U.S.C. 181 et seq.; 30 U.S.C. 351 et seq.; 30 U.S.C. 1001 et seq.; 30 U.S.C. 1701 et seq.; 43 U.S.C. 1301 et seq.; 43 U.S.C. 1331 et seq.; and 43 U.S.C. 1801 et seq.

Subpart A—General Provisions

§ 207.1 Required recordkeeping.

The recordkeeping requirements contained in this part have been approved by the Office of Management and Budget (OMB) under 44 U.S.C. 3501 et seq. and assigned OMB Clearance Number 1010–0061.

§ 207.2 Definitions.

The definitions in Part 206 of this title are applicable to this part.

§ 207.3 Contracts made pursuant to new form leases.

On November 29, 1950 (15 FR 8585), a new lease form was adopted (Form 4–1158, 15 FR 8585) containing provisions whereby the lessee agrees that nothing in any contract or other arrangement made for the sale or disposal of oil, gas, natural gasoline, and other products of the leased land, shall be construed as modifying any of the provisions of the lease, including, but not limited to, provisions relating to gas waste, taking royalty-in-kind, and the method of computing royalties due as based on a minimum valuation and in accordance with the oil and gas valuation regulations. A contract or agreement pursuant to a lease containing such provisions may be made without obtaining prior approval of the United States as lessor, but must be retained as provided in § 207.5 of this subpart.

§ 207.4 Contracts made pursuant to old form leases.

(a) Old form leases are those containing provisions prohibiting sales or disposal of oil, gas, natural gasoline, and other products of the lease except in accordance with a contract or other arrangement approved by the Secretary of the Interior, or by the Director of the Minerals Management Service or his/her representative. A contract or agreement made pursuant to an old form lease may be made without obtaining approval if the contract or agreement contains either the substance of or is accompanied by the stipulation set forth in paragraph (b) of this section, signed by the seller (lessee or operator).

(b) The stipulation, the substance of which must be included in the contract, or be made the subject matter of a separate instrument properly identifying the leases affected thereby, is as follows:

It is hereby understood and agreed that nothing in the written contract or in any approval thereof shall be construed as affecting any of the relations between the United States and its lessee, particularly in matters of gas waste, taking royalty in kind, and the method of computing royalties due as based on a minimum valuation and in accordance with the terms and provisions of the oil and gas valuation regulations applicable to the lands covered by said contract.

§ 207.5 Contract and sales agreement retention.

Copies of all sales contracts, posted price bulletins, etc., and copies of all agreements, other contracts, or other documents which are relevant to the valuation of production are to be maintained by the lessee and made available upon request during normal working hours to authorized MMS, State or Indian representatives, other MMS or BLM officials, auditors of the General Accounting Office, or other persons authorized to receive such documents, or shall be submitted to MMS within a reasonable period of time, as determined by MMS. Any oral sales arrangement negotiated by the lessee must be placed in written form and retained by the lessee. Records shall be retained in accordance with 30 CFR Part 212.

Subpart B—Oil, Gas, and OCS Sulfur, General [Reserved]

Subpart C—Federal and Indian Oil [Reserved]

Subpart D—Federal and Indian Gas [Reserved]

Subpart E—Solid Minerals, General [Reserved]

Subpart F—Coal [Reserved]

Subpart G—Other Solid Minerals [Reserved]

Subpart H—Geothermal Resources [Reserved]

Subpart I—OCS Sulfur [Reserved]

PART 210—FORMS AND REPORTS

1. The authority citation for Part 210 continues to read as follows:

Authority: 25 U.S.C. 396 et seq.; 25 U.S.C. 396a et seq.; 25 U.S.C. 2101 et seq.; 30 U.S.C. 181 et seq.; 30 U.S.C. 351 et seq.; 30 U.S.C. 1001 et seq.; 30 U.S.C. 1701 et seq.; 43 U.S.C. 1301 et seq.; 43 U.S.C. 1331 et seq.; and 43 U.S.C. 1801 et seq.

2. Part 210 is amended by revising the titles of Subparts B, C, D, F, and G to read as follows:

Subpart B—Oil, Gas, and OCS Sulfur—General

Subpart C—Federal and Indian Oil—[Reserved]

Subpart D—Federal and Indian Gas—[Reserved]

Subpart F—Coal [Reserved]

Subpart G—Other Solid Minerals [Reserved]

3. The following subparts are added to Part 210:

Subpart H—Geothermal Resources [Reserved]

Subpart I—OCS Sulfur—[Reserved]

§§ 210.100, 210.101, 210.102, 210.103, 210.104, 210.105, 210.150, 210.151 [Removed]

§§ 210.300 and 210.301 [Redesignated as §§ 210.350 and 210.351]

4. Sections 210.100, 210.101, 210.102, 210.103, 210.104 and 210.105 under Subpart C and §§ 210.150 and 210.151 under Subpart D are removed. Sections 210.300 and 210.301 under Subpart F are redesignated as new §§ 210.350 and 210.351, respectively, under new Subpart H.

5. 30 CFR Part 210, Subpart B, is amended by adding § 210.55 to read as follows:

§ 210.55 Special forms or reports.

When special forms or reports other than those referred to in the regulations in this part may be necessary, instructions for the filing of such forms or reports will be given by MMS.

PART 241—PENALTIES

1. The authority citation for Part 241 is revised to read as follows:

Authority: 25 U.S.C. 396 *et seq.*; 25 U.S.C. 396a *et seq.*; 25 U.S.C. 2101 *et seq.*; 30 U.S.C. 181 *et seq.*; 30 U.S.C. 351 *et seq.*; 30 U.S.C. 1001 *et seq.*; 30 U.S.C. 1701 *et seq.*; 43 U.S.C. 1301 *et seq.*; 43 U.S.C. 1331 *et seq.*; and 43 U.S.C. 1801 *et seq.*

2. Part 241 is amended by revising the titles of Subparts B, C, and D to read as follows:

Subpart B—Oil, Gas, and OCS Sulfur, General

Subpart C—Federal and Indian Oil—[Reserved]

Subpart D—Federal and Indian Gas—[Reserved]

Subpart H—[Removed]

3. "Subpart H—Indian Lands—[Reserved]" is removed.

Subparts E, F, and G—[Redesignated as Subparts F, G, and H]

4. Subparts E, F, and G are redesignated as Subparts F, G, and H, respectively.

5. A new Subpart I is added to read:

Subpart I—OCS Sulfur [Reserved]

6. A new Subpart E is added to read:

Subpart E—Solid Minerals, General—[Reserved]

§ 241.10 [Removed and Reserved]

7. Section 241.10 under Subpart A is removed and reserved.

§ 241.50 [Amended]

8. Section 241.50 under Subpart B is amended by removing the phrase "this subpart" and replacing it with the phrase "Subparts B, C and D of this part."

§ 241.100 [Redesignated as § 241.53]

9. Section 241.100 under Subpart C is redesignated as a new § 241.53 under Subpart B and retitled "Assessments for nonperformance."

§ 241.53 [Amended]

10. Paragraph (c) from newly redesignated § 241.53 is removed.

TITLE 43—PUBLIC LANDS: INTERIOR

PART 3100—OIL AND GAS LEASING

1. The authority citation for Part 3100 continues to read as follows:

Authority: Minerals Leasing Act of 1920, as amended and supplemented (30 U.S.C. 181 *et seq.*), the Minerals Leasing Act for Acquired Lands, as amended (30 U.S.C. 351–359), the Alaska National Interest Lands Conservation Act (16 U.S.C. 3101 *et seq.*), Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 *et seq.*), Federal Property and Administrative Services Act of 1949 (40 U.S.C. 760 *et seq.*), the Act of May 21, 1930 (30 U.S.C. 301–306), Omnibus Budget Reconciliation Act of 1981 (Pub. L. 97–35), Department of the Interior Appropriations Act, Fiscal Year 1981 (Pub. L. 96–514), the Refuge Administration Act of 1966 (16 U.S.C. 668dd-ee), the Independent Offices Appropriation Act of 1952 (31 U.S.C. 483a) and the Attorney General's Opinion of April 2, 1941 (40 Op. Atty. Gen. 41).

§ 3103.3–1 [Amended]

2. Section 3103.3–1 is amended by removing paragraphs (c) and (d) and redesignating existing paragraph (e) as new paragraph (c).

PART 3160—ONSHORE OIL AND GAS OPERATIONS

1. The authority citation for Part 3160 continues to read as follows:

Authority: The Act of February 25, 1920 (30 U.S.C. 181 *et seq.*), as amended; the Act of May 21, 1930 (30 U.S.C. 301–306), the Mineral Leasing Act for Acquired Lands (30 U.S.C. 351–359), as amended; the Act of March 3, 1909 (25 U.S.C. 396), as amended; the Act of May 11, 1938 (25 U.S.C. 396a–396g), as amended; the Act of February 28, 1891 (25 U.S.C. 397), as amended; 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 (25 U.S.C. 399), as amended; R.S. § 441 (43 U.S.C. 1457), see also Attorney General's Opinion of April 2, 1941 (40 Op Atty. Gen. 41), the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 471 *et seq.*), as amended; the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), as amended; the Act of December 12, 1980 (Pub. L. 96–514, 94 Stat. 2964), and the Combined Hydrocarbon Leasing Act of 1981 (Pub. L. 97–78, 95 Stat. 1070/6); the Federal Oil and Gas Royalty Management Act of 1982 (30 U.S.C. 1701), the Indian Mineral Development Act of 1982 (25 U.S.C. 2102).

2. Newly redesignated § 3162.7–4 is revised to read as follows:

§ 3162.7–4 Royalty rates on oil; sliding and step-scale leases (public land only).

Sliding- and step-scale royalties are based on the average daily production per well. The BLM authorized officer shall specify which wells on a leasehold are commercially productive, including in that category all wells, whether produced or not, for which the annual value of permissible production would be greater than the estimated reasonable annual lifting cost, but only wells that yield a commercial volume of production during at least part of the month shall be considered in ascertaining the average daily production per well. The average daily production per well for a lease is

computed on the basis of a 28-, 29-, 30-, or 31-day month (as the case may be), the number of wells on the leasehold counted as producing, and the gross production from the leasehold. The BLM authorized officer will determine which commercially productive wells shall be considered each month as producing wells for the purpose of computing royalty in accordance with the following rules, and in the authorized officer's discretion may count as producing any commercially productive well shut in for conservation purposes.

(a) For a previously producing leasehold, count as producing for every day of the month each previously producing well that produced 15 days or more during the month, and disregard wells that produced less than 15 days during the month.

(b) Wells approved by the BLM authorized officer as input wells shall be counted as producing wells for the entire month if so used 15 days or more during the month and shall be disregarded if so used less than 15 days during the month.

(c) When the initial production of a leasehold is made during the calendar month, compute royalty on the basis of producing well days.

(d) When a new well is completed for production on a previously producing leasehold and produces for 10 days or more during the calendar month in which it is brought in, count such new wells as producing every day of the month in arriving at the number of producing well days. Do not count any new well that produces for less than 10 days during the calendar month.

(e) Consider "head wells" that make their best production by intermittent pumping or flowing as producing every day of the month, provided they are regularly operated in this manner with approval of the BLM authorized officer.

(f) For previously producing leaseholds on which no wells produced for 15 days or more, compute royalty on the basis of actual producing well days.

(g) For previously producing leaseholds on which no wells were productive during the calendar month but from which oil was shipped, compute royalty at the same royalty percentage as that of the last preceding calendar month in which production and shipments were normal.

(h) Rules for special cases not subject to definition, such as those arising from averaging the production from two distinct sands or horizons when the production of one sand or horizon is relatively insignificant compared to that of the other, shall be made by the BLM authorized officer as need arises.

(i)(1) In the following summary of operations on a typical leasehold for the month of June, the wells considered for the purpose of computing royalty on the entire production of the property for the months are indicated.

Well No. and record	Count (marked X)
1. Produced full time for 30 days	X
2. Produced for 26 days; down 4 days for repairs.	X
3. Produced for 28 days; down June 5, 12 hours, rods; June 14, 6 hours, engine down; June 26, 24 hours, pulling rods and tubing.	X
4. Produced for 12 days; down June 13 to 30	
5. Produced for 8 hours every day (head well).	X
6. Idle producer (not operated)	
7. New well, completed June 17; produced for 14 days.	X
8. New well, completed June 22; produced for 9 days.	

(2) In this example, there are eight wells on the leasehold, but wells No. 4, 6, and 8 are not counted in computing royalties. Wells No. 1, 2, 3, 5, and 7 are counted as producing for 30 days. The average production per well per day is determined by dividing the total production of the leasehold for the month (including the oil produced by wells 4 and 8) by 5 (the number of wells counted as producing), and dividing the quotient thus obtained by the number of days in the month.

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Part IV

Department of the Interior

Minerals Management Service

30 CFR Parts 202 and 206

Revision of Gas Royalty Valuation Regulations and Related Topics; Final Rule

DEPARTMENT OF THE INTERIOR

Minerals Management Service

30 CFR Parts 202 and 206

Revision of Gas Royalty Valuation Regulations and Related Topics

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Final rule.

SUMMARY: This rulemaking provides for the amendment and clarification of regulations governing valuation of gas for royalty computation purposes. The amended and clarified regulations govern the methods by which value is determined when computing gas royalties and net profit shares under Federal (onshore and Outer Continental Shelf) and Indian (Tribal and allotted) oil and gas leases (except leases on the Osage Indian Reservation, Osage County, Oklahoma).

EFFECTIVE DATE: March 1, 1988.

FOR FURTHER INFORMATION CONTACT: Dennis C. Whitcomb, Chief, Rules and Procedures Branch, (303) 231–3432, (FTS) 326–3432.

SUPPLEMENTARY INFORMATION: The principal authors of this rulemaking are John L. Price, Scott L. Ellis, Thomas J. Blair, Stanley J. Brown, and William H. Feldmiller of the Royalty Valuation and Standards Division of the Royalty Management Program (RMP), Minerals Management Service; Donald T. Sant, Deputy Associate Director for Valuation and Audit, Minerals Management Service; and Peter J. Schaumberg of the Office of the Solicitor, Washington, DC.

I. Introduction

On February 13, 1987, 52 FR 4732, MMS issued a notice of proposed rulemaking to amend the regulations governing the valuation of gas from Federal leases onshore and on the Outer Continental Shelf (OCS), and from Indian Tribal and allotted leases. During the public comment period, MMS received almost 100 written comments. In addition, public hearings were held in Lakewood, Colorado, on April 7, 1987, and in Houston, Texas, on April 28, 1987. Sixteen persons made oral presentations at those hearings.

Because of the complexity of the regulations, and in accordance with MMS's understanding with the Congress, MMS issued a further notice of proposed rulemaking on August 17, 1987 (52 FR 30776), which included as an appendix MMS's draft of the final regulations. The purpose of the further notice of proposed rulemaking was to obtain further public comment during a short comment period and then to make any necessary revisions to the final regulations. See Conference Report on H.R. 1827, in the *Congressional Record* of June 27, 1987, pages H5651–H5666.

The public comment period on the first further notice of proposed rulemaking was scheduled to close on September 2, 1987, but was extended to September 11, 1987 (52 FR 33247, Sept. 2, 1987). On September 21, 1987, MMS issued a Notice of Intent to Issue a Second Further Notice of Proposed Rulemaking (52 FR 35451). In that Notice, MMS stated that all comments received on the Further Notice of Proposed Rulemaking and the first draft final rules would be included in the rulemaking record for this rule, even if they were received after September 11.

In addition to receiving written comments on the first draft final rules, MMS held several meetings with representatives from the States, Indian lessors, and industry in an effort to develop a set of regulations which were acceptable generally to all groups, though not a panacea for any one of them. Each of the groups exhibited a commendable willingness to make positive contributions to the process and, where necessary, to reach compromises.

In a further effort to ensure that all of the interested constituencies had a full and fair opportunity to comment upon the gas valuation rules following the several meetings and MMS's review of the written comments, MMS issued a second further notice of proposed rulemaking and second draft final rules (52 FR 39792, October 23, 1987). Public comments were received for 30 days. Over 35 additional comments were submitted in response to the second further notice of proposed rulemaking. Many commenters repeated comments that had been submitted in response to earlier requests for comments. However, MMS did receive additional comments, particularly on sections which were changed. All comments were reviewed and considered in drafting the final rules.

The MMS has considered carefully all of the public comments received during this rulemaking process, which included draft rules and input from the Royalty Management Advisory Committee (RMAC), proposed rules, and further notices of proposed rulemaking with draft final rules. A complete account of the RMAC process is included in the preamble to the proposed regulations issued in February 1987. Based on its review, MMS hereby adopts final regulations governing the valuation of gas from Federal and Indian leases. These regulations will apply prospectively to gas production on or after the effective date specified in the DATES section of this preamble.

II. Purpose and Background

The MMS has revised the current regulations regarding the valuation of gas to accomplish the following:

(1) Clarification and reorganization of the existing regulations at 30 CFR Parts 202 and 206.

(2) Creation of regulations consistent with the present organizational structure of the Department of the Interior (DOI).

(3) Placement of the gas royalty valuation regulations in a format compatible with the valuation regulations for all leasable minerals.

(4) Clarification that royalty is to be paid on all consideration received by lessees, less applicable allowances, for production removed or sold from the lease.

(5) Creation of regulations to guide the lessee in the determination of allowable transportation and processing costs for gas to aid in the calculation of proper royalty due the lessor.

A number of sections have been renumbered and/or moved to a new subpart. In Part 202, existing §§ 202.150, 202.151, and 202.152 of Subpart D, were redesignated as new sections under Subparts B and C and new §§ 202.150, 202.151 and 202.152 were added. Sections 206.150, 206.151, and 206.152 under Part 206, Subpart D, have been revised. In addition, new §§ 206.153, 206.154, 206.155, 206.156, 206.157, 206.158, and 206.159 have been added to Subpart D of Part 206.

Several general provisions which relate to both oil and gas have been added to Part 202. These provisions are included in the final rule to amend the oil valuation regulations also being published by the Department elsewhere in today's **Federal Register.**

This rule applies prospectively to gas production on or after the effective date of this rule. It supersedes all existing gas royalty valuation directives contained in numerous Secretarial, Minerals Management Service, and U.S. Geological Survey Conservation Division (now Bureau of Land Management, Onshore Operations) orders, directives, regulations, and Notices to Lessees (NTL) issued over past years, particularly NTL–5 (42 FR 22610, May 4, 1977, as amended; 51 FR 26759, July 25, 1986). Specific guidelines governing reporting requirements consistent with these new gas valuation regulations will be incorporated into the MMS Payor Handbook.

For the convenience of oil and gas lessees, payors, and the public, the

following chart summarizes the effects of these rules.

Regulation changes	Descriptions
I. Redesignations:	
Part 202:	
Sections 202.150, 202.151 and 202.152 under Subpart D are redesignated as new § 202.100, under Subpart C and new §§ 202.53 and 202.52, under Subpart B, respectively.	This administrative action more appropriately locates within Part 202 the information contained in these sections.
II. Removals:	
Part 206:	
Sections 206.106 and 206.107 are removed from Subpart C.	These requirements have been incorporated into new §§ 202.150 and 202.151 in Part 202.
III. Additions:	
1. *Part 202:*	
New §§ 202.150, 202.151, and 202.152 are added to Subpart D.	These new sections provide gas valuation standards and
2. *Part 206:*	
New §§ 206.10, 206.153, 206.154, 206.155, 206.156, 206.157, 206.158, and 206.159 are added to Subparts A and D.	These new sections provide gas valuation standards and procedures and identify allowable costs for transportation and processing to be deducted from gas royalty value.

The rules in § 206.150 expressly recognize that where the provisions of any Indian lease, or any statute or treaty affecting Indian leases, are inconsistent with the regulations, then the lease term, statute, or treaty governs to the extent of the inconsistency. The same principle applies to Federal leases.

A separate gas definitions section applicable to the royalty valuation of gas is included in this rulemaking in Part 206. All definitions contained under each subpart of Part 206 will be applicable to the regulations contained in Parts 202, 203, 207, 210, and 241.

III. Response to General Comments Received on the Proposed Gas Valuation Regulations and Related Topics

The notice of proposed rulemaking for the amendment and clarification of regulations governing valuation of gas for royalty computation purposes was published in the **Federal Register** on February 13, 1987 (52 FR 4732). This was followed by a Further Notice of Proposed Rulemaking (52 FR 30776, Aug. 17, 1987), and a Second Further Notice of Proposed Rulemaking (52 FR 39792, October 23, 1987). Over 200 comments were received from interested persons including Indian lessors, the States, and industry.

The Indian commenters included tribal groups, a tribal council, and Indian trade groups. Various government agencies, including State entities, Federal agencies, State associations, State Governors, and local governments also commented. Industry commenters included oil and gas companies, individual commenters, and several industry trade groups.

Many commenters made comments on the basic issues and principles underlying the proposed rulemaking without addressing specific sections of the proposed regulations, but addressing the basic premise underlying the proposed valuation methodology. These comments generally were repeated in response to the first and second notices of further proposed rulemaking.

The respondents were generally composed of two groups, with industry generally on one side and States, Indians, and local governments on the other. Industry generally endorsed the basic principles underlying the proposed regulations. Although the industry commenters objected to many of the specific provisions of the proposed and draft rules, they stated generally that a market-oriented approach based on gross proceeds from arm's-length contracts would fulfill MMS's goals of creating royalty certainty, fairness, and long-term revenue maximization. Some industry commenters advocated the adoption, in total, of the Royalty Management Advisory Committee (RMAC) Gas Panel's recommendations as the only proper solution to the valuation issue. States, Indians, and local governments, on the other hand, generally objected to the basic premise of the proposed valuation methodology that gross proceeds from arm's-length contracts represent value. They also objected to other parts of the proposed regulations for a variety of reasons.

The general comments raised by industry, States, and Indians may be categorized similarly to those raised with respect to the oil valuation regulations: (1) Acceptance of gross proceeds under an arm's-length contract, or the benchmarks, as the value for royalty purposes; (2) deduction of transportation costs; (3) legal mandates and responsibilities toward Indians; (4) complexity and obscurity of regulations and definitions; and (5) economic impacts. Because the general issues raised and MMS's responses thereto are so similar, MMS hereby incorporates the discussion in the General Comments portion of Section III of the Preamble to the final oil valuation regulations published elsewhere in today's **Federal Register**, as if fully and completely set forth herein.

The Further Notice of Proposed Rulemaking of August 17, 1987 (52 FR 30776), and the Second Further Notice of Proposed Rulemaking of October 23, 1987 (52 FR 39792), specifically requested comments on certain broad issues. These issues were whether there were additional requirements or approaches which would improve the royalty payment process, the ability of auditors to determine compliance with these regulations and the extent to which these rules were responsive to concerns regarding royalty underpayments identified in the Linowes Commission Report and reports of the Congress, the General Accounting Office, and the Department's Office of Inspector General.

A number of comments were received on additional requirements or approaches which would improve the royalty payment process. Some of the commenters stated that improvement had been made, but the provisions in the draft final rules attempting to ensure that a lessee had acted prudently had removed some of the certainty of earlier versions. These commenters suggested that MMS recognize that lessees act prudently in contract negotiations and allow royalty to be based on these contracts.

One commenter recommended that regulations must be revised as soon as the requirements of those provisions are identified as creating problems for lessees and MMS. One Indian commenter suggested that MMS establish an Indian audit branch and a special Indian valuation office.

MMS Response: The MMS does believe that the vast majority of lessees act prudently in contract negotiations and that values for royalty purposes will be set by the terms of those contracts. Therefore, the provisions of the final regulations providing MMS with the ability to assure that values are set only by the terms of arm's-length contracts that have been prudently negotiated should not detract from the improvements made over the existing regulations.

The suggestion that timely revisions to regulatory provisions be made to alleviate problems is well received by MMS. Many reports have stated that the area of product valuation was long ignored by the Department. MMS believes that the dialogue with industry, States, and Indians over the last few years has been invaluable in leading to these final rules, and it is anticipated that communication will continue so that necessary revisions to any of the provisions of the final rules adopted today will be timely promulgated.

It is clear from the requirements of the final rules that MMS must become increasingly familiar with the transactions occurring in those areas where Federal and Indian lands are situated. Many of the Indian lands under the Department's jurisdiction are in

close proximity to Federal lands and purchasers of production from these areas often are the same. Although MMS expects that the increased awareness of the marketplace and the already high priority given audits of Indian leases will suffice in assuring compliance with these rules, MMS will study the suggestion for separate audit and valuation offices for Indian lands.

Most of the commenters addressing the ability of auditors to determine compliance with these regulations suggested the establishment of guidelines governing audit closure rather than addressing the specific issue. A few commenters stated that clear regulations with timely revisions would enhance the ability of auditors to determine compliance. One commenter stated that the difficulty in determining if any consideration outside of the contract exists, the lack of any provisions for approval of non-arm's-length contracts, the burden on auditors to show control and administer the benchmark system, and the lack of independent cross-checks on values all act as impediments to auditors in determining compliance with the regulations.

MMS Response: The MMS agrees that regulations that are clear and understandable and timely revision of provisions causing problems enhance an auditor's ability to determine compliance with those regulations. The MMS agrees that it is difficult to identify consideration that exists outside of a contract. However, it is no more difficult than determining whether or not the requirement under current regulations that a lessee pay royalties based upon its gross proceeds has been met when part of the consideration received by the lessee is not covered by the sales contract. Similarly, approval of non-arm's-length contracts would not improve an auditor's ability to determine compliance. Approval of non-arm's-length contracts would not assure that the lessee has provided documentation of all consideration to be received in the transaction. Further, the resources that would be necessary to approve all non-arm's-length contracts and any amendments thereto would be overwhelming. The MMS does recognize that demonstrating control will be somewhat burdensome on auditors. However, showing control and the valuation of the gas sold under that contract under the benchmark system does not mean that the gross proceeds under that contract will not be accepted as defining value. Also, there are tests in the final rules that will result in the valuing of the gas under the benchmark system if the value under an arm's-length contract is unreasonable because of misconduct or a breach of the lessee's duty to market the gas for the mutual benefit of the lessee and the lessor. Finally, MMS does not agree that the benchmark system will be difficult to administer or that there will be a lack of cross-checks. As stated above, MMS realizes that it must become increasingly familiar with transactions occurring in the areas where Federal and Indian leases are situated. By becoming more familiar and obtaining sales volume and price information, MMS will be able to identify anomalies that exist and review the circumstances involved in those transactions.

Two commenters stated that the changes in the valuation regulations and other changes implemented by the Department were responsive to the concerns addressed by the Linowes Commission and others. One commenter stated that the regulations were not responsive to the concerns addressed by the Linowes Commission because States' suggestions were ignored, and the regulations were open to interpretation in many areas and lacked independent cross-checks.

MMS Response: The MMS believes that the regulations adopted today address most of the concerns of the Linowes Commission and others. Clarity and a great deal of certainty have been added to replace the vague requirements of the existing regulations which were identified as the major contributor to the undervaluing of production. The MMS does not agree that the concerns of States were ignored. Representatives of States have been involved in every step of the long process leading to these final rules and many of the provisions in the final rules directly reflect suggestions made by States. Although MMS does not agree that the final rules are as open to interpretation as suggested by this commenter, MMS intends to supplement these rules with chapters in the MMS Payor Handbook specifically dealing with all areas of valuation. The MMS will be able to identify anomalies in reported values and allowances by monitoring information reported to it and comparing reported information with other reported information and information collected independently by MMS. The MMS believes that such monitoring of reported values and allowances meets the requirement for cross-checks called for by the Linowes Commission.

The Second Further Notice of Proposed Rulemaking also specifically requested comments on certain individual issues. These issues were: (1) The feasibility of a larger scale royalty-in-kind program, particularly including gas; (2) whether or not the oil and gas valuation regulations should be consolidated; (3) whether or not the provisions dealing with extraordinary cost allowances relating to gas production and gas processing should be retained; (4) the practical limit on the term "relative" used in the definition of arm's-length contract; (5) whether or not allowances for certain post-production costs should be added; and (6) the allocation of transportation costs among products.

The comments received regarding a royalty-in-kind program for gas were evenly divided. Half of the commenters recommended that MMS take its gas royalty in-kind, particularly when there is a disagreement over the value of the gas. However, most of these commenters suggested a separate rulemaking to address the complicated issues involved in such a program. The other half of the commenters stated that MMS should not implement a royalty-in-kind program for gas because of the complications of such a program.

MMS Response: The MMS agrees that a royalty-in-kind program for gas is too complicated to be implemented without an in-depth study of all of the issues involved.

The commenters addressing the consolidation of the oil and gas valuation regulations either rejected the idea altogether or suggested deferring any attempt to do so until after the separate regulations are issued as final rules.

MMS Response: The MMS agrees that consolidation could not be accomplished in a timely manner and that experience with the separate rules should be obtained to identify if a need for consolidation exists.

The comments received concerning the remaining four issues will be addressed in later sections of this preamble dealing with the regulatory provisions specifically concerning those issues.

The MMS will monitor the operation and effect of the rules being adopted today. In 3 years, MMS will review the results of its analysis to determine if any significant changes to the regulations are required. In the meantime, technical and minor adjustments to the rules will be made as necessary.

IV. Section-by-Section Analysis and Response to Comments

Comments were not received on every section of the proposed regulations. Therefore, if those sections were not changed significantly from the proposal, there generally is no further discussion

in this preamble. The preamble to the proposed regulation (52 FR 4732, Feb. 13, 1987) may be consulted for a full description of the purposes of those sections. For other sections, this preamble will address primarily the extent to which the final rule was changed from the proposal or, in some instances, from the draft final rules. Again, a complete discussion of the applicable sections may be found in the preamble to the proposed regulation.

The mineral leasing laws require that the Secretary receive a royalty on the "value of production" from minerals produced from Federal lands, but value is a word without precise definition. "Men have all but driven themselves mad in an effort to definitize its meaning." *Andrews v. Commissioner of Internal Revenue*, 135 F.2d 314, 317 (2nd Cir. 1943). The word "value" has sometimes been modified by the words "fair market", although the mineral leasing law provisions on "value of production" do not include these words. But, these adjectives do not really clarify the word value. The word "fair" can modify the word value as in "fair value" or it can modify the word market as in "fair market." The term "fair value" may not be interpreted the same as the "fair market" value. The term fair market value, however, has been generally accepted to be the price received by a willing and knowledgeable seller not obligated to sell from a willing and knowledgeable buyer not obligated to buy. Willing, knowledgeable, and obligated are again adjectives which are not terms of precise definition. These general concepts, however, were still the general principles which were followed in drafting these regulations on valuation of production for the purposes of calculating royalties. The general presumption is that persons buying or selling products from Federal and Indian leases are willing, knowledgeable, and not obligated to buy or sell. Because the U.S. economy is built upon a system in which individuals are provided the opportunity to advance their individual self interest, this seems to be a reasonable presumption. This system and its reliance on self-motivated individuals to engage in transactions which are to their own best interest, therefore, is a cornerstone of the regulations.

The purpose of the regulations is to define the value of production, for royalty purposes, for production from Federal and Indian lands. Value can be determined in different ways, and these rules explain how value is to be established in different circumstances. Value in these regulations generally is determined by prices set by individuals of opposing economic interests transacting business between themselves. Prices received for the sale of products from Federal and Indian leases pursuant to arm's-length contracts are often accepted as value for royalty purposes. However, even for some arm's-length contracts, contract prices may not be used for value purposes if the lease terms provide for other measures of value (such as Indian leases) or when there is a reason to suspect the bona fide nature of a particular transaction. Even the alternative valuation methods, however, are determined by reference to prices received by individuals buying or selling like-quality products in the same general area who have opposing economic interests. Also, in no instance can value be less than the amount received by a lessee in a particular transaction.

Section 202.150 Royalty on gas.

Indian commenters recommended that paragraph (a) should provide specifically that Indian lessors, as well as MMS, have the right to require payment in-kind for royalties due on production.

MMS Response: Most Indian lessors have the authority to require payment in-kind for royalties due on production. To the extent the lease terms so provide, the lessor may take its royalty-in-kind. However, because requests to take royalty-in-kind may involve operational difficulties for the lessee, as well as a change in accounting and reporting procedures necessary for MMS to properly monitor royalty obligations, MMS will continue to administer such requests. Therefore, if an Indian lessor wants royalty-in-kind, he or she must contract MMS. The MMS then will make arrangements with the lessee for the in-kind payment.

The MMS also has added a provision clarifying that when royalties are paid in value, the royalties due are equal to the value, for royalty purposes, multiplied by the royalty rate.

Section 202.150(b).

The MMS received many industry comments stating that unavoidably flared gas should be exempt from royalty requirements. Commenters stated that the definition of the term "unavoidably lost" should be incorporated in § 206.151, Definitions. The commenters also recommended that this paragraph address the procedures for obtaining permission to use gas off-lease for the benefit of the lease.

One industry commenter recommended deletion of the phrase "when such off-lease use is permitted by the appropriate agency." The commenter recommended that legal interpretations affecting the inclusion of any on-lease or off-lease use could be more appropriately covered in the MMS Payor Handbook.

Industry commenters also stated that on-lease or off-lease royalty-free gas use should also include gas used in post-production operations, including boosting residue gas delivery pressure and other operations incidental to marketing, because this gas is used for the benefit of the lease.

One industry commenter recommended the inclusion of the following language: "Gas used for the benefit of the lease in royalty free, which includes gas used in lease equipment located on a platform or in a central facility serving multiple leases. Such platform or central facility may be located on a lease other than the one physically providing gas used."

One industry commenter did not agree that the standard for royalty liability detailed in this paragraph is consistent with section 308 of the Federal Oil and Gas Royalty Management Act of 1982 (FOGRMA), 30 U.S.C. 1756, which limits royalty liability to loss or waste owing to negligence or noncompliance with operational requirements.

Two industry commenters proposed that MMS consider expansion of the clause to include all gas used "on or off a lease as long as it is for the benefit of the lease."

Industry commenters endorsed MMS's decision that gas used off-lease for the benefit of the lease is royalty-free when such use is permitted by the appropriate agency.

Some Indian commenters also recommended that any royalty-free use of gas be subject to prior approval to ensure that production from Indian leases is not disproportionately used in royalty-free operations.

MMS Response: The determination of whether or not gas has been unavoidably or avoidably lost and whether or not gas used is royalty-free (whether used off-lease or on-lease) are operational matters covered by the appropriate regulations of the Bureau of Land Management (BLM) and MMS for onshore and offshore operations, respectively. The BLM's requirements are governed by the provisions of 43 CFR Part 3160 and Notice of Lessees and Operators No. 4A. The MMS's requirements are governed by the provisions of 30 CFR Part 250. Therefore, although these comments raised many substantive issues, they are not properly addressed in this rulemaking. The MMS

does not believe that prior approval for royalty-free use of gas is warranted because most leases, by their specific terms, allow royalty-free use of gas and it is a matter which will be reviewed during audits to prevent abuse.

Proposed § 202.150(b)(2), which addressed royalty-free use of gas for leases committed to unit or communitization agreements, has been expanded in the final rules to also cover production facilities handling production from more than one lease with the approval of the appropriate agency. Although MMS is satisfied that this issue is an operational matter governed sufficiently by the appropriate operation of the unit agreement or communitization agreement and BLM's and MMS's regulations, the number of comments received regarding this issue led MMS to believe that reiterating these operational requirements was advisable. This regulation simply provides that a disproportionate share of the fuel consumed at a production facility serving mutliple leases may not be allocated to an individual lease without incurring a royalty obligation on a portion of the fuel.

One industry commenter was strongly in agreement with § 202.150(b)(3) of the proposed rules, which recognizes the provisions of Indian leases that are inconsistent with the regulations.

One Indian commenter stated that this paragraph may not act to the benefit of Indian lessees unless MMS makes a specific requirement by instruction, manual releases, or notices to lessees with respect to the specific valuation guidelines to be applied.

MMS Response: The provisions of proposed § 202.150(b)(3) were adopted in the final rules. In most instances, the valuation regulations will apply equally to both Federal and Indian leases. This section covers any leases which may be inconsistent with the regulations. The final regulations recognize the primacy of statutes, treaties, and oil and gas leases and provide a means for dealing with special valuation requirements for both Indian and Federal leases. In many instances, lease terms are modified by unitization or communitization agreements. The reference to "leases" in the regulations means the lease terms as modified by any such agreement, where appropriate.

Section 202.150(c).

Section 202.150(c) was proposed as § 206.150(d). It provides that if the BLM (for onshore leases) or MMS (for offshore leases) determines that gas was avoidably lost or wasted, then the value of that gas will be determined in accordance with Part 206. This section also applies to gas drained from onshore leases for which BLM determines that compensatory royalty is due.

One industry commenter stated that the term "avoidable" indicates that such losses could have been anticipated and eliminated and that serious charges like these should be documented and proven, not merely assumed after the loss has been reported. Therefore, the commenter takes exception to this regulation.

MMS Response: Avoidably lost determinations are handled by personnel responsible for lease management operations, BLM onshore and MMS offshore, and are not a valuation issue. Any operator or lessee that BLM or MMS notifies of an avoidable loss determination has the right to appeal the determination if it is believed to be unjust or unfair.

One Indian commenter stated that payment should be due for the entire value, and not just the royalty portion of gas that is determined to have been avoidably lost or wasted from Indian leases.

One industry commenter stated that it should be made clear in this provision that the amount due for avoidably lost gas should be a royalty value and not the total value (100 percent).

MMS Response: The MMS policy for offshore leases is to assess only royalty for gas determined to have been avoidably lost. This also is BLM's policy for onshore leases for gas avoidably lost on and after October 22, 1984. This date is the effective date of BLM's revised regulations at 43 CFR 3162.7–1(d) (49 FR 37356, September 21, 1984), which included the provision for royalty on avoidably lost gas in accordance with Section 308 of FOGRMA, 30 U.S.C. 1756. The MMS and the BLM believe that collection of royalty provides an effective deterrent to wasting gas.

Section 202.150(d).

Section 202.150(d) was proposed as § 206.150(e) and requires royalties to be paid on insurance compensation for unavoidably lost gas.

Several industry commenters stated that to require a lessee to pay royalties on any compensation received "through insurance coverage or other arrangements for gas unavoidably lost is unfair." They stated that insurance proceeds are not received for the sale of production and should not be subject to sharing with the lessor. They believe, however, that if MMS insists on collecting a portion of such proceeds, the cost of such insurance coverage should be allowed as a deduction from royalty.

The MMS removed the insurance compensation section from the first draft final rule. Many Indian and State commenters thought this change was unfair, stating that if the lessee was compensated for the production, the lessor should than receive its royalty share.

MMS Response: The MMS has reinstated this provision in the final rules. However, royalties are due only if the lessee receives insurance compensation from a third person. No royalty is due where the lessee self insures.

Section 202.150(e).

Several industry commenters opposed § 202.150(e), which was proposed as § 202.150(c). They questioned the authority to require other non-Federal/Indian lessees to pay royalties on leases on which they are not the lessee. According to the commenters, this could present gas balancing problems where production taken by a lessee falls below that lessee's production entitlement. These commenters suggested that proposed § 202.150(c) fails to recognize the marketing aspects of production. Although MMS attempted to clarify the purpose and scope of this section in the draft final rules, many additional comments were received. Many industry commenters commented that a requirement to pay royalties based upon what other unit participants receive for the gas raises many problems of information gathering making timely and accurate reporting of royalties extremely difficult. These commenters suggested alternatives such as allowing a lessee to pay royalties based upon its own contract price or allowing a lessee to pay royalties based upon the volume of production it actually sold.

MMS Response: Section 202.150(e) of the final rules states that all production attributable to a Federal or Indian lease under the terms of the agreement is subject to the royalty payment and reporting requirements of Title 30 of the Code of Federal Regulations even if an agreement participant actually taking the production is not the lessee of the Federal or Indian lease. Only a few concerns were expressed about this requirement and many commenters supported it. Most important, however, § 202.150(e) requires generally that the value, for royalty purposes, of this production be determined in accordance with 30 CFR Part 206 under the circumstances involved in the actual disposition of the production. As an example, if a Federal lessee does not sell or otherwise dispose of its allocable share of unit production, it will be sold

or otherwise disposed of by other unit participants. If one of the unit participants other than the Federal lessee transports unprocessed gas to a sales point off the unit area under an arm's-length transportation agreement and then sells the gas under an arm's-length sales contract, the value, for royalty purposes, will be that participant's gross proceeds less the costs of transportation incurred under the arm's-length transportation agreement. This provision does not address the issue of what participant must report and pay the royalties; it only addresses the issue of valuation.

These rules do not require non-Federal and non-Indian lessees to conform to these regulations for valuing production. The MMS merely has required that the lessee must determine its royalty liability in accordance with the other interest owners' contracts or proceeds as long as those royalties comply with these value regulations. Any gas balancing problem that may exist because of interest owners taking more than their entitlement is a matter to be settled by the agreement members.

The MMS has added a new paragraph (3) to the final rules to clarify that all agreement participants actually taking volumes in excess of their allocated share of production in any month are deemed to have taken ratably from all persons taking less than their proportionate share. The MMS decided that such a provision was required to provide certainty as to which unit participants' dispositions the lessee must consider to satisfy the requirements of this provision, especially where there is no balancing agreement among the unit participants.

Two industry commenters also stated that the foreseeable results of this paragraph includes: "* * * (1) chronic late payments of royalties; (2) inconsistent AFS and PAAS reporting; (3) difficulty in determining proper royalty values where the overproduced working interest owners dispose of production pursuant to non-arm's-length transactions; and (4) excessive accounting and administrative costs for MMS and all working interest owners."

MMS Response: The MMS believes that lessees generally will be able to comply with the requirements of the regulations. However, MMS has added a new paragraph (2) which authorizes MMS to approve a royalty valuation method different from that prescribed by paragraph (1) to value any volumes of agreement production allocated to a lessee but which the lessee does not take. The lessee must request the exception and MMS may approve it only if it is consistent with the purposes of the regulations. For example, under a unit agreement a Federal lessee may be entitled to 100,000 mcf of production. The lessee is required to pay royalty on that volume. However, the lessee is able to sell only 75,000 mcf under its arm's-length contract that month. The lessee could request that MMS allow it to pay royalty on the remaining 25,000 mcf at its contract price.

The MMS recognizes that under most balancing agreements, a lessee who has undertaken at some point will overtake to balance its account. Because the lessee was required to pay royalties on the value of its allocated share when it undertook, the lessee is not required to pay additional royalties for prior periods for that lease when it subsequently over takes. Again, royalties are due only on the allocated share of agreement production even when the lessee takes and sells a greater volume. The MMS has added a new paragraph (4) to clarify this issue.

Some industry commenters recommended that paying and reporting royalties be accomplished solely on the basis of sales. According to these comments, because royalties will have been paid on total sales from the leases, there should be no decrease in royalty payments due over the life of the lease through the use of the sales approach.

MMS Response: Paying and reporting royalty solely on the basis of sales would not conform to the requirements of the federally approved agreement or the terms of the lease. It also could cause a hardship for Indian lessors who rely on a steady stream of revenues when there is production from their leases. Therefore, it is not an acceptable procedure.

In response to comments that the valuation method for production from unitization and communitization agreements required by the proposed and draft rules could cause royalty calculation and reporting problems for lessees, MMS is including in the final rules in subsection (f) an exception authority for valuing production from Federal and Indian leases committed to agreements. The authority is discretionary and may be exercised where the lessee requests an alternative method, the proposal is consistent with applicable statutes, lease terms and agreement terms, to the extent practical, persons with an interest in the agreement are notified and given an opportunity to comment, and, to the extent practical, all persons with an interest in a Federal or Indian lease committed to the agreement agree to use the proposed method.

Section 202.151 Royalty on processed gas.

Section 202.151(a).

Some commenters recommended deleting the word "reasonable" before the words "actual costs" in paragraph (a) because the lessee should be able to deduct actual costs from the processed gas value. One commenter stated that condensate recovered without resorting to processing should not be included in calculating royalty if the condensate is not allocated to the lease.

MMS Response: The MMS's policy is to allow "reasonable" actual costs incurred by the lessee for processing lease production. The MMS does not believe that it should share in unreasonable costs and has not adopted this suggestion. The MMS does not agree that a lessee should be allowed to remove production from the lease and avoid the royalty obligation for any part of that production. Therefore, MMS will retain the requirement that condensate recovered without resorting to processing be included when determining the value of gas that is processed.

The MMS received a comment regarding the requirement for dual accounting in § 206.155. That commenter stated that dual accounting should be required in all instances where gas is processed from onshore Federal and Indian leases, because that is the only way to ensure that royalty is paid on that portion of the gas stream leaving the lease which becomes a liquid during the transmission of the gas to the plant. These liquids are commonly referred to as drip condensate. The commenter pointed out that in many instances the company transporting the gas retains these liquids and the lessee makes no royalty payment for this portion of the production removed from the Federal or Indian lease.

MMS Response: As the commenter properly pointed out, royalty is due on all gas production removed from the lease, including any gas which becomes a liquid during transmission to a gas plant. When gas is sold at the lease and the lessee does not retain or exercise the right to process the gas, the total gas production removed from the lease is properly accounted for at that point. Thus, the issue of royalty on drip condensate is not involved in these instances.

When gas is processed by the lessee, any portion of the gas removed from the lease which becomes a liquid during transmission to a gas plant must be accounted for to properly define the value of the total gas production

removed from the lease upon which royalty is due. Although MMS is not adopting the recommendation to require dual accounting in all instances where gas is processed, MMS is modifying the final rules in § 202.151 and § 206.153 to specify this requirement. Therefore, it is being made clear that the value of gas which is processed by a lessee must include the combined values of the residue gas, all gas plant products *and* any condensate recovered downstream of the point of royalty settlement without resorting to processing.

Section 202.151(b).

Several industry commenters stated that an allowance for boosting residue gas should be allowed under paragraph (b) for operation of the processing plant. The rationale was that costs associated with this process are incurred as a result of processing and should not be regarded as costs necessary to place the gas in marketable condition.

MMS Response: The regulations specify the MMS's policy that the lessee is required to condition the production for market. The cost for boosting residue gas is considered as a cost necessary to place the gas in marketable condition, and will not be an allowable deduction.

Three industry commenters recommended deleting the word "reasonable" before the words "* * * amount of residue gas * * *" and allowing actual amounts of residue gas used to be royalty-free. Indian commenters were concerned that the regulation should specify that residue gas could not be disproportionately charged to their leases royalty-free.

MMS Response: Historically, MMS's policy has been to allow a reasonable amount of residue gas to be royalty-free for the operation of a processing plant. In most instances the actual amounts of residue gas used are considered to be reasonable. However, the final rule specifies that only a lease's proportionate share of the residue gas necessary for the operation of the processing plant may be allowed royalty-free. Although adopted in response to the concerns of Indian commenters, this provision is equally applicable to all Federal and Indian leases.

Section 202.151(c).

Two industry commenters strongly endorsed the language set forth in paragraph (c).

One Indian commenter stated that "* * * the Secretary should not retain unilateral authority to authorize the royalty-free reinjection of residue gas or gas plant products from Indian production into unit areas or communitized areas." The recommendation was that the volume of royalty-free residue gas or gas plant products which can be reinjected into a unit area should be limited to the ratio of lease production to total unit production multiplied by the volume of unit production reinjected.

One industry commenter requested clarification that the use of the word "reinjection" includes original injection. In addition, the commenter recommended deletion of the qualification "* * * when the reinjection is included in a plan of development or operations and the plan has received BLM or MMS approval, * * *" because the recovery must be paid for entirely by the lessee.

MMS Response: The BLM or MMS for onshore or offshore operations, respectively, has the authority to approve the plan of development or operations. The issue regarding reinjection of residue gas or gas plant products is a matter which is addressed by the appropriate operational regulations of BLM and MMS.

Section 202.152 Standards for reporting and paying royalties on gas.

Section 202.152(a)

One industry commenter recommended that the phrase "if the Btu value is required pursuant to the lessee's contract" be added to the end of the last sentence of paragraph (a)(2). This commenter stated the Btu measurement is an expensive process and should not be required periodically unless necessary.

One Federal agency commenter stated that the frequency of Btu measurement be required quarterly, if not monthly, if not covered by the lessee's contract. This commenter stated that there are many situations which may require more frequent monitoring of the Btu heating value to assure proper assessment of gas royalties.

MMS Response: The Btu measurement is necessary in determining the proper value of the gas for royalty purposes. In addition, the BLM onshore and MMS OCS operations regulations require periodic Btu measurements.

Section 202.152(b).

One industry and one Federal agency commenter suggested that the words "where applicable" be added at the end of paragraph (b)(2). They stated that when the production is composed of carbon dioxide, nitrogen, or helium there will be no applicable Btu value.

MMS Response: This regulation has been modified in the final rule to read as follows: "Carbon dioxide (CO_2), nitrogen (N_2), helium (He), residue gas, and any other gas marketed as a separate product shall be reported by using the same standards specified in paragraph (a)." The concern expressed regarding Btu values for nonhydrocarbon gases is resolved by the inclusion of the words "where applicable" in the final rule for paragraph (a).

Regarding paragraph (b)(4), one Indian commenter stated that if sulfur is sold in a unit other than a long ton, the lessee should be allowed to report it to MMS and to Indian lessors in that unit.

MMS Response: The unit for reporting sulfur volumes must be standardized for reporting purposes. The most common unit used by industry for reporting sulfur is the long ton. A simple arithmetic formula can be used to convert a unique sales unit to long tons.

Section 206.150 Purpose and scope.

Section 206.150(a).

Several commenters suggested that Indian and Federal lands are dissimilar and deserve separate treatment when valuation and other gas production matters are under consideration. They recommend that separate regulations be promulgated for Indian leases.

MMS Response: The MMS believes that because these regulations provide for a reasonable and appropriate value for royalty purposes, completely separate rules for Federal and Indian leases generally are unnecessary. The regulations in § 206.150(b) recognize the primacy of terms of statutes, treaties, and oil and gas leases which provide special valuation requirements for both Federal and Indian leases. In addition, certain additional provisions applicable only to Indian leases have been included in these regulations.

The MMS has added a general statement that the purpose of this subpart is to establish the value of production for royalty purposes consistent with the mineral leasing laws and other applicable laws and lease terms.

Section 206.150(b).

One industry commenter suggested the addition of the phrase "in the event that any term of an approved existing unit or communitization agreement is inconsistent with the final rule, then such agreement will govern to the extent of the inconsistency."

MMS Response: Section 18 of the standard Federal form of a unit agreement states: "The terms, conditions, and provisions of all leases, subleases, and other contracts relating to exploration, drilling, development or operation for oil or gas on lands

committed to this agreement are hereby expressly modified and amended to the extent necessary to make the same conform to the provisions hereof * * *." Therefore, the offered language is unnecessary owing to this existing unit agreement provision.

One Indian commenter suggested the addition of the phrase "provisions of Title 25 of the Code of Federal Regulations will supersede the provisions of this part, to the extent of any inconsistency."

MMS Response: The valuation regulations which were in Title 25 of the Code of Federal Regulations are identical to the provisions of many Indian leases. Therefore, these final regulations would cover any inconsistencies with lease terms if there were any. Moreover, BIA currently intends to amend the valuation regulations in 25 CFR simply to refer to the MMS valuation regulations.

Indian commenters recommended that, where provisions of any Indian lease, or any statute or treaty affecting Indian leases, as stated or as interpreted by the courts, are inconsistent with the regulations, the lease, statute or treaty, or court interpretation would govern to the extent of the inconsistency.

MMS Response: This suggestion was not adopted because it was not considered necessary. If the regulations are inconsistent with the requirements of any court decision, the court decision would take precedence.

One commenter suggested the MMS include in this section a reference to settlement agreements resulting from administrative or judicial litigation. It was pointed out that some settlement agreement provisions may vary from the regulations.

MMS Response: The MMS has made the suggested change in the final rules because the terms of a settlement of administrative or judicial litigation will govern. In response to a comment on the draft final rules, MMS has included references to settlement agreements involving Indian lessors.

Section 206.150(c).

A few industry commenters requested that consideration be given to the establishment of a "statute of limitations" for MMS audit and adjustment purposes. This commenter suggested that a 6-year period be adopted which would commence with the filing of the lessee's royalty report. It was also suggested that a provision be included for the lessee and MMS to mutually agree to waive the limitation for specific incidents and items under appeal or before the courts, but it should never apply in cases of fraud. This would partially relieve both the lessee and MMS of records archival responsibility and the associated costs, which are significant. Also, the limitation goes well beyond the cost-effective period for conducting normal compliance and follow-up audits. The suggested statute of limitations could be similar in concept and language as that used by the Internal Revenue Service.

MMS Response: The MMS performs all audits in accordance with 30 CFR 217.50. Any limitation such as that suggested would properly be included in a rulemaking to amend that section of the regulations. Therefore, it is beyond the scope of this rulemaking. The MMS has modified the provision in the final rule to make it clear that this provision applies to payments made directly to Indian Tribes or allottees as well as those made to MMS either for Federal or Indian leases. The MMS will address the issue of audit closure elsewhere.

Section 206.150(d).

The MMS received many comments from Indians that this section should specifically reference the Secretary's trust responsibilities to the Indians.

MMS Response: The MMS has incorporated the suggested change.

The MMS received a comment from an Alaska Native Corporation stating that MMS should not make the new regulations applicable to the proportionate share of production which corresponds to an Alaska Native Corporation's proportionate share of leases acquired under section 14(g) of the Alaska Native Claims Settlement Act, 43 U.S.C. 1613(g). Under section 14(g), a native corporation can acquire all or part of the lease. The commenter's point was that at the time a proportionate interest in a lease is acquired, the native corporation had an expectation of what royalties it would receive, and it would be inequitable for MMS to modify that expectation for leases or portions of leases which MMS does not even own.

MMS Response: In the draft final rules accompanying the second further notice of proposed rulemaking, MMS proposed to add a § 206.150(e) which provided that regulations, guidelines, and Notices to Lessees in effect on the date that an Alaska Native Corporation acquired a proportionate interest in a lease will continue to apply to that interest. The MMS received several comments that this provision is unfair and not supportable because the lease terms expressly recognize that regulations may change and that the lease will be subject to the new regulations. The MMS agrees with the comments and has deleted this section from the final rules. However, it should be clarified that these rules do not have any retroactive effect. MMS does not intend that any rules adopted in the rulemaking would apply to production involving Alaska Native Corporation lease interests which occurred prior to the effective date of this rulemaking.

MMS is including in the final rules a new subsection (e) to specify which Notice to lessees are to be terminated by this rulemaking.

Section 206.151 Definitions.

"Allowance"—One industry commenter suggested that the proposed definition be modified as follows: "Processing allowance means an allowance for processing gas; i.e., an authorized or an MMS-accepted or approved deduction for the costs of processing gas determined pursuant to §§ 206.158 and 206.159." The same commenter stated further that "Transportation allowance means an allowance for moving unprocessed gas, residue gas, or gas plant production to a point of sale or point of delivery remote from the lease, unit area, communitized area, or processing plant; i.e., an authorized or an MMS-accepted or approved deduction for transportation costs, determined pursuant to §§ 206.156 and 206.157." This commenter recommended deleting the phrase "for the reasonable, actual costs incurred by the lessee." The method of determining the allowance should be addressed in the regulation setting forth the calculation method, not in the definition of allowance. If MMS adopts comparable arm's-length transportation and processing costs as a benchmark for non-arm's length contracts, the above cited phrase could be incorrect in certain instances."

A few industry and one Indian commenter stated that certain terms incorporated in the definition are subjective in nature. One industry commenter stated: "The New Rules do not draw a clear, objective line between costs that may be deducted and costs that may not be deducted. What is 'remote'? What is 'field gathering'?" Two industry commenters want the word "reasonable" deleted in the definition of "processing allowance and transportation allowance." They believe that the "Lessee should be entitled to deduct actual cost of processing and transportation. 'Reasonable' implies that the deduction may be something less than actual." One Indian commenter stated: "* * * the use of the terms accepted and approved call into question important issues regarding the relationship of the acceptance or

approval with later audit. We assume that acceptance would not preclude later audit review and disallowance or modification when justified." One industry commenter suggested deleting the words "remote from" and replacing them with "off." The commenter "believes what is really intended by the phrase 'remote from' is to cover transportation to sales and delivery points of the lease."

Finally, one Indian commenter, referring to "allowance," pointed out that: "The definition should clearly specify that the transportation allowance applies only to transportation from *the lease boundary* to a point of sale remote from the lease and that such costs be reasonable, actual, *and necessary.*"

MMS Response: The final rule includes some modifications to the proposed language. It should be noted that processing and transportation allowances are "accepted" subject to review and/or audit. The MMS also has deleted the phrase "remote from the lease" and replaced it with the phrase "off the lease" for clarification that any transportation off the lease, except gathering (see definition below), is eligible for an allowance.

"Area"—One industry commenter stated that " 'Area' should be more precisely defined so that there are reasonable limits to how large an 'area' is. In addition, for the sake of clarification, the words 'or producing unit' should be inserted after 'oil and/or gas field' * * *."

MMS Response: For royalty computation purposes, the definition of "area" must remain flexible so that it may be applied to diverse situations. The size of an "area" may vary with each specific royalty valuation determination for gas.

"Arm's-length Contract"—The proposed definition of "arm's-length contract" was addressed by a large number of State, Indian, and industry commenters.

Many commenters stated that the originally proposed definition of arm's-length contract was so restrictive that many perfectly valid arm's-length transactions may fail to qualify, thus potentially rendering this key element of the benchmark system meaningless. These commenters suggested that MMS should adopt a definition of "affiliated person" based on control versus mere ownership of stock. They stated that in order to eliminate this problem, the underlying language should be deleted in favor of language already adopted by BLM in its regulations implementing Section 2(a)(2)(A) of the Minerals Lands Leasing Act of 1920 (MLLA). The rule, 43 CFR 3400.0–5(rr)(3), added by 51 FR 43910, 43922 (1986), specifies that:

Controlled by or under common control with, based on the instruments of ownership of the voting securities of an entity, means:

(i) Ownership in excess of 50 percent constitutes control;

(ii) Ownership of 20 through 50 percent creates a presumption of control; and

(iii) Ownership of less than 20 percent creates a presumption of noncontrol.

One industry commenter further recommended that "* * * MMS also adopt a 5% ownership threshold, below which there is an absolute presumption of noncontrol which is not subject to rebuttal. The 5% threshold is taken from the Investment Companies Act [* * *] which establishes that there is no effective affiliation between parties when direct or indirect ownership of voting stock is below 5%."

One industry commenter stated: "Additionally, for those companies in which there is a definite controlling interest, a transaction should still be treated as arm's-length if the controlling company is regulated by a regulatory agency who approves rates or tariffs charged to third parties."

Many industry commenters recommended changing MMS's reference from "persons" to "parties." One of these commenters stated that "Involvement in one or more joint operations with a competitor should not be viewed as materially affecting the arm's-length nature of transactions between the firms. However, the reference to 'joint venture' in the definition of 'person,' which is referenced in the proposed definition of arm's-length contract, could be improperly construed as including normal joint oil field operations conducted under the terms of joint operating or similar agreements. Joint operations clearly involve no interlocking ownership of the instruments of voting securities as between the firms. Joint operations are undertaken to accomplish effective reservoir management, to satisfy spacing requirements, or to share the enormous costs involved in certain OCS and frontier areas."

One industry commenter was concerned that: "The proposed language does not clarify at what time affiliation is to be determined. Is it when the contract is originally executed or some subsequent time during the term of the contract? In the current climate of mergers and acquisitions, affiliation may change." Another industry commenter stated that although the definition of "arm's-length contract" is well written, any additional language elaborating on the state of being affiliated should be deleted because it would allow auditors to reject too many arm's-length contracts.

One State commenter stated that "The definition of 'arm's-length contract' is clearly deficient because it is limited to formal affiliation or common ownership interests between the contracting parties. The assumption behind accepting arm's-length contract prices is that those prices will reflect market value. The definition proposed by MMS ignores the fact that parties may have contractual or other relationships or understandings which would cause them to price gas below its value, especially if the benefit of the reduced royalty burden can be shared by means of the gas sales contract." One Indian commenter questioned "* * * whether there are any truly arm's-length relationships in today's market which would make an arm's-length valuation method valid. We are particularly concerned that the arm's-length label essentially forecloses any scrutiny by MMS of the value reported by the lessee." One State/Indian association stated that nonaffiliation does not guarantee arm's-length: "For example, arrangements between families (via blood, kinship, heir, or marriage) offer similar conditions for influencing proceeds subject to royalty."

Two State commenters, one State/industry association, one Indian, and one Indian trade group are of the opinion, as expressed by one commenter, that: "MMS's desire for an 'almost purely objective' test provides a totally inadequate justification for giving away the power to prevent manipulation of the public's royalties." These commenters conclude that: "The definition as proposed is not workable even though it is objective." They suggest that MMS's definition in the draft regulations presented to the RMAC would allow more legally accurate results:

"Arm's length contract" means a contract or agreement that has been freely arrived at in the open marketplace between independent, nonaffiliated parties of adverse economic interest not involving any consideration other than the sale, processing, and/or transportation of lease products, and prudently negotiated under the facts and circumstances existing at that time.

Some Indian and State commenters agreed that, as one commenter phrased it: "The adverse economic interest and open market requirements have long been standard criteria for determining

the arm's-length nature of contracts. These criteria have allowed for an accurate line of demarcation between arm's-length and non-arm's-length."

One State commenter supplied the following questions to be asked to test the arm's-length nature of a contract: "(1) Is there an individual who is a board member, officer, partner or employee of one of the contracting parties, and also a board member, officer or employee of the other? (2) What, if any, other commercial relationships exist or are being proposed between the buyer and seller? (3) Is there any family relationship between the buyer and seller? (4) Is there any other special relationship between the parties to the gas sales contract?"

Based on the numerous comments concerning the originally proposed definition, MMS included in the first draft final rule a definition which adopted the "control" language found in the BLM's regulations at 43 CFR 3400.0–5 (rr)(3) quoted above. In response to those commenters who believed that parties to an arm's-length contract must have adverse economic interests, MMS included in the first draft final rule definition a provision which required that, to be arm's-length, a contract must reflect the total consideration actually transferred from the buyer to the seller either directly or indirectly. For example, if the parties to the contract agreed that the price for gas from a Federal or Indian lease would be reduced in exchange for a bonus price to be paid for other production from a fee lease, MMS would not treat that contract as arm's-length.

Many of the comments on the first draft final rule again focused on the definition of arm's-length contract. Most of the industry commenters thought that the reference to "reflects the total consideration actually transferred directly or indirectly from the buyer to the seller" did not belong in the definition of arm's-length contract. Rather, they stated that it properly should be dealt with as a "gross proceeds" issue. The States and Indians commented that a reference to adverse economic interests still was necessary. They also thought that there must be a requirement of a free and open market. Finally, the States and Indians thought that MMS should lower the control threshold to 10 percent and that MMS should have more flexibility to rebut presumptions of noncontrol. Many of these commenters also thought that the rules should state that the lessee has the burden of demonstrating that its contract is arm's-length.

The comments on the second draft final rule were similar to those already received. Many commenters raised questions about possible audit difficulties. The American Petroleum Institute supported the definition in the second draft final rule.

MMS Response: The MMS adopted many of the changes suggested for the originally proposed definition. The MMS agrees that the "total consideration" issue is properly a gross proceeds matter that does not reflect the affiliation of the parties. Thus, that phrase has been deleted from the arm's-length contract definition and the matter dealt with under the definition of "gross proceeds". The MMS did not adopt the concept of "free and open market" because that concept is highly subjective. However, MMS did include a requirement that the contract be arrived at "in the marketplace" in support of the concept that an arm's-length contract must be between nonaffiliated persons. Also, in furtherance of that concept, MMS included a provision that an arm's-length contract must be between persons with opposing economic interests regarding that contract which means that the parties are acting in their economic self-interest. Thus, although the parties may have common interests elsewhere, their interests must be opposing with respect to the contract in issue. In response to many comments on the second draft final rule, MMS has reduced the control threshold to 10 percent. The MMS can rebut presumptions of noncontrol between 0 and 10 percent and lessees can rebut presumptions of control between 10 and 50 percent.

Many commenters thought that MMS's inclusion of joint venture in the definition of "person" improperly narrowed the definition of arm's-length contract. These commenters have misconstrued MMS's intent. The definition of "person" includes joint ventures because there are instances where joint ventures are established as separate entities. In those situations, if a party with a controlling interest in the joint venture buys production from the joint venture entity, that contract is non-arm's-length. However, MMS is aware that it also is common for companies to jointly contribute resources to develop a lease and then share the production proportionately. In a situation where four totally unaffiliated companies share the production, if one of the companies buys all of the production from the other three, those three contracts would be considered arm's-length. The company's purchase from its affiliate, of course, would be non-arm's-length.

The MMS also has included in the arm's-length definition a provision whereby if one person has less than a 10-percent interest in another person which creates a presumption of noncontrol, MMS can rebut that presumption if it demonstrates actual or legal control, including the existence of interlocking directorates. For example, there may be situations where ownership of 5 percent of a very large corporation could give a person sufficient control to direct the activities of that corporation. Where there is evidence of actual control, MMS can rebut the presumption of noncontrol.

Finally, in response to those commenters who believed that the lessee has the burden of demonstrating that its contract is arm's-length, MMS has included such a provision in the valuation sections. See §§ 206.152(b)(1)(i) and 206.153(b)(1)(i). The MMS also believes that these sections satisfy the request that the rules prescribe that the lessee has the burden of proving nonaffiliation since one of the requirements for demonstrating that a contract is an arm's-length contract is to demonstrate the degree of affiliation between the contracting parties.

The MMS may require a lessee to certify ownership in certain situations. Documents that controllers or financial accounting departments of individual companies file with the Securities and Exchange Commission concerning significant changes in ownership must be made available to MMS upon request.

The final rule also provides that to be considered arm's-length for any specific production month, a contract must meet the definition's requirements for that production month as well as when the contract was executed. Some industry commenters objected to this provision stating that if the contract was arm's-length when executed, it should satisfy MMS.

MMS Response: When the parties to a contract no longer have opposing economic interests, the reliability of that contract as an accurate indicator of value becomes suspect. In such circumstances, MMS will not rely on a contract price to conclusively establish value.

The MMS asked for comments on whether the term "relatives" needed further definition. Many useful comments were received. The MMS has decided, however, that further explanation of the meaning of relatives is better suited to guidelines which will be prepared after these rules are adopted.

"Audit"—One industry commenter expressed concern over MMS's interpretation of what constitutes an

audit: "MMS's use of terms such as 'review,' 'examination,' rather than 'audit,' arbitrarily eliminates the right of lessees to offset overpayments and underpayments discovered during the course of an audit." This commenter believes that an account reconciliation by MMS should be termed an audit.

One Indian commenter did not disagree with the definition but thought that the processed information available to MMS is not adequate to perform thorough audits. "Our view of the definition of audit is academic because the MMS will accept payment reports without review in the future as in the past, unless resources and personnel are provided by the Tribe to accomplish the task."

One industry commenter stated that the review and resolution of exceptions processed by MMS's automated systems constitutes auditing by mail. The industry takes exception to this procedure.

MMS Response: The MMS has simplified the definition of "audit" as follows: "Audit means a review, conducted in accordance with generally accepted accounting and auditing standards, of royalty payment compliance activities of lessees or other interest holders who pay royalties, rents, or bonuses on Federal and Indian leases."

"Compression"—One industry commenter suggested deleting the definition because the term does not require an explanation.

MMS Response: The MMS believes that the definition should be retained because it clarifies a term used in the regulations.

"Field"—One industry commenter suggested adding the underlined language to clarify that this definition is for royalty purposes: "Field means, *for purposes of oil and gas royalty*, a geographic region * * *."

MMS Response: The additional language proposed by the commenter is unnecessary because the underlying premise of all the definitions contained in § 206.151 is that they are for royalty purposes.

"Gas"—One industry commenter stated that "The term should refer to unprocessed gas. The chemical definition is inappropriate in this context because it fails to distinguish between manufactured and raw gas."

MMS Response: The MMS believes that the definition adequately and correctly defines the term "gas" in language which is accepted by the oil and gas industry.

"Gas Plant Products"—One industry commenter stated that the phrase "excluding residue gas" should be deleted from this paragraph. According to this commenter, "Residue gas is a manufactured product as that term has been used by Federal courts in the royalty context. See *U.S. v. General Petroleum; California v. Seaton* affirmed *California v. Udall* * * *. If gas is processed, or manufactured there is no rational basis for limiting the deduction of manufacturing costs against the value of only gas plant products other than residue." An Indian Tribe supported the exclusion of residue gas from the definition.

One industry commenter suggested, "* * * we think the word 'nitrogen' should be excluded from the definition of 'Gas Plant Products' since some natural gas is high in this component, and there is currently a small or nonexistent market for small amounts of nitrogen. Purchasers have traditionally downgraded the price for high nitrogen gas, and if producers have to bear additional royalty as well, they may elect to shut in or plug wells due to poor economics."

MMS Response: The MMS does not agree that the phrase "excluding residue gas" should be deleted from this paragraph. Historically, no processing allowance has been allowed to be applied against the residue gas, and MMS generally has retained this position in the final rule. The MMS has also concluded that the definition should not be modified to exclude nitrogen. The MMS has, however, included in § 206.158(d) a provision for an extraordinary processing allowance for atypical types of gas production operations.

"Gathering"—MMS received numerous comments from industry concerning the phrase "or to a central accumulation or treatment point off the lease, unit, or communitized area as approved by BLM or MMS OCS operations personnel for onshore and OCS leases, respectively." These commenters stated that the phrase was unclear and that it should be removed from the definition. Several industry commenters recommended limiting gathering to the lease or unit area so a transportation allowance may be obtained for all off-lease movement.

MMS Response: The definition has been retained intact. The operational regulation of both BLM and MMS require that a lessee place all production in a marketable condition, if economically feasible, and that a lessee properly measure all production in a manner acceptable to the authorized officials of those agencies. Unless specifically approved otherwise, the requirements of the regulations must be met prior to the production leaving the lease. Therefore, when approval has been granted for the removal of production from a lease, unit, or communitized area for the purposes of treating the production or accumulating production for delivery to a purchaser prior to the requirements of the operational regulations having been met, MMS does not believe that any allowances should be granted for costs incurred by a lessee in these instances.

"Gross Proceeds"—MMS received a large number of comments on this definition.

Three Indian commenters, one State commenter, and one State/Indian association commenter supported the definition and urged MMS to retain the entitlement concept despite pressures to the contrary. A State commenter stated that "MMS has correctly resisted lessee efforts to exclude the royalty owner from sharing in some kinds of consideration, such as severance tax reimbursement and take or pay payments." This commenter recommended clarifying the first sentence by amending it as follows: "Gross proceeds (for royalty purposes) means the total monies and *the value of* other consideration paid *or given* to [an oil] and gas lessee, or monies and *the value of* other consideration to which such lessee is entitled, for the disposition of gas." The commenter stated that "These additions are necessary because when 'consideration' is not in the form of 'monies' it is necessary to determine its value."

Many industry commenters opposed the definition of "gross proceeds" as proposed because they believed it is too expansive and contrary to the provisions of the Mineral Lands Leasing Act and the OCS Lands Act. Instead, they propose the following: "Gross proceeds (for royalty payment purposes) means the consideration accrued to the lessee for production removed or sold from Federal, Indian Tribal or Indian allotted leases." One commenter stated further that "Such definition is unambiguous, furthering the MMS's desire for certainty in its regulations. Reimbursement for production-related costs and take-or-pay payments are currently being litigated. If it is eventually determined that royalty is owed on such payments such definition will not have to be modified. On the other hand, the proposed definition will have to be amended if industry is successful in its claims that royalty is not due on such amounts." One industry commenter proposed adopting the definition of "gross proceeds" endorsed by a majority of the RMAC Gas Panel. It reads: "* * * all consideration due and

payable to the lessee for the sale of gas and processed gas products, less any applicable allowances for transportation, processing and other post production expenses."

Several of the industry commenters disagreed with the entitlement language contained in the originally proposed definition. Their concerns are represented by the following statement from one of the comments: "Proceeds have long been defined and understood to mean the consideration, money or the monetary equivalent of other nonmonetary consideration *actually received by a lessee*. The MMS' expansive definition of proceeds, including monies to which a lessee is *entitled*, makes product valuation uncertain and subjective. This uncertainty and subjectivity arises because: (1) The meaning of entitlement is not clearly understood, nor is it a clearly defined legal term; (2) lessees do not know how either they or MMS will, or should, apply this standard; and (3) the required steps which a lessee must take to secure entitlements to consideration are unknown. It will put MMS into the business of second guessing lessee's business transactions. To minimize this second guessing problem of uncertainty we recommend the concept of entitlement be eliminated from further consideration." One industry commenter was concerned that "a lessee would be required to pay royalties on monies to which it is entitled, not on what is received or on what is settled for as a matter of compromise." In order to add more certainty to the concept of "entitlement," one commenter suggested "a simple statement to the effect that MMS expects to be indemnified against the negative consequences of a lessee sleeping on its *clear cut uncontested* contract rights should suffice."

Many industry commenters had the opinion, as one commenter phrased it, that "Federal statutes, regulations, and leases do not require lessees to pay royalty on reimbursements received for post-production services." Several commenters believed that "the claim for royalty on production-related cost reimbursements received by a lessee pursuant to the FERC's Order No. 94 series is particularly inappropriate." One commenter stated that "a demand for royalties on Order No. 94 violates the royalty clause of the MLA, the OCSLA, as well as MMS's own regulations implementing these statutes, for at least two reasons. First, these reimbursements do not result from the production of gas but from services performed by the producer subsequent to production. Second, such reimbursements are not consideration for production that is sold or removed and are thus outside the scope of the royalty clause. Consequently, the MMS' proposal to include production-related cost reimbursements in the definition of gross proceeds is simply wrong." Another industry commenter "strongly asserts the producer's right to deduct all post-production costs involved in marketing gas. Further tax reimbursements should be exempt from royalty." Finally, one industry commenter stated that "all post-production costs should be shared by lessor and lessee because such costs enhance the value of the production for the benefit of both lessor and lessee."

Many industry and a few individual commenters responded to the inclusion of take-or-pay payments in the definition of "gross proceeds." The consensus among these commenters is that MMS has no lawful reason or authorization to collect royalties on take-or-pay payments. One commenter stated that "the typical take-or-pay clause in a contract between the lessee and the gas purchaser requires the purchaser to pay for the specified minimum quantity of gas for each contract year. Whenever the gas purchaser takes less than the contract minimum for a particular year, the purchaser is required to make a take-or-pay payment to the lessee. The purpose of take-or-pay payments is to guarantee the lessee a steady cash-flow, regardless of the level of actual production, to meet its operation and maintenance costs. The payments are not for production; indeed, they are made in lieu of taking production. Consequently, to the extent the lessee receives take-or-pay payments there is no gas production or sale because the gas remains in the ground."

Several industry commenters recommended the increased use of "in-kind" royalty clauses to resolve good faith royalty disputes. One industry commenter stated "indeed, the 'in-kind' standard should be considered as the measure of product 'value,' where a producer and the MMS, or a State auditor under a delegation of authority, disagree over whether a contract is 'arm's-length,' or over contract 'entitlements,' the gas should be taken 'in-kind,' by volume at the wellhead. This means that the royalty owner must assume all subsequent costs or marketing the gas."

MMS Response: In the draft final rule, MMS included a definition which was only slightly different than the proposal. In the second draft final rule, MMS again made a slight modification, discussed below, which has been retained in the final rule. The MMS retained the intent of the proposed language because gross proceeds to which a lessee is "entitled" means those prices and/or benefits to which it is legally entitled under the terms of the contract. If a lessee fails to take proper or timely action to receive prices or benefits to which it is entitled under the contract, it must pay royalty at a value based upon that legally obtainable price or benefit, unless the contract is amended or revised. As is discussed more fully below, gross proceeds under arm's-length contracts are a principal determinant of value. The MMS cannot adopt that standard and then not require lessees to pay royalties in accordance with the express terms of those contracts. It is MMS's intent that the definition be expansive to include all consideration flowing from the buyer to the seller for the gas, whether that consideration is in the form of money or any other form of value. Lessees cannot avoid their royalty obligations by keeping a part of their agreement outside the four corners of the contract. Moreover, as noted earlier, many commenters stated that the "total consideration" concept properly belonged as part of gross proceeds, not in the definition of arm's-lenght contract. Therefore, MMS has purposefully drafted the gross proceeds definition to be expansive and thus include all types of consideration flowing from the buyer to the seller. Toward that end, MMS has replaced the word "paid" used in the first draft final rule with the term "accruing." There may be certain types of considerations which are not actually paid by the buyer to the seller, but from which the seller benefits. The term "accruing" ensures that all such consideration is considered gross proceeds.

Costs of production and post-production costs are lease obligations which the lessee must perform at no cost to the Federal Government or Indian owner. The services listed in the definition are all benefits that a lessee may receive under the terms of the contract and are considered part of the value, for royalty purposes, for the production removed or sold from the lease.

It is MMS's position that take-or-pay payments are part of the gross proceeds accruing to a lessee upon which royalty is due.

The MMS retains the exclusive right to determine when it will accept "in-kind" production in fulfillment of a lessee's royalty obligation. Although

MMS received many comments supporting a gas royalty-in-kind program, MMS received an equal number identifying significant problems with such a program. The MMS does not anticipate adopting a gas royalty-in-kind program at this time.

"Lease"—One Indian commenter stated the following: "Inclusion of any contract profit-sharing arrangement, joint venture or other agreement in the term 'lease' as opposed to a more standardized BIA form lease may cause confusion. Most joint ventures and profit-sharing arrangements contain explicit provisions on payment of expenses and division of revenues."

MMS Response: This definition must be broad enough to cover any agreement that may be issued or approved by the United States for either Federal or Indian lands.

"Lease products"—One industry commenter stated: "Lease products definition should be deleted as it eliminates the important and necessary distinction between raw gas and manufactured products. Use of the phrase 'gas' and 'gas plant products' is preferable as it serves to make this distinction."

MMS Response: The MMS believes that this definition is appropriate and correct and does not eliminate any distinction between raw gas and manufactured products. The definition of the terms "gas" and "gas plant products" will be retained in the definitions paragraph.

"Lessee"—Several industry representatives and trade groups commented that the originally proposed definition of "lessee" was too broad. One commenter stated that "As drafted, it would include any person who pays royalties, notwithstanding the fact that such payors may have no contractual obligation to the lessor to make royalty payments. Thus, under the proposed definition, the voluntary royalty remitter would become subject to all of the royalty valuation obligations imposed on lessees and would, consequently, become directly liable for any infractions of the application reporting and payment regulations, a result which is not sanctioned by existing statutory law." To be consistent with that law, industry suggests that MMS substitute for its definition of "lessee" the one which is contained in section 3(7) of the Federal Oil and Gas Royalty Management Act (FOGRMA), 30 U.S.C. 1702(7):

> "Lessee" means any person to whom the United States, an Indian Tribe, or an Indian allottee, issues a lease, or any person who has been assigned an obligation to make royalty or other payments required by the lease.

Most of these commenters favored this definition because "the statutory definition includes persons who have been issued a lease or who have been *assigned* an obligation to make royalty or other payments required by the lease. The gas proposal would wrongfully expand the definition to include any person who has *assumed* an obligation to make such payments."

One industry commenter recommended adding the phrase "for royalty payment purposes" directly after the word "Lessee" for the purpose of clarity. "We do not believe it is the intent of Congress that a lessee be able to divest himself of all lease obligations by someone else merely assuming royalty responsibility."

MMS Response: The MMS agrees with the comments regarding consistency with the definition found in FOGRMA and, therefore, has replaced the word "assumed" with the word "assigned." It should be specifically noted that the term "assigned," as used in this Part, is restricted to the assignment of an obligation to make royalty or other payments required by the lease. It is in no way related to lease "assignments" approved through the MMS, BLM or BIA. It is MMS's intent that operators and others who pay royalties follow these regulations in determining the royalties due. The lessee of record is ultimately responsible if the operator or other payor does not properly pay the royalties due the lessor.

"Like-quality lease products"—Some Indian commenters recommended deleting any reference to legal characteristics from this definition. They believed that by using legal characteristics of gas in defining like-quality gas many elements would be used to differentiate gas in such a manner as to lower gas values. They were concerned that gas sold in intrastate commerce would not be considered as being like-quality to gas sold in interstate commerce. They believed that such distinction would be contrary to court rulings. Further, the Indian commenters believed that gas should be considered only on its chemical and physical characteristics. The Indians commented that inclusion of the term could lead to the possibility that State regulations could influence the value of gas produced on Indian leases.

MMS Response: The MMS believes that legal characteristics of gas must be considered in determining like-quality production. However, the legal characteristics of gas intended to be considered under this definition are limited to categories under NGPA and the price regulated or deregulated status of the gas. The MMS does not believe that mixing NGPA categories of gas or comparing regulated to deregulated gas is reasonable when defining like-quality gas for royalty purposes. Without such distinction, gas that is price regulated at levels below $1.00 per MMBtu might be used to demonstrate the acceptability of a price for gas that should be compared to gas selling for prices in excess of $2.00 per MMBtu under market-sensitive contract provisions free from Federal price controls. Similar problems could result by mixing price regulated gas with price deregulated gas, even though the gas qualifies under the same provisions of NGPA. For example, between January 1, 1985, and July 1, 1987, all wells qualifying under NGPA Section 103 qualified under section 103(c). However, there were two different maximum lawful price ceilings prescribed by this section and a provision that deregulated certain section 103 gas. Regarding the distinction between intrastate and interstate sales, it has not been MMS's practice, nor is it intended to be under these final regulations, to incorporate the market chosen by a lessee in the definition of like-quality gas (unless adopted as a requirement by NGPA in defining categories).

"Marketable Condition"—One industry commenter suggested changing the definition to "Marketable Condition means condition acceptable to the purchaser under its sales contract."

One industry commenter suggested adding the words *"and/or transporter"* after the word "purchaser" in the definition.

One industry commenter stated that phrases such as "sufficiently free from impurities" and "a contract typical for the field or area" are subjective and ambiguous. The commenter stated that "All references to 'marketable condition' should be dropped in the final regulations. Instead, the regulations should reflect the distinction between production and post-production costs and clearly allow the lessee with an arm's-length contract to deduct post-production costs."

Several industry commenters expressed the view that the lessor should share proportionately in all post-production costs including those costs incident to placing production in a marketable condition.

One commenter expressed the view that the regulations must define "production costs" and "post-productior costs." The commenter disagrees with

MMS's position that these costs are costs associated with the obligation of the lessee to place production in a marketable condition, especially when costs are incurred downstream or off-lease. The commenter suggested that MMS should reconsider its position and allow deductions for nonproduction-related or post-production costs.

Another commenter believes that the costs of dehydration, separation, compression, and storage performed at a plant and incurred subsequent to the sales point should be deemed to have occurred for gas processing and not as a cost necessary to place the gas in marketable condition. This commenter also stated that a reasonable amount of gas, residue or unprocessed, should be allowed for fuel.

One industry commenter stated that "The proposed definition of 'marketable condition' is problematic because it seems to set up a normative standard for the condition of a product when, in fact, products may be sold profitably in a variety of conditions. We do not believe the lessee should be required to meet a specific set of processing criteria in all circumstances. The lessee, for its own profit and for that of its lessor, must be able to evaluate potential benefits and costs under each circumstance without being bound by what the lessor may consider 'typical' for the field or area. Furthermore, regarding the term 'typical', what was typical 20 years ago almost certainly is not typical now; yet there is no reference in this definition to the need for contracts to be fairly contemporaneous in order to be comparable. The definition set forth in the report of RMAC's Gas Working Panel is far preferable to the proposed rule."

MMS Response: The MMS believes that the definition is clear, concise, and equitable. The definition is not subject to manipulation, as one commenter stated. Furthermore, the suggestion that a uniform standard be developed for what is "marketable" is unrealistic because the gas marketplace is dynamic. The definition, as written, allows MMS the latitude to apply the concept of "marketable" in a fair and correct manner, now and in future gas markets. Also, MMS adheres to its long standing policy that costs incurred to place production in a marketable condition are to be borne solely by the lessee. Therefore, the MMS has not made any changes to the proposed definition.

"Marketing affiliate"—The MMS received several comments that sales to marketing affiliates who then resell the gas to third persons should not be treated under the rules as non-arm's-length sales. The MMS has addressed this issue in the valuation rules, discussed below, and is including a definition of marketing affiliate as an affiliate of the lessee whose function is to acquire *only* the lessee's production and to market that production. Some industry commenters stated that the term "only" should be deleted to include affiliates that purchase gas from other sources including other sellers in the same field.

MMS Response: The MMS is retaining the term "only". If the affiliate of the lessee also purchases gas from other sources, then that affiliate presumably will have comparable arm's-length contracts with the other parties which should demonstrate the acceptability of the gross proceeds accruing to the lessee from its affiliate. Also, deleting the term "only" from the definition may require the lessee to track the production to a sales point much farther downstream than the point at which it can be valued based upon the comparable arm's-length contracts of its affiliate.

"Net-back Method"—One industry commenter recommended deleting the second sentence of the definition because the procedure for performing a net-back calculation cannot be adequately explained in one sentence. Another industry commenter believed that the reference to net-back method needs clarification. A net-back is simply a means for reconstructing the value of gas to the well and has nothing to do with valuing the disposition of the gas at a point remote from the well. Consequently, a net-back procedure can be employed simultaneously with another valuation criterion to arrive at the value at the well."

One industry commenter stated the following about the definition: "It is vague because there is no explanation of what 'working back' means; it is overly broad because the first 'use' of virtually all gas is downstream from the lease. In addition, exclusive reliance on costs, however 'costs' are determined, may well understate the value added to production by downstream value-enhancement activities."

One State commenter stated that "the definition is internally inconsistent because it declares the 'net-back method' to be a method for valuing 'unprocessed gas' which is first sold downstream of, among other things, 'processing plants.' One of these references must be deleted to preserve consistency. The concept is vague because no standard is provided for determining what is meant by the phrase 'first alternative point which can be used for value determination.' "

MMS Response: Upon review, MMS determined that the proposed definition of net-back was too broad—it applied to any situation where lease production is sold at a point remote from the lease. The MMS's intent is that a net-back method be used for valuation primarily where the form of the lease product has changed, and it is necessary to start with the sales prices of the changed product and deduct transportation and processing costs. An example would be where gas production from a Federal lease is used on lease to generate electricity which is then sold. If the value of the gas cannot be determined through application of the first three benchmarks in the regulations (see § 206.152(c)), then a net-back method would involve beginning with the sale price of the electricity and deducting the costs of generation and transportation, thus working back to a value at the lease. In the draft final rule, MMS used the phrase "ultimate proceeds" to try and refer to the downstream product. Many commenters thought the term would result in MMS doing a net-back from the farthest downstream product, even to the point of "Stainmaster Carpet" or "model airplanes." This was not MMS's intent. Therefore, the term "ultimate" was deleted and a reference included to starting the net-back at the first point at which reasonable values for any product may be determined by a sale pursuant to an arm's-length contract or by comparison to other sales of such products. Thus, if there are five different stages of chemical or fiber products between raw gas production and "Stainmaster Carpet," if the value of the second product can be determined through comparisons with sales of other such products in the same market, MMS would begin the net-back from that product, not from the carpet.

"Net Output"—One industry commenter recommends "substituting the phrase 'actually extracts' for 'produces'. Net output of a plant is that which is *actually extracted*, not theoretically extractable." Another industry commenter suggested that the language be amended to clarify that gas produced at a plant but determined to have been unavoidably lost be excluded from the term.

MMS Response: The MMS disagrees with the commenter's recommended addition. The phrase "actually extracts" could be interpreted as meaning something different than "is produced." The MMS also disagrees that the term should be amended to exclude volumes determined to have been unavoidably lost. It has long been an established practice that incidental losses occurring

from the plant be excluded from royalty computations. Also, if the gas produced from the plant is determined by BLM or MMS, as appropriate, to have been unavoidably lost, the regulations when taken as a whole would exclude such volumes.

"Person"—One industry commenter recommended replacing the word "firm" with "company" in the interest of clarity.

Several industry commenters expressed the opinion that if the definition is not altered "then inclusion of joint venture in the definition of person could be extended to oil and gas joint venture operations and further narrow the definition of an arm's-length transaction by clouding the issues of control and affiliation. The sale of hydrocarbons produced through joint venture operations should not be presumed to be other than arm's-length because the individual parties and not the 'joint venture' are responsible for making their own sales of their share of the production." One industry commenter stated that the solution to the problem is to delete the term "joint venture" from the definition. Another industry commenter proposed the following definition: "Person means any individual, firm, corporation, association, partnership, consortium, or joint venture. For purposes of this definition, association, partnership, consortium or joint venture shall not include any relationship or arrangement resulting from persons entering into any joint operating agreement, production sharing agreement, farm-out or farm-in agreement, or any similar agreement or contracts generally found in the oil and gas industry for the cooperative exploration of mineral resources." Another industry commenter recommended adding the phrase "when established as a separate entity" after the term joint venture.

MMS Response: The MMS has adopted the addition of the suggested phrase concerning joint ventures in the final definition. The MMS agrees that two unaffiliated parties jointly developing and producing a lease should not be viewed as one entity unless those parties have formally established a separate entity that involves them both.

"Posted Price"—One industry commenter stated that the word "posted" is an outdated term which should be deleted and that the following underlined language should be added to the definition. "Posted price means the price in the field, net of all deductions, as specified in a publicly available * * * price bulletin *or price notices available as part of normal business operations to an operator desiring to do business with specific purchasers,* that a buyer is willing to pay for quantities of unprocessed gas, residue gas, or gas plant products of marketable condition * * *." The commenter also stated that, "if gas price bulletins become generally circulated, it may be that some buyers may not publish a price bulletin as that term is normally used in the industry, but will provide and make available price quotations or notices to any operator (seller) desiring to do business with the buyer."

MMS Response: The MMS has revised the definition in the final rule. For clarification purposes, the word "condition" replaces the word "quality" which follows the word "marketable" in the first sentence. The phrase "net of all deductions" has been modified to read "net of all adjustments." As used in this definition, the term "adjustments" refers to deductions from the price of gas or gas plant products for quality adjustments. Adjustments for location also may be taken into account where appropriate.

"Processing"—Two industry commenters recommended "that a clarifying statement be included to recognize that a plant may be located on the lessee's Federal/Indian lease. If a gas plant is located on a lease, then any of the 'field processes', as set out in the definition may well be an integral part of the plant process and consequently must be considered elements of processing." One industry commenter suggested that the following sentence be inserted between the proposed second and third sentences: "However, these processes will be considered as processing if they are included as an inherent part of the process to separate the produced gas into gas plant products and residue gas." Two industry commenters recommended "The addition of the word 'fractionation' at the end of the first sentence. Fractionation is a plant process and an allowance should be granted as is currently allowed by MMS."

One Federal agency commenter stated that some confusion may arise when comparing proposed § 206.151(bb) to proposed § 206.158(d). "Once the gas reaches the gas plant it would be arguable that any process associated with treating the gas, such as dehydration or mechanical separation, is generating a gas plant product that would be eligible for a processing cost deduction."

One industry commenter suggested changing the definition of "processing" to: " *'Manufacturing:'* The transformation of a raw gas stream into one or more saleable products by processes other than dehydration, standard field conditioning and separation techniques. Manufacturing includes gas processing, sweetening, purification, desulfurization, gas separation, adsorption, absorption, liquefaction and other extraction techniques. Furthermore, gas processing should be defined as: *Gas Processing:* The manufacturing technique whereby wet gas is treated to remove natural gas liquids such that the natural gas liquids and dry residue gas are separately marketable." This commenter thinks that "manufacturing also includes the physical operation attendant to the specific manufacturing process such as the dehydration and compression steps which occur within a gas plant. The MMS has instead attempted to limit its attention to 'gas processing' and thus provides an allowance only to such operations. The position of the MMS is based upon a clear misapplication of the *Udall* case, namely, that all operations for placing gas in marketable condition, *including manufacturing operations,* are not deductible. Compounding its error, the MMS ignores the *General Petroleum* holding, not affected by *Udall,* that residue gas is a manufactured product, and so proposes that no manufacturing cost be deducted against the residue gas."

One State commenter stated that the definition of "processing" is very vague. According to this commenter, the distinction between "field processing" and other "processing" is not clearly drawn. The commenter asserted that "The ambiguity of the definition of 'processing' would not be so troubling except for the fact that it seems to control the meaning of the term 'unprocessed gas,' which is not defined in the proposed regulations despite its critical importance. One would think that regulations aimed at providing certainty would present clear guidelines for identifying the 'processing' costs in which the royalty owner must share."

MMS Response: The MMS has considered the comments carefully but disagrees that the proposed definition is confusing and vague. Therefore, it will be retained unchanged in the final rule.

"Residue Gas"—One industry commenter suggested that "Residue gas may also include ethane." Another industry commenter recommends deleting this definition but states: "Nevertheless, if this definition is maintained residue gas should be restricted to residue gas resulting from processing sweet gas containing hydrocarbons."

MMS Response: The MMS has not adopted the suggestions made by the

commenters and the definition remains unchanged. The definition recognizes that residue gas may include ethane.

"Spot Sales"—One industry commenter suggested deleting all language in the proposed definition that follows the word "duration." According to this commenter, "The additional language is not necessary to define a spot sales agreement as it defines what is *not* required, versus what *is* required."

One industry commenter suggested deleting the clause "* * * which does not require a cancellation notice to terminate * * *" "Many spot sales agreements require ten (10), thirty (30), or sixty (60) days notices of cancellation * * *. The MMS purpose of including only those contracts which do not imply an intent to continue in subsequent periods is adequately served by the balance of the definition."

Three industry/trade group commenters recommended that this paragraph should be retitled as "'spot/direct sales agreements' and a definition for direct sales be added as follows: A direct sale (which generally does not contain a reserve dedication) is a similar agreement but is usually made with an end user or local distribution company *and can be a short or long term contract.*"

One industry commenter recommended adding the following sentence to the definition: "A spot or direct sale which meets all of the criteria of an arm's-length contract as defined in § 206.151(d) of these regulations shall be treated as an arm's-length contract according to these regulations." The commenter believes that the proposed definition must clearly state that a spot sales agreement will be treated as arm's-length if it meets all the requirements of an arm's-length agreement.

MMS Response: In the final rule, MMS has inserted the word "normally" immediately preceding the phrase "require a cancellation notice to terminate." The MMS also agrees that there are spot sales which constitute arm's-length contracts. However, to be considered as a comparable arm's-length contract in the valuation of gas which is not sold pursuant to an arm's-length contract, these contracts also must meet other standards. See, for example, § 206.152(c)(1).

"Take-or-pay payment"—Several industry comments were received on this definition and all recommended its deletion. The comments are reflected by the following statement of one of the commenters: "While the definition proposed is technically correct, it should be deleted from the proposed rule because, as stated in the discussion of § 206.151(m) above, take-or-pay payments are not consideration for the sale of production."

MMS Response: The MMS has decided that the definition of take-or-pay payment is unnecessary. Take-or-pay payments have a generally understood meaning in the industry and may take different forms. MMS has decided to remove any definition from the final rules since a regulatory definition may not correspond with all types of payments which fall within the concept of take-or-pay payments which should be royalty bearing. The MMS already addressed above the issue of whether take-or-pay payments should be included in gross proceeds.

"Warranty Contract"—One industry commenter stated that "the exclusion of warranty contracts from the valuation of gross proceeds under an arm's-length contract is intended to exclude those low-value warranty contracts that were entered into prior to the mid 1970's. However, the proposed definition is so broad that it will encompass future negotiated selling arrangements." To clearly express the MMS's intent, the commenter "proposes that the definition be restricted to those contracts entered into before a specific date."

MMS Response: The MMS has modified the definition to refer only to long-term contracts entered into prior to 1970. This also includes contracts entered into prior to 1970 that may have been amended either before or after 1970.

Proposed New Definitions

Commenters have proposed adding the following definitions to the list of existing definitions: natural gas liquids; post-production costs; production; production costs; royalty; and unavoidably lost gas.

MMS Response: The MMS has decided not to include any of the suggested additional definitions. The terms either have a recognized meaning (such as "royalty") or are not used in the regulations (such as "post-production costs").

Section 206.152 Valuation standards—unprocessed gas.

Section 206.152(a).

Paragraph (a)(1) provides that the provisions of § 206.152 apply only to gas that is sold or otherwise disposed of by the lessee pursuant to an arm's-length contract prior to processing. The section expressly does not apply to contracts where the lessee reserves the right to process the gas or to percent-of-proceeds contracts. Several industry commenters stated that the proposal to exclude percent-of-proceeds contracts from this section is unreasonable and unfair to the lessee. They stated that the percentage of proceeds mechanism is a means of arriving at the wellhead value and is not a sale of processed gas. The commenters also stated that the requirement to submit allowances forms to MMS in these cases would be burdensome and, with the provision for exceeding the processing allowance limitations, such treatment is unnecessary. All industry commenters recommended classifying percent-of-proceeds contracts under unprocessed gas.

MMS Response: The MMS still believes that the percentage-of-proceeds contracts should be treated as processed gas as proposed. Without such treatment, lessees would be free to avoid many requirements and limitations of the valuation regulations simply by the manner in which they structure their contracts. In many cases the lessee will agree to any terms dictated by the processing plant owner to be able to realize revenue from the oil production from its wells. Under some cases MMS is familiar with, lessees have agreed to provide fuel to run compressors off the lease without compensation and lessees have given all or a substantial portion of any condensate recovered between the point of title transfer and the inlet of the plant to the plant operator without compensation. Further, in some cases, the lessee may allow itself to be paid based upon prices received by the plant operator under a non-arm's-length contract without the lessee being able to ensure that those prices reflect market value. Finally, MMS does not believe that any percentage-of-proceeds contracts, even being arm's-length contracts, would be an acceptable benchmark for determining values under non-arm's-length percentage-of-proceeds contracts. However, the final rule includes provisions for an exception from processing allowance limitations (see § 206.158(c)(3)), which should address many of the commenters' concerns).

An Indian commenter stated that this section is inconsistent with the ruling in *Jicarilla Apache Tribe v. Supron,* which held that under the terms of the Indian leases in dispute, wet gas had to be valued as the higher of the value at the lease or as the value of all products at the tailgate of the plant, less transportation and processing costs.

MMS Response: The MMS's regulations recognize the primacy of statutes, treaties, and oil and gas leases, thus providing a means for determining

special valuation requirements not only for Indian leases, but also for Federal leases. Many Indian leases have provisions that require dual accounting for processed Indian gas production.

Section 206.152(a)(2).

One Indian commenter stated that this proposed rule authorizes alterations in dealings between the Indian lessor and the industry lessee. The commenter further stated that this provision will result in royalties which are adjusted for transportation costs not contemplated by either party to the lease. The commenter recommended that all references to transportation allowances be deleted and that value be defined, for royalty purposes, to be the fair-market value of the gas at the lease in marketable condition.

One industry commenter objected to the concept of determining royalty on the value of gas and the associated products after completion of the manufacturing or processing phase. The commenter recommended that royalty be due only on the market value of the product as it is produced at the wellhead.

Industry commenters recommended that the phrase "less applicable transportation" should be expanded to include other cost allowances such as production costs.

MMS Response: The MMS has modified the final rule to refer to "applicable allowances". In response to the comments, transportation allowances generally are appropriate for most Indian leases. The regulation refers to "applicable" allowances and does not imply that any and all transportation costs can be deducted. If transportation allowances are not appropriate, the word "applicable" restricts application only to those leases where they can be applied.

The MMS is including in the final rule a new paragraph (a)(3) which states that for any Indian leases which provide that the Secretary may consider the highest price paid or offered for a major portion (major portion) in determining value, MMS will, where data are available and where it is practicable, compare the value determined in accordance with the prescribed standards with the major portion. The rule provides that the royalty value, for royalty purposes, will be the higher of those two values. The draft final rule included a provision that if MMS determines that the major portion results in an unreasonably high value, then it will not be used for royalty purposes. Many Indian commenters thought that, for their leases which include a specific reference to the major portion, value should establish a minimum value, and a major portion value in most cases will be reasonable because at least half the gas is sold at or above that price. The MMS agrees and has made the change to the final rule.

Many Indian commenters raised concerns about the qualifications included in this paragraph. These commenters must recognize that if data are not available, it is impossible to do a major portion analysis.

The MMS is also including in paragraph (a)(3) a description of how the major portion is computed. It will be determined using like quality gas, which includes legal characteristics (generally, the specific NGPA category). Only gas sales under arm's-length contracts will be used because non-arm's-length contracts may not reflect market value. The production will be arrayed from highest price to lowest price (at the bottom). The major portion is that price at which 50 percent (by volume) plus one mcf of the gas (starting from the bottom up) is sold. An industry commenter recommended deletion of the reference to "area". However, because only arm's-length contracts are used in the analysis, the field may not yield a sufficiently reasonable sample in all cases. Generally, it will not be necessary to look beyond the field.

The MMS believes that for these Indian leases, by comparing the major portion to values determined using arm's-length-contract prices or the benchmarks for non-arm's-length-contracts, and using the higher of the two, the Indians will be receiving royalties in accordance with their contract with the lessee.

Section 206.152(b).

Several industry commenters stated that they supported the concept of relying on gross proceeds in an arm's-length transaction as the principal determinant of value. Some industry commenters also endorsed the overall approach to valuation determination procedures and eliminating the requirement that a lessee obtain preapproval. Industry commenters supported the acceptance of the gross proceeds received by their marketing affiliates under arm's-length contracts as value rather than treating the initial transfer to the marketing affiliate as a non-arm's-length transaction subject to valuation under the benchmark system. Industry also suggested that the regulations be amended to provide that, when the marketing affiliate sells commingled production from many leases to many parties and the sales contracts do not specify the source of the gas, the value of the gas sold from all contributing leases be defined as the weighted average price at which the production was sold.

MMS Response: The MMS agrees with the commenter that the value of gas sold in the manner described by the commenter is properly defined by the weighted average price at which the commingled stream was sold, but believes that guidelines to be prepared for inclusion in the MMS Oil and Gas Payor Handbook would be the proper place to specifically address the issue.

One Indian commenter recommended that a definition of gas value, for royalty purposes, be based on the highest price paid or offered for similar gas in the same field or area, and requested MMS to adopt the following approach:

Section 206.102 (sic) Valuation Standards.

(a) Remains the same.

(b) The value of gas which is sold pursuant to a contract shall be the gross proceeds accruing, or which could accrue, to the lessee, *provided that* such proceeds do not fall more than 10 percent below the greater of the highest price paid or posted for similar gas in the same field or area. If such proceeds fall more than 10 percent below such prices, the value of gas in that case shall be 10 percent below the greater of the highest price paid or posted for similar gas in the same field or area.

A State commenter stated that the proposed regulations would allow substantial manipulation and undervaluation of the royalty amount because it is unacceptable to allow lessees to use contract prices as the royalty value without adequate safeguards to assure a fair valuation. They recommended at a minimum, only prices under "genuine" arm's-length contracts should be acceptable for royalty purposes and urged MMS to at least impose a floor value, such as 80 percent of the value of production as determined under the "value" criteria applicable to gas not sold under arm's-length contracts.

One Indian commenter recommended the inclusion of provisions specifically reserving to MMS the right to review and audit "arm's-length" contracts and that the proceeds under all contracts should be subject to price checks—market value analysis—before being accepted as value. Another Indian commenter requested that all arm's-length contracts be filed with MMS and that MMS require that agreements for the sale or disposition of gas within different branches of the same company be in writing and on file.

One Indian commenter stated that "if MMS is to properly undertake its responsibilities, a predetermination of

value on which royalty is to be based should be made *before* production value is reported." In addition, it was recommended that the Secretary should determine whether each contract is arm's-length or non-arm's-length instead of allowing the lessee to make this determination. Also, it was suggested that the Secretary should have all benchmarks available to him and MMS should have the flexibility to set benchmark minimum prices established by the highest price paid or offered for a major portion of gas produced from the field or area.

MMS Response: The suggestions to predetermine the value on which royalty is to be based were not adopted because of the increase in administrative burden which would be very costly for MMS (and, in some instances, to industry). An internal sales agreement cannot be considered to be arm's-length.

In response to a large number of comments from the States, Indians, and industry, MMS has modified the regulations which govern the valuation of gas production sold pursuant to arm's-length contracts. For almost all such sales, the value for royalty purposes will continue to be the gross proceeds accruing to the lessee. Under MMS's existing regulations, the lessee's gross proceeds pursuant to an arm's-length contract are acceptable, though not conclusively, as the value for royalty purposes. The MMS believes that the gross proceeds standard should be applied to arm's-length sales for several reasons. The MMS typically accepts this value because it is well grounded in the realities of the marketplace where, in most cases, the 7/8ths or 5/6ths owner will be striving to obtain the highest attainable price for the gas production for the benefit of itself. The royalty owner benefits from this incentive.

It also adds more certainty to the valuation process for payors and provides them with a clear and logical value on which to base royalties. Under the final regulations, in most instances the lessee will not have to be concerned that several years after the production has been sold MMS will establish royalty value in excess of the arm's-length contract proceeds, thereby imposing a potential hardship on the lessee. This is particularly a concern for lessees who have long-term arm's-length contracts where sales prices under newer contracts may be higher. If MMS were to establish royalty value based on prices under those newer contracts, (*i.e.*, prices which the lessee cannot obtain under its contract), the resulting royalty obligation could, in some instances, consume the lessee's entire proceeds.

Establishing gross proceeds under an arm's-length contract as the royalty value also has benefits for MMS and those States which assist MMS in the audit and enforcement efforts. The gross proceeds standard will give auditors an objective basis for measuring lessee compliance. It will reduce audit workload and reduce the administrative appeal burden which results when valuation standards are too subjective, particularly when values are determined to be in excess of a lessee's arm's-length contract gross proceeds.

The MMS recognizes, however, that there must be exceptions to the general rule that the lessee's arm's-length contract price should be accepted without question as the value for royalty purposes. One such situation is where the contract does not reflect all of the consideration flowing either directly or indirectly from the buyer to the seller. For example, in return for Seller's reduced price for gas production from a Federal lease, Buyer may agree to reduce the price of oil it sells to the Seller from a non-Federal lease. This agreement is not reflected in the gas sales contract. In the event that MMS becomes aware of consideration that exists outside the four corners of the contract, MMS could accept the lessee's gross proceeds as value, adjusted to reflect the additional consideration. However, in some circumstances the additional consideration may not be easily calculable. Thus, even if the parties are not affiliated and the contract is "arm's-length," MMS may require in paragraph (b)(1)(ii) that the gas production be valued in accordance with paragraph (c), the standards used to value gas disposed of under non-arm's-length contracts. Under these standards, the lessee's gross proceeds still may determine value, but the lessee will be required to demonstrate comparability to other arm's-length contracts. Thus, despite many industry comments suggesting that this section be deleted, MMS is retaining it in the final rules.

The MMS recognizes that some parties may have multiple contracts with one another. This fact alone would not cause a contract to be treated as non-arm's-length. Rather, there must be some indication that the contract in question does not reflect the full agreement between the parties. Although many commenters disagreed with the requirement, the final regulations also include a provision whereby MMS may require a lessee to certify that the terms of its arm's-length contract reflect all the consideration flowing from the buyer to the seller for the gas. The commenters believed that values already were subject to audit and that was a sufficient safeguard. The MMS is retaining this provision because there may be circumstances where an auditor could not reasonably be expected to find other consideration, yet there is good reason to believe it exists. Because of the potentially severe penalties for a false certification, this will assure that no other consideration exists when the certification is received.

In other situations it may not be apparent why an arm's-length contract price is unusually low, yet the lessor should not accept the arm's-length contract proceeds as value. It may be because of collusion between the buyer and seller or improper conduct by the seller, or it could be the result of a patently imprudent contract. Even if the contract is between unaffiliated persons and thus "arm's-length," pursuant to paragraph (b)(1)(iii), if MMS determines that the gross proceeds do not reflect the reasonable value of the production because of misconduct by the contracting parties or because the lessee otherwise has breached its duty to the lessor to market the production for the mutual benefit of the lessee and the lessor, then MMS may require that the gas production be valued pursuant to paragraph (c)(2) or (c)(3). Thus, MMS first must determine that a price is unreasonable; for example, by looking at comparable contracts and sales. Then MMS must determine that the unreasonably low price was the result of misconduct or a breach by the lessee of its duty to market its production for the mutual benefit of itself and the lessor.

A breach of the lessee's duty to market production to the mutual benefit of the lessor includes, but is not limited to, collusion between the producer/seller and buyer, pricing practices found by a court or regulatory authority to be incorrect or fraudently manipulated, or negligence in negotiating contracts.

The MMS believes that new § 206.152(b) establishes a more definable standard than subsection (b) of the first draft final rule at 52 FR 30813 ("whether there may be factors which would cause the contract not to be arm's-length"). Although MMS retains the discretion under this section not to accept an arm's-length contract price as value, which many commenters thought was a necessary provision in these regulations, there are limits on the exercise of that discretion.

Some commenters requested that the rules require MMS to give a lessee an opportunity to respond before making a finding under subsection (b)(iii). As a general matter, the appeals regulations

in 30 CFR Part 290 give the lessee such an opportunity before a final MMS decision is made. However, MMS will give a lessee an informal opportunity to comment when it determines the lessee has breached its duty to market the gas for the mutual benefit of the lessee and the lessor.

If valuation in accordance with the second and third benchmarks in paragraph (c) is required, then the lessee also must follow the notification requirements of paragraph (e)(3).

The suggestion that the Secretary should determine whether each contract is arm's-length or non-arm's-length was implied in the rules. However, the MMS has added a clarifying provision to the final rule which provides that the lessee will have the burden of demonstrating that its contract is arm's-length. This includes overcoming presumptions of control where two parties are possibly affiliated.

Section 206.152(b)(2) of the proposed rules excepted warranty contracts from the general acceptance of gross proceeds as value for arm's-length contracts. One industry commenter recommended that advance MMS approval not be required for the value of gas sold pursuant to a warranty contract since all activities are subject to audit.

Two industry commenters stated that this section should be deleted and that the gross proceeds received by the producer under a warranty contract should be used for determining royalty just as it is for other arm's-length contracts.

Two industry commenters recommended that MMS consider limiting the warranty contracts exception to those contracts entered into before a specific date, such as prior to the mid-1970's.

MMS Response: The MMS has adopted the rule that the value of gas sold pursuant to a warranty contract will be determined by MMS. The issue of limiting the definition of warranty contracts to those executed prior to 1970 was discussed above in the definition of warranty contract.

Most industry commenters strongly disagreed with the language "or which could accrue" contained throughout the regulations. Most companies recommended that the language be deleted. Most commenters stated that the language is too speculative and appears to provide for a second-guess mechanism under which a lessee's sale today can be reviewed in light of knowledge gained at a later date.

MMS Response: The MMS has determined that the phrase "or which could accrue" will be deleted in reference to gross proceeds. Many commenters thought that this phrase would allow MMS to second guess the price which the lessee agreed to in its contract by arguing that other persons selling gas may have received higher prices—thus, more proceeds "could have accrued" to the lessee. This was not MMS's purpose in including the "or which could accrue" language in the proposed rule. Rather, MMS's intent is to ensure that royalties are paid on the full amount to which the lessee is entitled under its contract, not just on the amount of money it may actually receive from its purchaser. However, MMS is satisfied that the phrase "the gross proceeds accruing to the lessee" properly includes all consideration to which the lessee is entitled under its contract, not necessarily just what it actually receives from the buyer. Therefore, the "or which could accrue" phrase was unnecessary. Because it caused confusion as to MMS's intent, it was deleted from the final rule.

One Indian commenter stated that "acceptance of gross proceeds as conclusive evidence of value is an abrogation of the Secretary's fiduciary duties," and that they do not believe "gross proceeds accruing or which could have accrued in an arm's-length transaction should be determinative of value for gas produced from Indian and Federal leases."

MMS Response: As discussed previously, these rules do not provide for conclusive acceptance of gross proceeds except in well-defined and appropriate circumstances. The MMS believes that the rules as adopted with the changes discussed earlier will result in appropriate values for Indian leases, in accordance with the Secretary's responsibilities.

Section 206.152(c).

Gas which is not sold pursuant to an arm's-length contract is required by the regulations to be valued in accordance with a series of benchmarks. Several State, Indian, and industry commenters disagree with various aspects of the proposed benchmark system because they think that it is vague and subjective. Two State commenters stated that because the majority of gas contracts are not arm's-length, the benchmark system proposed by MMS may be too complex. They recommend that "* * * MMS should study the numerous pricing provisions related to gas sales, and on the basis of the study establish Federal floor values which could be used by lessees to compute a minimum royalty and which would be publicly available."

One State commenter believes that the appropriateness of using the benchmark system depends upon whether the benchmarks are fair and reliable. According to this commenter, "The proposed system would not be fair to the royalty owner because it would lead to the potential for abuse and would certainly result in the diminution of royalties. It would be unreliable because the standards are vague, subjective, and subject to abuse. Unlike the proposed benchmarks for oil valuation, we do not believe that the proposed gas valuation benchmarks can be developed into a fair and workable system. Instead, we believe all the factors listed in paragraphs (c)(1) through (c)(4) should be combined into a single valuation standard." One industry commenter stated that although the proposed benchmark system gives producers more confidence in arriving at value, it falls short of providing a method to determine an exact royalty amount when royalty is due.

Many industry representatives and trade groups and one Indian trade group, with minor changes, support the benchmarks and giving them priorities because both will add certainty to valuation determinations. They commend MMS for the recognition of market forces as the principal determinant of value. One commenter stated that "The truest representation of the value of a product is what it can be sold for on the open market, at arm's-length. The proposed benchmarks for valuation of gas under arm's-length contract, non-arm's-length contract, and no contract transactions promote accurate valuation according to the marketplace, and provide rational standards for MMS to follow in monitoring establishment of gas value."

Some commenters stated that the benchmarks should not be prioritized. Rather, value should be determined using the most applicable benchmark. These same commenters recommended combining the first two benchmarks. Other commenters suggested a different ordering of the benchmarks.

MMS Response: The MMS believes that a prioritized benchmark system is a valid and usable system for determining the value of gas not sold pursuant to an arm's-length contract. The system allows the lessee some certainty in determining its own value without dependence upon MMS to establish the value. The suggestion that MMS develop Federal floor values is not feasible or equitable and would be difficult to administer. Therefore, other than some minor modifications, the benchmarks have been adopted as proposed. The MMS believes that the proposed ordering of the benchmarks basically is

correct and equitable to both the lessee and lessor. The MMS agrees that the net-back method will not be used frequently. The net-back analysis should only be used where less complex procedures are not feasible. For purposes of this section, MMS does not consider a situation where either transportation or processing allowances are deducted from an arm's-length delivered sales price for gas as a net back. Such procedures will typically be used for royalty valuation. See the discussion of the net-back method above.

In the draft final rule, MMS combined the first two benchmarks. The standard still was the lessee's gross proceeds, but the lessee was determining comparability against a broader sample which helps ensure that the lessee's gross proceeds reflect the value of the gas in the market, not just what that lessee considers to be the market value.

MMS received many industry comments suggesting that the first two benchmarks be separated again because the lessee's own sales data are a good measure of value and are determinable. Sales data of other persons often are not available, according to these commenters.

MMS Response: The MMS believes that the benchmarks will be retained as revised in the second draft final rule. These benchmarks best ensure that the lessee's non-arm's-length prices are reasonable determinants of value.

Some States and Indian lessors stated that when applying benchmarks, it should not be necessary in all circumstances to consider all other sales in the field. In other instances, it may be necessary to look beyond the field. The MMS agrees that the size of any sample cannot be predetermined but must be based upon the actual circumstances in the field or area.

Three Indian commenters stated that MMS's failure to recognize its obligation to maximize tribal royalties is evidenced in the proposed benchmark system. One commenter stated that "MMS, however, relies on lessee-generated information for that determination and, moreover, relies upon the truthfulness of that information. For example, under alternative number one, MMS proposes to look at the lessee's comparable contracts in the same field or area, notwithstanding possible underselling during the same period. Plainly, this benchmark is so riddled with potential conflicts of interest that it cannot possibly be urged as consistent with the Federal fiduciary duty to maximize Indian oil and gas resources." Another commenter stated that the proposed benchmark system is based on the premise that gross proceeds represents market value and "Gross proceeds have always been considered as the minimum value of production because it has long been recognized that price does not always indicate value. The proposed benchmarks appear to treat gross proceeds as the maximum value." This commenter "believes that gas production should be valued at the highest price posted or paid in the field regardless of whether the contract is arm's-length or non-arm's-length * * *." Finally, one Indian commenter stated that "The lease provisions should prevail and should require the Secretary to formulate and implement procedures for the majority portion analysis. These provisions of the regulations should include a statement which indicates that it will not be applied to Indian Tribal and allottee leases. If, however, these provisions will be applied to Indian tribal and allottee leases, then each benchmark should be considered a reasonable option that the Secretary can utilize to determine value and the Secretary should use the reasonable option which brings the highest revenue to the Indian Tribe or allottee."

MMS Response: The MMS believes that the regulations adopted will permit the Secretary to discharge his responsibilities to the Tribes and allottees because the value determined in accordance with the benchmarks will be compared to the major portion, with royalties due on the higher value. This process is required by paragraph (a)(3), discussed above.

One industry commenter recommended that "the last benchmark of net-back pricing be eliminated from the list because we believe that it would not be routinely used and would be administratively impractical to implement. The reference to any other reasonable method to determine value should be retained."

MMS Response: The MMS disagrees that the net-back method should be deleted. The net-back method is a viable valuation procedure, even though it will not be routinely used.

One industry commenter stated that "* * * depending upon how one treats 'spot sales', the hierarchy of measures which they establish could result in a substitution of a poorer measure for one that represents the best measure of gas value." This commenter recommended placing spot-sale agreements higher in the hierarchy of benchmarks.

MMS Response: The MMS believes that the position of "spot sales" in the benchmark system is appropriate. The first two proposed benchmarks, combined as one in the final rule, are a better measure of establishing value for royalty purposes than spot sales. The rule has been modified to reference "arm's-length" spot sales.

One industry commenter suggests that the wording of the criteria should be amended to avoid ambiguity in their application: "As currently written, these provisions are unclear as to how royalty should be valued if the proceeds under the non-arm's-length contract is not 'equivalent' to the proceeds of the lessee's arm's-length contracts (first criterion) or the arm's-length contracts of other lessees in the field (second criterion)." This commenter "* * * understands the intent of the proposed regulations is that the proceeds under the referenced arm's-length contracts would be used to set royalties, but the regulation does not expressly so state. Indeed, as presently worded, the regulation would suggest that if the non-arm's-length contract was not 'equivalent', then the next criterion in the hierarchy would apply. This ambiguity should be removed."

MMS Response: The MMS disagrees that these provisions are unclear. Under the benchmark system, value will be determined through application of criteria in a prescribed order. In other words, the second criterion would not be considered unless the first criterion could not be reasonably applied. Therefore, if the proceeds under comparable arm's-length contracts in the field are not "equivalent" to the proceeds under the non-arm's-length contract, then the first benchmark does not apply and the lessee should try to apply the second benchmark. If that one also does not apply, then the lessee must apply the third benchmark.

One industry commenter stated that "for making comparisons to arm's-length contracts, when the producer is selling gas to an affiliate and that affiliate is also purchasing gas in the same field or area under an arm's-length contract, the marketing experiences of the parties to the arm's-length contract should be a primary consideration (not just of the volume of gas sold, for example). If the producer under a comparable arm's-length contract is active in the marketplace, it is only reasonable that he would neither accept less nor pay more than the market price for gas. In addition, larger volumes of gas do not always attract a better price than a smaller volume. In some cases, the larger volume is harder to move because it has to be sold in pieces."

MMS Response: The rules, as adopted, require that there be numerous factors considered before an arm's-length contract could be deemed

comparable. The purpose for consideration of these factors is to prevent abuses through application of only a few factors so that contracts containing unusually low or high prices could be used.

Many industry commenters recommended that legal characteristics of the gas be included in the comparability criteria in paragraph (c)(1).

MMS Response: This addition is unnecessary as the section already refers to like-quality gas, which is defined as including legal characteristics.

One industry commenter suggested "an alteration to the proposed regulations under §§ 206.152 and 206.153 to validate any intracompany or affiliate intercompany 'sale', if that transaction is monitored by a regulatory body to determine the market responsiveness of the transaction. Specifically, the commenter suggests that MMS's proposed regulations recognize the FERC's right to determine the justness and reasonableness of (producer) 'first sale' market rates, where those costs are 'passed on' to interstate pipeline sale-for-resale customers via Purchased Gas Cost Adjustment Clauses filed by interstate pipelines as part of their FERC Gas Tariff."

MMS Response: The MMS and FERC have different statutory responsibilities. It is MMS's responsibility to determine the value of production from Federal and Indian leases. Although FERC's actions may be one criterion to consider in determining value, MMS cannot accept them as conclusive.

One industry commenter stated that under the benchmark system it is difficult for an affiliated producer to prove its determination of value, especially with respect to those properties it does not operate. According to this commenter, "The MMS is in the unique position of having access to data, facts, and information that are not readily available to an individual producer. Indeed, attempts to gather such information might violate antitrust laws. Without access to this information on a continuing basis, application of these benchmarks becomes difficult, if not impossible." This commenter recommended "that the burden of proof be shifted to the MMS such that a rebuttable presumption exists that the gross proceeds accrued to an affiliated producer is reasonable value absent a clear showing to the contrary by the MMS using these benchmarks." Other commenters also suggested that MMS gather and make available sales data in certain fields.

MMS Response: Obviously, a lessee will be able to obtain the necessary data on its sales for application of the first benchmark. The MMS also believes that in most fields or areas lessees will be able to obtain data on third-party transactions. If those data are unavailable, the lessee will have to use one of the succeeding benchmarks, but in no event can the lessee use a value which is less than its gross proceeds. Because values determined under the second and third benchmarks must be the subject of a notice to MMS (see § 206.152(e)(3) of the final rules), and because a lessee may seek a value determination from MMS (see § 206.152(g) of the final rules), MMS is satisfied that ultimately the lessee will be able to determine the proper royalty value for its gas.

One State commenter noted that it is inappropriate to put the valuation process into a benchmark straight jacket. In addition, this commenter stated that this paragraph permits a lessee to deliberately price its non-arm's-length disposition at the lowest price it can argue to be "comparable" in the field, even where much higher values may be obtained in other dispositions from the field.

MMS Response: A lessee will have many factors to consider in establishing a price under its non-arm's-length contracts, including tax consequences and regulatory concerns. If the price selected is equivalent to the price under comparable arm's-length contracts which must meet the standards in paragraph (c)(1), MMS is satisfied that the price reflects market value and is acceptable for royalty purposes.

One Indian commenter was concerned that the lessee would apparently make the determination as to whether the "arm's-length" contract under which the comparison is made is, in fact, arm's-length. Also, although the data are subject to monitoring, review, and audit by MMS, the commenter believes that in view of the past experience with audits by MMS, the lessees' reporting of gross proceeds under non-arm's-length contracts would remain on the honor system.

MMS Response: Under most valuation procedures MMS considered for these regulations, it would be up to the lessee in the first instance to apply those procedures and report royalties each month. The MMS has adopted rules which it hopes are clear and comprehensible. It must be assumed that lessees will apply the rules properly considering the likelihood of audit and the possibility of significant interest and perhaps penalties for intentional underpayment of royalties.

One industry commenter interpreted the regulations to require that gas sold pursuant to spot-sales contracts would be valued under the first benchmark, even though "spot sales" are mentioned in a later benchmark. In addition, the commenter stated that the best measure of value for gas sold pursuant to arm's-length spot sale contracts are those contracts and not other long-term contracts which are not comparable.

MMS Response: If a spot-sales contract is arm's-length, the value of the gas sold under it would be determined pursuant to paragraph (b), not by application of the benchmarks.

Two industry commenters stated that the net-back method should be stricken from this section because the net-back method is to be used as a benchmark only when the preceding benchmarks are inapplicable; therefore, to these commenters it seems inappropriate to include it as a presumed priority when any other reasonable method is what is actually intended.

One industry commenter stated that the reference to net-back method needs clarification. Further, the commenter stated that net-back method is simply a means for reconstructing the value of gas to the well and has nothing to do with valuing the disposition of the production at a point remote from the well.

One State commenter noted that there is no logical basis for favoring valuation on the basis of "gross proceeds" less allowable deductions while disfavoring "net-back method". Also, the net-back method is essentially the same thing as "gross proceeds" with allowable deductions.

MMS Response: The MMS believes that the benchmark priority system is appropriate. As explained above in regard to the definition of net-back method, MMS does not anticipate that this method will be used frequently. It generally will be used where the nature of the product has changed (i.e., gas to electricity) and it is necessary to work back from the sales price of the electricity to get a value for the gas.

Section 206.152(d).

Two industry commenters supported the premise that "if the maximum lawful price permitted by Federal law is less than the value determined pursuant to the valuation regulations, MMS would accept such maximum price as value."

One industry commenter recommended deleting the last sentence of this paragraph because gas sold under a warranty contract is valued in the same manner as gas sold pursuant to any other arm's-length contract.

The MMS also received several comments from the Indians and States stating that the rules should specify that State and local price ceilings will not operate to limit the value for royalty purposes. The MMS proposed to include such a provision in the second draft final rule. Some commenters supported this provision. Others, including mostly industry and one State commenter, objected to the provision on the grounds that it is unfair to producers who must be bound by these ceilings when selling their production.

MMS Response: The final rulemaking adopts this paragraph with the addition of a provision that price limitations set by any State or local government will not be considered to be a maximum price permitted by Federal law. Therefore, in some situations, value for royalty purposes may exceed a State or local price limitation. The MMS agrees with those commenters who argued that States and local governments should not be able to limit royalty values, particularly for Indian leases.

The last sentence, which is now paragraph (d)(2), was not deleted because the MMS believes that warranty contracts must be viewed differently than other arm's-length contracts for purposes of value. Unlike arm's-length contracts for gas production which is committed to the contract, the seller under a warranty contract often had the sole authority to determine the origin of the gas production to be delivered. Therefore, the seller had the option not to sell particular production from a Federal or Indian lease under the warranty contract and to sell it at a higher price. Thus, although in some NGPA categories the warranty contract price is the maximum price permitted by law for gas sold *under that contract*, it is the sole decision of the lessee to dedicate gas from Federal or Indian leases to that contract.

Section 206.152(e).

Several industry and State commenters supported establishing a valuation procedure which does not require the prior approval of MMS because it will expedite and simplify the valuation process. Two industry commenters stated that "the time during which the MMS may direct a lessee to pay royalty at a different value should be limited to a specific period so that the lessee is not required to indefinitely retain the records it relies upon to support the value determination." A State commenter noted that "Also, the lessee should be required to retain 'all data relevant to determination of royalty value', not simply the evidence supporting the lessee's claimed value. A lessee should not be allowed to destroy relevant evidence supporting a different royalty valuation, and to retain only that which is self-serving. Also, the regulation should specify that MMS 'will' order compliance when incorrect payments are discovered."

Many industry commenters stated that the provision is too broad and should be limited to fee lands within the boundaries of approved Federal unit or communitized areas. They argued that lessees should not be required to provide information on their other sales prices or volumes.

MMS Response: The MMS has adopted in the final rule a valuation procedure that generally does not require MMS's prior approval. The second sentence has been modified to read as follows: "* * * the lessee shall retain all available data relevant to the determination of value." Lessees are required to retain all records to support value determinations for a period of 6 years, unless an audit is ongoing, as mandated by section 103 of FOGRMA, 30 U.S.C. 1713. The lessee is responsible for complying fully with the regulations by properly valuing lease products, for royalty purposes, in accordance with the appropriate benchmark and to retain all relevant data. The MMS believes that the adopted language clearly states this requirement. The MMS also has adopted in paragraph (e)(2) of the final regulations a requirement that lessees make available to authorized MMS State and Indian representatives, or to the Department's Office of the Inspector General, arm's-length sales and volume data which it has available for like-quality production sold from the same field or area or nearby fields or areas. Because lessees in many instances will be determining value for Federal or Indian production by reference to other sales in the field or area, MMS must have access to the data to the same extent as the lessee to determine whether the lessee's valuation was in accordance with the regulations.

Several industry commenters recommended that MMS delete the requirement of proposed paragraph (e)(2) that a lessee must notify MMS if it uses the third or fourth (now second or third) benchmarks because it is not consistent with MMS's self-implementing concept and current MMS auditing and monitoring rights are adequate to allow the MMS to verify royalty compliance.

MMS Response: The MMS believes that what is now paragraph (e)(3) in the final rule is consistent with its self-implementing policy because lessees that determine value pursuant to paragraphs (c)(2) or (c)(3) of this section must notify MMS of their determination after the fact and not before the fact. In every instance, value for royalty purposes is subject to future audit. This section has been modified so that the notice is due the end of the month following the month the lessee first reports royalties on the Form MMS–2014 using paragraph (c)(2) or (c)(3).

Section 206.152(f).

One State commenter suggested that a "provision should be made for penalties for willful violations and violations made in reckless disregard of royalty obligations."

Industry representatives commented that if the lessee must pay any difference plus interest, MMS should also pay, when applicable, any difference plus any interest statutorily authorized.

MMS Response: If a lessee knowingly or willfully underpays royalty, it may be subject to civil penalties in accordance with FOGRMA, 30 U.S.C. 1719, and MMS regulations at 30 CFR Part 241. With regard to the second comment, MMS is barred by law from paying interest on royalty overpayments but is required by law (i.e. FOGRMA) to collect interest on late payments.

Section 206.152(g).

This paragraph provides that the lessee may request a value determination from MMS. One State commenter noted that "the lessee should be required to submit 'all data relevant to determination of royalty value'. Again, a lessee should not be able to limit its documentary submittal to evidence which 'supports' its claimed royalty value. Also, because of the impact upon the States and Indians, and in light of the existing cooperative and State audit programs, an opportunity should be given for review and comment on royalty determination requests by the potentially impacted State, Alaska Native Corporation, Indian Tribe or Indian allottee." One Indian commenter suggested that in addition to a lessee, a lessor should at any time be able to request a royalty value determination from MMS. This commenter also stated that "this paragraph should require MMS to notify the Tribe or allottee involved of any change in value determinations."

Several industry commenters stated that "the MMS should impose a time limitation on itself to respond to requests for valuations from a lessee, in the absence of which the lessee should not be held liable for interest or

penalties for underpayment of royalty." Further, one industry commenter stated that this section should be used to allow a value determination to be made by MMS which would accommodate the circumstances of a particular lessee when its circumstances do not allow for a definitive value determination under the applicable benchmark. As an example, the commenter stated that, although its gas sales are made under arm's-length contracts, the manner in which the gas is marketed (bundled sales of gas from many leases on the spot market to many purchasers) prevents the tracing of the gas produced from any one lease to a particular sales outlet and, thus, the defining of the gross proceeds received from the sale of the gas produced from that one lease.

MMS Response: The proposed language has been modified to require that a lessee submit all available data relevant to its valuation proposal. The MMS does not consider it practical to include in the regulations a requirement for review by the State or Indian lessor when a value determination is made. This does not make the cooperative audit program in accordance with FOGRMA less effective because MMS will make every effort to assist and consult with States and Indian lessors in valuation matters. The MMS also will make every effort to respond timely to requests by lessees, but this is necessarily dependent upon available resources; thus, MMS cannot agree to a regulatory time limit. The MMS has added a sentence to accommodate the requested flexibility. Therefore, this section now provides that MMS may use any of the valuation criteria authorized by the regulations when issuing a value determination. The MMS has adopted this change because of the continuing changes in the way gas is marketed.

Section 206.152(h).

This paragraph provides generally that the value of production, for royalty purposes, cannot be less than the lessee's gross proceeds less applicable allowances. One industry commenter recommended that the last sentence be replaced with "* * * allowance determined pursuant to these *regulations.*" Another industry commenter recommended that the phrase "less applicable transportation and processing allowances" be expanded to include "and other cost allowances." Some industry commenters recommended deleting these paragraphs entirely.

MMS Response: For reasons discussed earlier in this preamble, MMS has determined that the phrase "or which could accrue" should be deleted from the final rule. The MMS also has modified this section to refer to all applicable allowances, not just transportation allowances.

Section 206.152(i).

This paragraph addresses the lessee's obligation to place lease production in marketable condition. Several State, Indian, and individual commenters agree with the MMS's proposed provision that costs such as those for compression to meet pipeline pressure requirements to place the gas in marketable condition should be borne by the lessee.

One industry commenter was concerned that "marketable condition" is not a constant, but acknowledges the lessee should act as a reasonably prudent operator in marketing its products. Many industry commenters believed that the statutory framework and lease terms provide that royalty is due only on the market value of gas as it is produced at the wellhead and any obligation the lessee may have to render the gas marketable does not entitle the lessor to a free ride on those expenses incurred by the lessee subsequent to production. These commenters also believed the lessee is entitled to deduct all reasonable post-production expenses, including any costs incurred by the lessee to make the product marketable.

Some industry commenters recommended deleting this provision because of the changes occurring in the marketplace. They stated that these costs are subject to negotiation and may be incurred by either party. They believed that it is incorrect to assume that costs incurred by a purchaser have a direct effect on the price to be paid and suggested that the price paid by the purchaser should be used for royalty valuation unless stated specifically in the contract that it was adjusted to cover the subject costs.

One industry commenter noted that the Federal Energy Regulatory Commission has rejected imposition of any national quality standards for gas sold in first sales and has left to each producer-purchaser contract the resolution of which downstream-of-the-wellhead services are to be provided by which party to the contract. Reference was made to FERC Order No. 94A, 22 FERC 61,055 (1983).

Most industry commenters essentially believed that the lessor should proportionately share in all costs subsequent to production, including the costs of placing production in marketable condition. They believed that all so-called "post production" costs should be shared because such costs are incurred to enhance the value of the production from the lease for the benefit of both the lessee and the lessor; proportionate sharing of those costs would yield a value of production that is equal for both lessee and lessor. These commenters believed that royalty is due on the market value of production at the lease or well, and that proportionate sharing of any post-production costs incurred to enhance the value of production is necessary to meet this requirement.

They stated that, under the proposed rules, no allowance is made for the costs of processing residue gas to place it in marketable condition or for any other post-production costs incurred to dehydrate, compress, or gather the product. They further stated that MMS has abandoned the definition of "associated" and "principal" products but the unjustified concept underlying these terms has apparently been retained.

The industry commenters generally argued that MMS improperly sweeps all post-production operations under the holding of the *California* v. *Udall* case. They stated that MMS goes so far as to say that even if a buyer willingly buys raw, unconditioned gas (i.e., if there is an actual market for such gas in the field), any of the costs the buyer incurs to place the gas in "marketable" condition will be added to the purchase price of the gas. They believed that this approach totally distorts the concept of market value at the lease, ignores the holding in *Udall*, and exceeds the reasonable and legal limits of the Secretary's discretion. They further stated that the Secretary should recognize the realities of today's onshore leasing and production and that all post-production costs should be deductible but, at the very least, they believed that off-lease post-production and unusual or extraordinary on-lease post-production costs should be shared proportionately.

The industry commenters stated that the MMS should recognize that manufacturing/processing, transportation, and other post-production costs are legitimate deductions necessary to arrive at the value of production, for royalty purposes, at the lease or well and that such costs should be deductible from the value of all marketable products when necessary to reflect the actual expenditures that enhanced the value of the gas after production. They further stated that if MMS continues to rely on the *Udall* holding, its proper application requires a consideration of the purpose served by a particular facility to

distinguish between costs "incidental to marketing" and manufacturing or transportation costs.

The MMS specifically requested comment on a provision in the draft final rules which would provide an allowance for certain production related costs in extraordinary situations. Many comments were received from industry supporting this provision and suggesting that it be broadened.

MMS Response: Historically, the policy and practice of MMS is that the lessee is responsible for placing the lease product in marketable condition at no cost to the lessor. This practice has been upheld by court decision. The MMS has adopted the suggestion that the language "unless otherwise provided in the lease agreement" be added at the end of the first sentence because there are a few leases in which the lessor shares in such costs. Also, as noted earlier, MMS received many comments that so-called post-production costs should be allowed as a deduction in determining value for royalty purposes. Generally, these costs are not allowed as a deduction because they are necessary to make production marketable.

The MMS received many comments on the section added to the draft final rules that provided for certain extraordinary cost allowances. State and some Indian commenters thought that this section was an unwarranted exception from the requirement that the lessee is obligated to bear the costs of placing gas in marketable condition or that further restrictions should be included, while one Indian commenter endorsed the principle introduced by this new section. Industry commenters generally thought that the new section was a step in the right direction, but thought that the dual qualification process was too rigid. They suggested that the extraordinary allowance be granted if a lessee could meet the requirements of either paragraph (i) or (ii). Industry commenters also suggested that the reference to 400 meters be changed to 400 feet because that is the point at which costs begin to escalate significantly. They also thought that use of the term "unique" was inappropriate because it would limit the applicability to only the first lessee with a particular type of extraordinary operation. Some commenters also requested that, when approved, the allowance extend beyond one year.

MMS Response: After carefully considering all of the comments on this issue, MMS has decided not to retain the extraordinary cost allowance provision in the final rules. It was concluded that the burdens placed on the lessee by the environment in which it must operate were matters taken into account at the time the lease was issued, affecting the amounts of bonus bids and, in some instances, the royalty rate. The MMS has concluded that if a lessee is entitled to further economic relief, it is inappropriate to provide that relief by adjusting the value of the production by methods which are inconsistent with MMS's historical practice and interpretation of the lessee's express obligation to place production in marketable condition at no cost to the lessor. Rather, the more appropriate mechanism is for the Department to consider royalty rate relief in circumstances where it is warranted for existing leases, and for lessees to consider such factors when entering leases in the future under royalty reduction procedures which can be adjusted to the price and cost circumstances prevailing on a particular lease and at a particular time.

Section 206.152(j).

One industry commenter stated that this provision, as proposed, goes against the firm notion of gross proceeds and grants an exception only in situations where the lessee is entitled to a contractual price increase. According to the commenter, this ignores the reality of the existing situation in the gas marketplace where many purchasers have unilaterally suspended contractually obligated takes and payments under the pretext of "force majeure." The commenter believed that it may be more prudent in many instances to diligently renegotiate contracts which would be in the best interest of the lessee and lessor. The commenter further stated that such renegotiations may take place over an extended period of time during which the lessee may be receiving less than its contract price for its gas; therefore, under these circumstances, where the lessee is taking documented, reasonable measures to force purchaser compliance and to favorably renegotiate its contract, the lessee should only be required to pay royalty on the gross proceeds it receives from the purchaser for its gas.

The industry commenter also stated that rapid deterioration of purchasers' markets has caused unilateral price actions; further, difficult and protracted negotiations have ensued during which proceeds are less than the contractually agreed-to price. The commenter mentioned that lengthy litigation is a last resort. The lessor benefits from continued production at market prices pending final resolution and, therefore, a more realistic approach would be to accept proceeds if proceeds were not less than the prevailing market price in the field or area.

One Indian commenter foresaw the ability of willing parties to amend contracts to compromise payments that have accrued to or would accrue to the lessee under its existing contract. The commenter believed that, of course, such contract revisions cannot be avoided in all instances but, if they are made, the lessee should not be able to compromise the lessor's right to receive royalty payments pursuant to the original contract and not under any amendments that have compromised the price.

One industry commenter argued that MMS has neither the authority nor the expertise to determine "the highest price a prudent lessee can receive through legally enforceable claims under its contract." The commenter also suggested deleting most of this section with the exception of the third sentence (of the second draft final rule) and the requirement that the lessee must pay royalties on all volumes of production which are sold.

One State commenter expressed that, by freely allowing contract revisions (even retroactive ones), MMS would provide a gaping loophole in the requirement that a lessee seek to enforce its contract "entitlements." The commenter believed that when a lessee is challenged by the MMS about not enforcing its contract rights, there are few buyers who will not agree to assist their sellers by retroactively amending their contracts to the lower amount actually paid.

MMS Response: The MMS has adopted this provision with only minor changes from the original proposal. However, the paragraph does not preclude the approach suggested by the commenters. This section requires a lessee to pay royalty in accordance with the contract price, but also expressly recognizes that contract prices may be amended retroactively. The MMS is aware that often there is a process of negotiation that occurs before the contract is formally amended and that lower payments may be received in the interim. Royalties may be paid on the gross proceeds received by the lessee until all attempts to force the purchaser to renegotiate the contract or to comply with the existing contract are exhausted, provided the lessee takes proper or timely action to receive prices or benefits to which it is entitled, or to revise the contract retroactively. Thus, the MMS will accept a renegotiated or a revised contract price if the main reason for renegotiating or revising the contract is not solely to reduce royalties.

However, if a higher price can be legally enforceable under a contract and the lessee is not diligent in obtaining that price, royalties will be due on that higher price.

Two industry commenters suggested that the phrase "the lessee will owe no additional royalty until monies are * * * received" be reworded to insert the phrase "unless or" before the word "until". They believed that it is contrary to the concept of "proceeds received" to attempt to assess royalty on proceeds which have never been received when only part payment is made to the lessee in contract disputes.

MMS Response: The MMS adopted the suggested change in the final regulation.

One commenter stated that retroactive application of contract revisions may be inconsistent with FOGRMA because it requires that royalties be keyed to production and not to sales. The commenter further stated that timely application by a lessee for a price increase should not be sufficient to allow a lessee to defer payment of royalties until monies or consideration resulting from the price increase are received. The commenter stated that a lessee should be required to go further in pressing its claim for benefits accruing or which could accrue to the lessee under the contract before nonpayment of additional royalties is allowed, perhaps even to the point of instituting litigation.

Two industry commenters stated that the "prudent operator" clause is unnecessary because it is in the lessee's own best interest to obtain the maximum amount of revenue possible under the terms of the applicable contract. They believed that the inclusion of a "prudent operator" standard in the regulations contradicts the concept of using market proceeds and merely serves to impose an obligation on MMS auditors to evaluate and second-guess the prudency of the actions of lessees. They also believed the "prudent operator" clause opens the door to regulatory uncertainty and the basing of royalties on amounts in excess of the market value of gas. They believe the provision should be eliminated.

MMS Response: Although most lessees will try to maximize the amount of revenue possible under the terms of the applicable contract, not all will be diligent. Therefore, MMS must protect the Federal Government's and Indian's interests by using the "prudent operator" clause.

Two industry commenters stated that they disagreed with MMS's attempt to enforce contract entitlements. They believed that, as proposed, royalties would be based on the highest price obtainable and would serve to encourage the pursuit of price increases, rather than the proper payment of royalties based on the prices received. They also believed that this provision is contrary to MMS's own statement that "value is best determined by the interaction of competing market forces, the 7/8ths or 4/5ths owner is going to negotiate the best deal he/she can to further his/her own interest, advancing those of the royalty owners as well;" therefore, they recommended this provision be deleted.

MMS Response: The MMS does not view this provision as contrary to the approach it has taken to determine values. It would be inconsistent with the theme of these regulations for MMS to not require full compliance with its principal value determinant.

Section 206.152(k).

The MMS has added a new paragraph (k) to the draft final rules which provides that in those situations where MMS may make a preliminary value determination in the course of monitoring compliance with these regulations, that determination will not be binding until MMS has done an audit and the audit formally is closed. The MMS intends to issue further guidelines on when an audit is closed.

Several industry commenters thought that any determinations by MMS should be binding.

MMS Response: The MMS is adopting this section. The MMS cannot be bound by a preliminary determination which may not be based on a full array of information as would be available during an audit.

Section 206.152(l).

Two individual commenters stated that this paragraph, which was proposed as paragraph (k), appears to preclude the lessor or overriding royalty interest owner from obtaining any information to substantiate the transportation and processing costs he is being charged. Therefore, they are opposed to this provision.

One Indian commenter stated that this provision perpetuates restrictions upon disclosure of data required in reviewing a lessee's computation of royalty. The commenter believed that Indian Tribes should be provided copies of all reports submitted by their lessees to MMS, upon request. The commenter also stated that the Tribes need this information to monitor lessees as well as responsible Federal agencies, and requested that the information provisions be revised to ease release of this information to Tribes subject to reasonable restrictions upon disclosure to third parties.

One Indian commenter stated that this provision should make it clear that all information will be available to Indian lessors and States without going through the Freedom of Information Act procedures. The commenter also stated that to place such a burden on Indian Tribes and States who are the beneficiaries of the production would not be reasonable.

One Indian commenter stated that the scope of this provision is so broad that it effectively denies Indian Tribes and allottees and States access to the information required to assure that valuations are properly determined. The commenter reminded MMS that the intent of the FOGRMA is to provide all interested parties, including Indian Tribes and allottees and States, the data necessary to conduct audits, oversee the audits performed by MMS, and in the case of Indian Tribes, to manage their mineral resources and to plan for governmental operations. The commenter stated that it could not understand why the MMS included this provision inasmuch as the almost unanimous vote of the Royalty Management Advisory Committee on a resolution recommending that the regulations provide Indian Tribes access to data demonstrates that industry also understands that Indian Tribes require and should have access to such data.

MMS Response: The intent of this paragraph is not to preclude access to information for those who are working in concert with the MMS to the extent allowed by law, but rather to ensure the lessee that disclosure of proprietary information is in accordance with established procedures. There are statutory restrictions on providing certain types of information to persons outside the Department of the Interior, and MMS must act in accordance with those limitations. States and Indians with FOGRMA delegations and cooperative agreements will have broader access to information which otherwise could not be released. This section is not intended to limit in any manner an Indian lessor's right to obtain information directly from the lessee or from MMS to the extent provided in lease terms or applicable law. In the draft final rule, MMS changed the phrase "will be maintained" to "may be maintained." Many industry commenters were concerned that this change would allow MMS to release proprietary information. This was not MMS's intent, and to avoid any confusion the term "will" has been substituted for "may."

Section 206.153 Valuation standards—processed gas.

This section is almost identical to § 206.152 and the comments received were also similar. Therefore, MMS will not repeat the section-by-section analysis or response to comments for this section. Interested persons should refer to the corresponding part of § 206.152.

Section 206.154 Determination of quantities and qualities for computing royalties.

Paragraph 206.154(a) establishes procedures for determining the volumes and quality of unprocessed gas that must be used in computing royalties. Three industry commenters were opposed to MMS or BLM assigning a point of royalty settlement that is different from the lessee's sales point where the transfer of title occurs, as stipulated in the lessee's arm's-length gas sales contract.

One industry commenter stated that MMS must recognize that the proper point of royalty valuation is the lease and that MMS cannot confiscate the entrepreneurial profits which are added by downstream activities of the lessee and are not part of the value of the production in which the lessor is entitled to share.

Two industry commenters stated that this provision is inconsistent with the statutes, lease terms, and the proposed gross proceeds valuation methodology.

MMS Response: Historically, MMS has required that royalties be computed on the basis of the quantity and quality of unprocessed gas in marketable condition as measured on the lease unless prior approval to measure off-lease is obtained from BLM or MMS, for onshore and offshore leases, respectively. This will assure the lessor that the total production from the lease is accounted for. This provision is consistent with the statutes, lease terms, and the gross proceeds valuation methodology because this provision establishes a point of royalty measurement upon which a quantity, at a quality, is valued for royalty purposes.

One industry commenter stated that paragraph (a)(2) would adjust the price received under an arm's-length contract in the event that there were some line loss between the point of royalty settlement and the point of sale. The commenter stated that the arm's-length contract whose quantity provisions MMS would modify requires the purchaser to pay only for production which is actually received but, by adjusting the quantity figures, MMS is, in effect, amending, solely for royalty purposes, the deal between the lessee and the purchaser.

MMS Response: The MMS must structure its royalty accounting program to be in concert with the administration of oil and gas leases by the other components of the Department of Interior's full mineral leasing program. As such, this provision simply recognizes that it is the measured production, as required by BLM or MMS operations personnel, that must be valued for royalty purposes.

Paragraph 206.154(b) establishes the procedures for determining the quantity of residue gas and gas plant products on which royalty must be paid. One industry commenter suggested that this provision be reworded to indicate that "net output" means the production from the plant and not tailgate deliveries. The commenter stated that net monthly output could be interpreted to mean plant tailgate deliveries. The commenter said that if this were the case, royalty would not be paid on plant products until they were sold.

Another commenter stated that, in current marketing situations, it is impossible to avoid temporary storage of gas plant products. The commenter said that purchasers are nominating volumes they will purchase which may or may not coincide with production. The commenter also stated that royalties should not be paid on production stored until it is sold because, in that manner, value can be properly determined. The commenter said that residue gas must be delivered as produced because there will normally be no means by which the lessee can store it.

MMS Response: As adopted at § 206.151, net output means the quantity of residue gas and each gas plant product that a processing plant produces. Therefore, royalty is due on residue gas and gas plant products at the time they are produced.

One industry commenter stated that this *methodology* of net output is contrary to the MMS concept of gross proceeds accruing from the *sale* under an arm's-length contract. The commenter said that many gas plants place the net output in temporary storage awaiting sales and that the net output of gas plant products is not valued until removal from temporary storage and sale. The commenter stated that, if this paragraph is implemented, it is probable that there would be many MMS audit exceptions as a result of the valuation of net output rather than actual sales from temporary storage facilities.

One industry commenter stated that it may be difficult to establish the value of the product that remains in storage. The commenter also stated that, if the lessee is forced to compute a value, then the concept of "gross proceeds" becomes meaningless because the lessee, in effect, becomes the purchaser of the product. The commenter claims that when the product is disposed of at a later date, MMS would have no basis on which to review the proceeds eventually realized by the lessee for sale of the production.

MMS Response: The MMS believes that there is no conflict between the gross proceeds methodology and these provisions. It must be recognized that it is the volume of gas leaving the lease which must be valued, for royalty purposes, and the use of the cumulative value of any condensate recovered downstream of the point of royalty settlement without resorting to a manufacturing process, plus the residue gas and gas plant products, less applicable allowances, is the method by which this is done when gas is processed. Therefore, all such condensate, residue gas, and gas plant products attributable to this production must be used in determining value. Adjusting the gross proceeds to reflect the net output attributable to the lease would be accomplished by applying the unit value established by the actual product sales to the portion of the net output attributable to the lease, which was not sold in the month produced. Likewise, if the quantity of any product sold during a month is greater than the net output attributable to a lease because of sales of a quantity of product which was previously placed in storage, the gross proceeds would be reduced. If proper documentation is maintained by the lessee and made available to MMS during an audit, no audit exceptions should result.

Paragraph 206.154(c) establishes the procedure to allocate the net output of a processing plant back to the leases. One industry commenter proposed that the language be modified to reflect the view that any lease allocation method agreed to between a seller and purchaser and/or processor will be deemed acceptable, including methods where the parties are affiliates, subject to review by MMS.

One industry commenter suggested that any contractually prescribed method should be deemed acceptable in preference to "a generally accepted lease allocation method", which may be a contention in the future.

An industry group recommended that MMS recognize the validity of allocation methods approved by BLM.

MMS Response: The MMS has adopted a specific procedure for

allocating the net output of a processing plant back to leases. The method adopted is the method prescribed by the current regulations. The MMS believes that this procedure is the predominant method used by industry. However, MMS has adopted a provision in the final rule whereby a lessee may request approval of other allocation methods.

One industry commenter suggested the addition of the sentence "This same methodology shall also apply to allocations among unitized and communitized areas." The commenter believed that this inclusion of units and communitized areas was intended.

One Federal agency commenter suggested the modification of the proposed rule to include a tight definition of the term "generally accepted." The commenter said this term should be defined as an allocation method used consistently by a majority of gas plant operators and this method must be in accordance with the method promulgated by an industry group such as COPAS.

MMS Response: The final rule adopted limits the use of methods other than the one prescribed, as outlined above. Therefore, the term "generally accepted" has been eliminated from the final rule. Unitized and communitized areas will be covered under this provision and MMS does not deem it necessary to add a specific reference.

Paragraph (d) prohibits deductions from royalty volume or royalty value for actual or theoretical losses. Indian and State commenters agreed with this provision, stating that no deductions should be allowed for actual or theoretical losses prior to the point of royalty settlement.

Many industry commenters stated that line losses are attributable to several factors. They stated that line losses are partially attributable to metering differences and partially attributable to physical factors, and they are a part of the reality of oil and gas field operations. They believed that the provision should be amended for both valuation and allowance purposes to provide a credit for line loss not attributable to negligence, because such a change in the regulations would be in conformance with FOGRMA. They stated that allowing losses would also make the allowance regulations conform to the overall market orientation underlying the valuation proposal, because costs associated with line loss are commonly explicit components of arm's-length contracts and tariffs.

MMS Response: When a volume of gas, upon which royalty is due, has been determined in accordance with the requirements of MMS's offshore operations and BLM's onshore operations personnel, MMS must collect royalty upon its value. Likewise, it is imperative that the quantities of residue gas and gas plant products attributable to a lease be determined once, and only once, and royalty paid on those volumes. This is consistent with the historical practice of the Department. The treatment of line losses as a cost of transportation is addressed later in this preamble.

Section 206.155 Accounting for comparison.

In the proposed rule, MMS required so-called dual accounting only in situations where the lessee (or a person to whom the lessee transferred gas pursuant to a non-arm's-length contract) processes the lessee's gas and, after processing, the residue gas is not sold pursuant to an arm's-length contract.

Some industry commenters stated that the removal of the requirement to perform dual accounting for OCS gas sales where the residue is sold pursuant to an arm's-length contract is a substantial improvement in the regulations which will reduce paperwork for both MMS and lessees.

Another industry commenter endorsed the MMS's decision to abolish "accounting for comparison" (more commonly known as dual accounting) for processed gas except where the lessee has no arm's-length contract for the sale of residue gas or where dictated by lease terms. The commenter had no objection to such value comparison if the gas is processed in a lessee-owned plant, and the residue gas is not sold under an arm's-length contract.

Several industry commenters stated that they believed the continuation of dual accounting for most processed gas in non-arm's-length residue sales is unnecessary. They said that because the residue gas will be valued pursuant to MMS's guidelines in both arm's-length and non-arm's-length situations, the elimination of dual accounting for one and not the other will create substantial administrative effort when both arm's-length and non-arm's-length residue sales occur at the same plant. They also stated that as long as a substantial portion of sales from a plant continue to be arm's-length, which they propose to be set at 25 percent or higher, elimination of the dual accounting requirement for the remainder of that plant will not result in any lesser degree of accuracy in determining market value.

One industry commenter stated that this provision stops short of being totally consistent with other MMS proposals on gas valuation. The commenter said that inasmuch as MMS has determined that there is an acceptable method to value residue gas sales under non-arm's-length or no-contract situations, there is justification for eliminating dual accounting for residue gas valued in accordance with this provision, regardless of the types of sales contracts.

Another industry commenter believes that royalty is due only on the market value of gas, associated products, and oil because they are produced at the wellhead. The commenter stated that the concept of dual accounting under which MMS assesses royalty on either the value of the principal and associated products after processing or the value of the unprocessed gas, whichever is higher, is fundamentally unfair.

Two industry commenters recommended that this paragraph be deleted because dual accounting results in higher value to the lessor than the lessee. They believed that the value should be based upon the value of the unprocessed gas at the lease if the gas is not processed, or upon net realization (gross proceeds minus allowances) if gas is processed, and not the higher of the two. They stated that, because the proposed method is applied after the fact, only the lessee bears any losses. Another commenter stated that it would be unfair and inequitable to require the payment of royalty on a basis higher than the value of the processed gas when the value differential is not because of the negligence or imprudent actions on the part of the lessee but instead represents the current market fluctuations for the gas plant products and residue gas. The commenter also suggested the addition of the word "applicable" before the word allowances in paragraph (a)(1).

MMS Response: To ensure that the Federal and Indian lessors receive the proper royalties, MMS continues to believe that dual accounting must be used where the lessee, or a person to whom the lessee has transferred gas pursuant to a non-arm's-length contract or no-contract situation, processes the lessee's gas and, after processing the gas, the residue gas is not sold pursuant to an arm's-length contract. This provision will encourage the producer under a non-arm's-length contract to obtain the highest price for the gas produced whether that higher price comes from processing the gas or whether it comes from selling the unprocessed gas.

One industry commenter stated that dual accounting imposes an unreasonable accounting burden on both the lessee and the Department and

allows the Department to effectively second-guess the lessee each month on the decision to process the gas.

MMS Response: The MMS's current policy is to require dual accounting for all offshore gas processed by the lessee, including affiliates, and for onshore gas processed by the lessee in a lessee-owned plant or onshore gas sold to an affiliate of the lessee and that affiliate processes the gas. Because the requirement for dual accounting adopted in the final rule eliminates some of the current requirements, the accounting and administrative burden should be reduced for both industry and MMS.

Proposed paragraph (b) specifically provided for dual accounting where required by the terms of a Federal or Indian lease. Industry commenters agreed with this provision provided that the lease terms, whether Indian or Federal, specifically require dual accounting.

Three Indian commenters stated that dual accounting should be required for all Indian leases whether specifically stated in the lease terms or not. They stated that this is needed for the Secretary to fulfill his trust responsibilities to the Indians.

MMS Response: The MMS has adopted this provision essentially as proposed.

Section 206.156 Transportation allowances—general.

The MMS received a large number of comments from the States, Indians, and industry on this section of the regulations. Comments on transportation allowances which did not relate to any specific section of the regulations were considered to be addressed to the General section of the transportation regulations, § 206.156. These comments addressed four broad issues—validity issues, adequacy/inadequacy issues, post-production costs and other cost issues, and issues relating to the definition of terms.

1. One issue concerned the validity of any transportation allowances whatsoever and proposed that MMS should not consider transportation allowances as valid deductions from royalty computations, or only consider such allowances if transportation is necessary for lease development or results in a higher royalty.

Some State and Indian commenters stated that transportation allowances should only be granted when necessary (1) to market the product, (2) to promote development of the lease, (3) to obtain a higher royalty value, (4) to enhance offshore development, or (5) if the royalty revenue increases enough to offset the allowance. The key word in these comments was "necessary." None of the parties believed that any transportation allowance should be given if it was not necessary. A State representative suggested approving the transportation allowances on the basis of individual cases only if necessary.

One Indian commenter stated that only the reasonable, actual, and necessary transportation costs from a lease boundary to a point of sale should be allowed and the costs should not include any profit or allocated overhead from the regional or home office.

One Indian commenter stated that the regulations should establish transportation allowances as an exception, not as a rule.

Several Indian commenters stated that MMS should not grant any transportation allowances as a deduction against Indian royalties. The commenters opposed the transportation allowance for Indian leases for such reasons as (1) Indian leases do not provide for transportation as a deduction from royalty, and (2) transportation allowances have never been granted for Indian leases.

The Indian commenters emphasized that MMS must take into account its trust responsibility to the Tribes and allottees in preparing valuation regulations. These commenters advised that MMS must protect the Indians' interests.

The MMS received comments from Tribes and State representatives asserting that the royalty interest should be cost-free. These comments all stressed that royalties have always been and should always remain free of costs. All commenters believed that the costs of making lease production marketable, including transportation, are the responsibility of the lessee. A State representative suggested that MMS "* * * keep the door closed on all presale costs. Once it's opened, it's hard to let only the chosen ones in."

MMS Response: Based on Interior Board of Land Appeals decisions, Solicitor opinions, and judicial decisions, it has been DOI policy since 1961 to grant transportation allowances when production is moved to a sales point off the lease in order to calculate the value of the product at the lease. Furthermore, the IBLA has specifically ruled that transportation allowances must be granted for Indian leases. *Kerr-McGee Corp.*, 22 IBLA 124 (1975). Therefore, the transportation allowance regulations being adopted are consistent with past practice and consistent with the Secretary's responsibility to the Indians. The MMS believes generally that royalty should be free of cost. However, values may need to be adjusted for transportation and/or processing to determine value at the lease. The MMS believes that the policy of granting transportation allowances to properly value lease production is appropriate and should continue.

2. Another issue concerned the adequacy or inadequacy of the proposed gas transportation regulations in general. Some commenters believed that the regulations were generally deficient, while others pointed to specific instances where changes should be made to improve their specific applicability. Following is a brief summary of these types of comments.

Some industry and State respondents commented on the flexibility of the regulations. One industry commenter stated that the regulations should be modified to embrace both traditional and nontraditional transportation arrangements. Another industry commenter suggested that the regulations should accommodate changes in transportation and marketing. One State representative expressed concern that the regulations do not address new marketing opportunities related to the unbundling of pipeline services and market area gas storage which allow for greater sales levels in higher priced periods.

The MMS received comments from Tribes regarding the relationship between the lease terms and the regulations. One commenter requested that the regulations not be allowed to change the lease terms. Another commenter stated that the regulations should be consistent with the lease terms. A third commenter stated that, where the lease is silent, the regulations should not allow the gross proceeds received under an arm's-length contract to be reduced for transportation costs.

The MMS received comments regarding the effect of transportation allowances on revenues. A State organization stated that MMS should develop simple and concise rules that do not adversely affect Western States' revenues, and which will allow for more effective auditing. One Tribe requested that the royalty rate not be decreased in effect by redefining the rate basis. One local community commenter stated that the proposed regulations should not be issued without assessing the impact on the school or other local subdivision budgets. Five local community commenters opposed the proposals on the grounds that deductions would be taken too liberally, or perhaps royalty payments would be eliminated completely.

One Tribe stated that the regulations should apply only to new leases. One

industry party and one Tribe recommended that a separate set of regulations be developed for Indian lands only.

MMS Response: The MMS believes that the regulations are complete and are sufficiently flexible to apply to the different types of gas transportation arrangements that might arise in the future. MMS is aware of nothing in the transportation allowance regulations that would change the terms of any Indian mineral lease. The MMS agrees that the procedure for determining a transportation allowance places initial reliance on the gas industry. However, this program will be under continuous review and oversight by MMS. Thus, the ability to effectively review, evaluate, and audit transportation allowances has been maintained under the new regulations. The MMS believes that the consideration of transportation costs is necessary to determine the value of lease production at the lease.

3. One broad issue discussed by commenters was the deduction of post-production costs and other costs from royalty payments.

The MMS received many comments concerning the issue of post-production costs as an allowable deduction from royalty. Many industry commenters commented in favor of allowing all post-production costs to be deducted from the royalty portion.

MMS Response: This section of the regulations addresses only transportation allowances. The issue of post-production cost allowances is properly addressed in other sections of the regulations.

4. One issue commented on by several commenters concerns the definition of terms used in the regulations.

Some industry respondents commented that the term "reasonable" should be deleted from this section. One industry concern was that this term will only result in a wide diversity of opinion as to what a reasonable cost is.

One industry representative suggested that the term "actual" should be deleted for clarification purposes.

The MMS received several comments from the States, Indians, and industry suggesting that the term "remote from the lease" should be defined or changed. An industry representative stated that many terms, such as "remote" and "field gathering" beg for definition. This commenter requested that a distinction between "gathering" and "transportation" be delineated, for royalty purposes, and also suggested that the term "remote" should mean anything outside the lease boundary. Two industry commenters identically recommended changing this phrase to "first available market."

MMS Response: The term "reasonable" is defined by the Merriam-Webster New Collegiate Dictionary as "moderate, fair." The MMS intends that this same definition apply in the determination of a transportation allowance.

The MMS agrees that the term "gathering" should be defined. The definition of "gathering" has been included in § 206.151 and was discussed above. The phrase "remote from the lease" has been deleted from the final rule which uses the phrase "off the lease."

Section 206.156(b)

The MMS received several comments on paragraph (b), proposed as paragraph (c), which requires that transportation costs be allocated among all products transported. The proposed paragraph also provided that no allowance may be taken for transporting products which are not royalty-bearing.

Industry commenters recommended deletion of this paragraph. One industry representative stated that transportation costs represent the rate for moving the aggregate product stream. The industry commenters stated that allocation is an administrative burden and is unfair and inequitable, and it is inequitable to require allocation of transportation costs for the incidental movement of nonroyalty-bearing products.

One industry representative recommended that transportation costs be taken as an aggregate charge against the value of the full product stream.

One industry representative stated that this paragraph adapts an unrealistic transportation deduction exception by not allowing a transportation deduction for nonroyalty-bearing products. According to this commenter, practical realities dictate that nonroyalty-bearing products entrained with gas be transported.

Other industry commenters recommended that allowances be granted for nonroyalty-bearing substances up to 30 percent of the volume of the transported stream.

MMS Response: The MMS does not agree with the commenters' proposal that the cost of transporting nonroyalty-bearing substances should be shared by the lessor in all instances. However, upon review, MMS has recognized that it is appropriate to provide an allowance which includes the costs of transporting certain nonroyalty-bearing substances such as waste products, including water. For example, there may be circumstances where transportation of water along with the royalty-bearing portion of the production is necessary. For other than waste products, the final rule provides, however, that prior MMS approval is required before an allowance may be taken for the costs of transporting non-royalty-bearing substances.

The MMS is aware that the allocation of transportation costs in situations where more than one product is involved could be burdensome. However, it is MMS's experience that the allocation requirement would only be burdensome in a few instances where the products being transported are not all in the same physical state.

Section 206.156(c).

Paragraph 206.156(c) was proposed as paragraph (b). The MMS received a large number of comments on this provision which limited the transportation allowance to 50 percent of the value of the product transported. The comments on this paragraph related to one major topic: Whether the limitation should be eliminated or retained.

Industry commenters and trade group representatives stated that MMS should abolish the 50-percent limitation for one or more of the following reasons: (1) If the proposed limit is retained, the exception to the 50-percent limitation may not be exercised freely enough; (2) The 50-percent limit could impose a serious economic deterrent to the development of frontier areas; (3) The limitation figure is strictly arbitrary and totally unjust to the lessee/working interest owners; (4) It would be a rare case when a natural gas transportation cost would come close to the proposed 50-percent cap, much less exceed it; and (5) The proposed 50-percent cap is a deviation from the stated intent of MMS to base royalty valuation on "gross proceeds."

Several commenters stated that MMS should approve requests for transportation allowances exceeding the 50-percent limitation upon submission of adequate documentation by the lessee.

Many industry commenters and trade groups stated that MMS should allow lessees to carry forward transportation costs otherwise allowable (except for the 50-percent limitation) from the current year to subsequent years. According to the commenters, this procedure should be applied to all transportation systems, but it would be especially important in the frontier areas. One commenter from industry stated that MMS should not permit roll forwards because it would create paperwork and allow the lessees to use the 50-percent limit permanently.

Industry commenters and trade groups stated that the 50-percent limit could be a disincentive for exploration and for building transportation systems when costs exceeding the cap may not be recovered.

One State representative stated that the 50-percent limitation provides incentive to keep costs under control while allowing some relief for legitimate hardship conditions.

Several industry commenters suggested that MMS should specify the conditions for which MMS will approve an allowance in excess of 50 percent. Three Indian commenters and one Congressman recommended that the standard should be whether the allowance in excess of 50 percent is in the best interests of the lessor.

MMS Response: The MMS has decided generally to retain the 50-percent limit on transportation in the final rule. For unprocessed gas valued pursuant to § 206.152, the transportation allowance deduction based on a selling arrangement is limited to 50 percent of the value of the unprocessed gas determined in accordance with § 206.152. For processed gas, the transportation allowance for gas plant products or residue gas based on a selling arrangement is limited to 50 percent of the value of the residue gas or gas plant product determined in accordance with § 206.153. Natural gas liquids are considered one product.

A lessee may request, and MMS may approve, a transportation allowance in excess of 50 percent if the lessee demonstrates that the costs incurred were reasonable, actual, and necessary. Thus, the 50-percent threshold merely gives MMS the ability to monitor more closely the situation where the allowance based on reasonable actual costs will exceed that limit. In no event may the allowance for any lease product equal 100 percent of the value of that product. MMS received comments that the transportation allowance in excess of 50-percent should be allowed only when it is in the "best interests of the lessor." MMS did not include this standard because it is too subjective. The requirement that the costs be "reasonable, actual, and necessary" is sufficient to protect the lessor's interests.

The MMS is not including in the final rule any specific standard as to when the 50-percent limit may be exceeded. This will require a case-by-case determination.

Section 206.156(d).

The MMS received comments from industry representatives on this paragraph (d), which recommended that MMS should be required to pay interest on overpayments by lessees to the extent permitted by law.

MMS Response: The MMS has no legal authority to pay interest to lessees on their overpayments.

Section 206.157 Determination of Transportation Allowances.

Paragraph (a) of the regulations addresses transportation allowances where the lessee has an arm's-length contract for transportation services. The MMS received many comments on this paragraph of the regulations. Although there were comments on a wide variety of subjects, 11 principal issues were addressed: Acceptance of arm's-length transportation agreements; excessive penalty and retroactive approvals; MMS's approval of the transportation allowances; acceptance of transportation reduced prices; status of currently approved allowances; required filing every 12 months; allowance on nonroyalty bearing production; allocation of transportation costs; suggested deletion to regulations; period for filing a proposed allocation; MMS payment of interest on lease overpayments; and clarification of the conversion process.

1. Acceptance of arm's-length transportation agreements as an accurate indicator of reasonable, actual costs.

Industry commenters supported the proposal to accept arm's-length contract costs as a reasonable transportation allowance. These commenters explained that arm's-length contracts provide an accurate indicator of "reasonable actual costs" because they reflect the true costs to the lessee for transporting production to a sales point downstream of the lease.

Some Tribes expressed serious concern about the validity of using arm's-length contracts as an indicator of value. One Tribe stated that arm's-length contracts are not a bona fide indicator of reasonable, actual costs. One Tribe expressed doubt that there can ever be an arm's-length contract between companies in the gas industry. Another Tribe stated that arm's-length contracts should not be accepted unless a thorough analysis of lessee/purchaser affiliations is undertaken. One Tribe also expressed considerable doubt that the criteria used by MMS would assure that an arm's-length contract is present in any given case. An Indian trade organization stated that MMS should establish appropriate criteria to determine the accuracy and reasonableness of allowances granted under arm's-length contracts (and non-arm's-length contract situations).

MMS Response: The MMS currently uses the payments made by a lessee under an arm's-length transportation agreement as an accurate indicator of reasonable, actual costs. The MMS has determined that payments made under arm's-length contracts are the best available indicator of reasonable, actual costs incurred by the lessee. MMS has added a sentence clarifying that the lessee has the burden of demonstrating that its contract is arm's-length. MMS also has added two new paragraphs to address situations where a contract, though arm's-length, should be treated as non-arm's-length pursuant to paragraph (b). The first situation is where MMS determines that the transportation contract reflects more than the consideration transferred from the lessee to the transporter for the transportation; i.e., the transportation cost has been inflated. The second situation is where the MMS determines that there has been misconduct by or between the contracting parties, or because the lessee otherwise has breached its duty to the lessor to market the production for the mutual benefit of the lessee and the lessor. The types of misconduct or breach of duty which would trigger application of these provisions are essentially the same as those discussed above in the valuation section.

2. Disallowance of a transportation allowance for a reporting period not covered by a Form MMS–4295.

The MMS received responses from several industry commenters and industry trade groups stating that the disallowance of a transportation allowance for a reporting period not covered by a Form MMS–4295 is an excessive penalty for what was considered by the commenters to be such a minor infraction of the rules. The point was also made that the lessee does not always have the data to timely file a Form MMS–4295 before the Form MMS–2014 is filed.

Many commenters stated that the regulations should have a provision allowing transportation allowances on a retroactive basis because a lessee does not always have the details on transportation worked out before production begins. Thus, it sometimes is necessary to go back and revise data related to an allowance after agreements are reached because of the fast changing current oil and gas markets.

It was suggested that MMS should consider a monetary fine for failure to file, or disallow the deduction for any period until Form MMS–4295 is filed. The lessee would not lose a deduction,

but would be precluded from taking the deduction until the proper forms are submitted to MMS for the periods covered.

MMS Response: After careful consideration of the comments, MMS has determined that the reporting penalties included in the proposed regulations were excessive. The MMS has also considered the comments on retroactive approvals and has revised the final regulations to allow lessees to request transportation allowances retroactively for a period of not more than 3 months prior to the first day of the month that Form MMS–4295 is filed with MMS, unless MMS approves a longer period upon a showing of good cause by the lessee. Also, paragraph (d) of the final rules provides that if a lessee deducts a transportation allowance on a Form MMS–2014 without complying with the requirements of this section, the lessee will owe interest on the amount of the deductions until the date proper forms are filed. However, the lessee will be required to repay the amount of any deduction disallowed because of the limitation on retroactivity.

3. The MMS's preapproval of transportation allowances.

The proposed rule provided that prior MMS approval was not required before a lessee could deduct a transportation allowance based on an arm's-length contract. Representatives of trade organizations, oil and gas companies, and one business expressed approval of the self-implementing concept for transportation allowance regulations. This was seen as a method of relieving a considerable administrative burden on both industry and MMS. Tribes disagreed with the self-implementing nature of the regulations because it was seen as a method of establishing the 50-percent limitation as a floor for transportation allowances.

One Tribe stated that MMS should preapprove all transportation allowances and should do so only on a showing of necessity to promote development or a showing that a higher value could be obtained for the gas at a point of sale away from the lease. It was also pointed out by this commenter that neither the MMS nor Indian Tribes have the resources to audit all leases and, if these allowances are not monitored "up front," they will never be audited.

MMS Response: The MMS considers arm's-length contracts a valid indicator of reasonable, actual costs. Thus, it is not necessary to preapprove transportation allowances based on such contracts. The MMS will monitor the transportation allowances, and they are subject to later audit.

4. Acceptance of transportation-reduced prices without requiring the filing of Form MMS–4295 for both arm's-length and non-arm's-length situations.

Representatives of oil and gas companies and trade organizations commented that MMS should accept transportation-reduced prices without requiring the filing of Form MMS–4295 for both arm's-length and non-arm's-length situations. It was believed that this policy would reduce the administrative burden on industry and MMS. However, one commenter disagreed with this proposal because it was considered a potential technique to exceed the 50-percent limitation provisions of the regulation.

MMS Response: The MMS has determined that the regulations should be revised to provide that transportation factors which reduce arm's-length sales contract or posted prices are to be considered as reductions in value rather than transportation allowances. This provision is included in paragraph (a)(5). However, so as not to provide a means of avoiding the 50-percent limit on transportation allowances, the final rules provide that the transportation factor may not exceed 50 percent of the base price of the product without MMS's approval.

5. Should current approved transportation allowances remain in effect until they expire?

Industry respondents stated that the transportation allowance reported on Form MMS–4295 should continue until the applicable contract or rate terminates, or is modified or amended. State respondents stated that, because some allowances are currently being taken without specific, written MMS approval, only those with documented approval should be allowed to continue without the submission of Form MMS–4295.

MMS Response: The MMS has revised the regulations in paragraphs (c)(1)(v) and (c)(2)(v) to provide that any transportation allowances in effect on the date these regulations become effective will be allowed to continue until such allowances terminate subject to later audit. However, MMS is limiting this provision only to those allowances that have written MMS approval. Because the regulations are being revised to remove any prior approval by MMS before a deduction may be taken, and the submission of Form MMS–4295 is to increase MMS's ability to monitor the allowances being taken, MMS believes that the intent of the final rules will be best served by having all allowances to be deducted under the new rules documented as of the effective date.

6. Should MMS require the filing of Form MMS–4295 every 12 months?

Industry representatives stated that there is no benefit to MMS in submitting a form that duplicates information on file when a change has not occurred, and there is no apparent reason for MMS to require the filing of Form MMS–4295 every 12 months. One industry representative recommended that this section be deleted.

MMS Response: The MMS requires the annual filing of Form MMS–4295 for use as a control and monitoring mechanism even when there is no change in the applicable contract or rate.

7. Should MMS allow transportation allowances for production which is not royalty-bearing.

Several industry representatives suggested deleting this section and proposed that transportation costs be taken as an aggregate charge against the value of lease production or that MMS cover cost allocation methodology in the MMS Royalty Management Program Oil and Gas Payor Handbook. One industry respondent recommended deleting any references concerning the disallowance for transporting lease production which is not royalty-bearing.

MMS Response: As discussed earlier, MMS will allow transportation allowances that include costs of transporting certain production which is not royalty-bearing, such as waste products.

8. Allocation of a cost applicable to more than one product.

One industry representative stated that allocation of costs presents a burdensome administrative task, but if allocation of costs is deemed necessary, it should be allocated on the basis of relative value rather than on relative volume. One business representative suggested that MMS provide an alternative allocation procedure for situations which would require a variance from the proposed allocation method.

Another industry representative recommended that allocation be based on the weighted average value of each product having a commercial value in that area. According to this commenter, transportation costs should not be allocated to by-products or products with no commercial value.

An industry representative suggested using an allocation procedure only when substantial volumes of nonroyalty-bearing products are being transported because of the considerable costs and reporting burdens involved in allocating costs.

MMS Response: The MMS has added a new paragraph which provides that, upon request by the lessee, MMS will approve the allocation of costs on the basis of the values of the products transported unless such allocation method is not consistent with the purposes of the regulations in Part 206. In situations involving the transportation of both gaseous and liquid products, it is difficult for MMS to provide guidance on acceptable methods of allocation because of the many different circumstances that exist. The MMS believes it would be advantageous to have the lessee submit an allocation proposal to MMS in these situations.

9. Should MMS extend the period in which to submit a proposed allocation method?

Representatives from industry suggested periods of 90–180 days, instead of the proposed 60-day period, to submit a proposed allocation method where an arm's-length contract includes both gaseous and liquid products and the transportation costs attributable to each cannot be determined from the contract.

Representatives from oil and gas companies and one trade organization stated that the requirement to submit a proposed allocation method within 60 days will create a significant workload burden, and a more reasonable provision of time would be from 90 to 180 days.

MMS Response: The MMS has modified § 206.157 (a)(3) of the final rule to provide a 3-month period.

10. Should MMS pay interest on lease overpayments?

One industry commenter stated that MMS should pay interest on overpayments consistent with statutory authority.

MMS Response: The MMS has no legal authority to pay interest to lessees on their overpayments.

11. Clarification of the conversion process.

Two respondents from the oil and gas industry commented that proposed paragraph (a)(5), concerning the conversion of payment to a dollar-value equivalent, should not be adopted because it is too complicated. If it is retained, it should be clarified with guidelines.

MMS Response: The value of production upon which royalty is due is reported to MMS as a dollar value; therefore, MMS believes that any deduction from that value when determining the royalty due also must be expressed as a dollar value. The MMS does not consider the conversion to a dollar-value equivalent to be complicated. This requirement is included in § 206.157(a)(4) of the final rules.

Paragraph (b) establishes the procedures for claiming a transportation allowance where the lessee has a non-arm's-length transportation contract or has no contract. The comments received under this section addressed eight principal issues: Acceptance of State or FERC tariffs, use of the benchmark system, penalties, prior approval, allowable costs, rate of return, retaining Alternatives 1 and/or 2, and allocation of costs.

1. Should MMS accept published State or FERC tariffs instead of using actual costs as the basis for approving transportation allowances?

Many industry commenters and trade groups stated that MMS should accept published State or FERC tariffs as the transportation allowance in non-arm's-length and no-contract situations. These commenters believed that MMS should rely on the expertise of FERC and State agencies that set pipeline tariffs to determine fair and reasonable transportation charges. Several industry representatives stated that if MMS does not rely on FERC and/or State tariffs, there would be a wasteful duplication of effort between FERC, State agencies, and MMS.

MMS Response: After careful consideration, MMS has decided that generally the fairest and best way to determine transportation allowances for non-arm's-length or no-contract situations is to allow actual, reasonable costs plus an acceptable rate of return on the lessee's undepreciated capital investment. However, MMS has concluded that where a lessee has a tariff approved by FERC or a state regulatory agency, it is unnecessarily burdensome and duplicative to recompute costs. Therefore, MMS will recognize FERC tariffs (for both Federal and Indian leases) and tariffs approved by a State regulatory agency (for Federal leases) as a valid cost in computing a transportation allowance when it is an actual (out-of-pocket) expense pursuant to an arm's-length transportation contract. Existence of such tariffs for a transportation system also will authorize MMS to grant an exception to the requirement to use actual costs for non-arm's-length or no-contract situations. See discussion below.

2. Should the transportation allowance be based on the market value of transportation service as determined under a benchmark system?

Several industry commenters and trade groups stated that MMS should allow the market value of the transportation service based on a benchmark system.

For those commenters recommending a benchmark system for determining the transportation allowance, the commenters suggested that MMS allow the lessee the market value of the transportation service based on a benchmark system featuring arm's-length contracts and tariffs and cost accounting to be used only as a last resort. It was suggested that this procedure was in keeping with the market-based concept and objective of bringing certainty to the regulations.

MMS Response: It is MMS's past and present practice generally to allow only those costs which are directly related to the transportation of lease production. Costs incurred under "comparable arm's-length contracts" or any other benchmark criterion may include costs such as Federal and State income taxes, or socioeconomic costs incurred by the lessee in order to obtain State or county land access, such as the construction of schools or city sewer facilities. The MMS considered these comments in revising the regulations and decided that it was in the best interests of the Government, States, and Indians to base gas transportation allowances on actual, reasonable costs plus a return on investment.

However, in an effort to simplify procedures for both the lessee and MMS, the regulations at § 206.157(b)(5) will provide an exception to the requirement to compute actual costs where the lessor's interest is adequately protected. The lessee must apply to MMS for the exception, and MMS will grant the exception only if the lessee has a tariff for the system approved by FERC (for both Federal and Indian leases) or a State regulatory agency (for Federal leases). However, the rules contain protection from unreasonably high tariffs. The MMS will deny the exception request if it determines that the tariff is excessive as compared to arm's-length transportation charges by pipelines owned by the lessee or others, providing similar transportation services in that area. If there are no such arm's-length transportation charges to use for comparison, MMS will deny the exception request if no FERC or State regulatory agency cost analysis exists and the FERC or State regulatory agency has declined to investigate pursuant to MMS timely objections upon filing, and the tariff significantly exceeds the lessee's actual costs for transportation as determined under the regulations in subsection (b)(2).

3. Should a penalty be imposed for late submission of the Form MMS–4295?

One industry commenter objected to the penalty of disallowing a transportation allowance for failure to file the applicable Form MMS–4295.

One industry spokesperson stated that the lessee should be assessed a fee of $10.00 per day for each day the Form MMS–4295 is not received.

One industry commenter suggested 120 days as a reasonable time in which to submit a completed page one of Form MMS–4295.

MMS Response: MMS has determined that the reporting penalties included in the proposed rule were excessive. MMS also has considered the comments on retroactive approvals and has revised the final regulations in § 206.157(b)(1) to allow lessees to request transportation allowances retroactively for a period of not more than 3 months prior to the first day of the month that the Form MMS–4295 is filed with MMS, unless MMS approves a longer period upon a showing of good cause by the lessee. Also, (d) provides an interest assessment for taking a transportation allowance without complying with the reporting requirements of the regulations, as well as a requirement that a lessee repay the amount of any deduction disallowed because of the limitation on retroactivity.

4. Should MMS require prior approval for allowances?

Several industry commenters and one trade group commented that they were in support of the self-implementing feature of the regulations which would not require prior approval of each allowance by MMS before the allowance could be claimed.

States and Indians stated that prior approval of allowances should be required. Because of the numbers of selling arrangements involving costs, these commenters were concerned that as a practical matter MMS will not question or audit the majority of deductions.

One Indian Tribe commenter stated that prior approval should be required before overhead expenses and depreciation are allowed; otherwise, transportation allowances will be subject to abuse and Indian royalties will suffer.

One Indian Tribe representative stated it was not proper to allow depreciation, unless prior approval and prior audit is required.

MMS Response: The MMS currently reviews and approves all transportation allowance requests and has considered preapproval and preaudit of transportation allowances. It has been decided that a more effective use of resources can be attained by doing exceptional processing on allowances and selectively reviewing certain allowances in depth to determine the propriety of the allowance reported by lessees on Form MMS–4295. Therefore, with limited exceptions, no prior MMS approval will be required. However, the lessee will be required to file a completed Form MMS–4295 before taking the allowance.

5. Should costs other than actual, reasonable costs be considered in calculating the transportation allowance?

Industry commenters stated that State and Federal income taxes are legitimate expense items and should be allowed.

One industry spokesperson recommended that dismantling costs be included in the calculation of transportation allowances because this is a real cost of doing business.

One trade group representative recommended that MMS reformulate the transportation provisions to allow a firm or entity providing necessary transportation services a complete recovery of costs plus an acceptable profit for assuming the risks involved in providing transportation service.

MMS Response: The MMS views income taxes to be an apportionment of profit rather than a valid operating expense. However, interest on money borrowed for operations would be considered as a valid operating expense. Interest on money borrowed to build a transportation facility is not considered allowable. A return on investment is given in lieu of interest on capital investments.

6. What rate of return should be used to calculate return on capital investment?

Industry commenters, trade groups, private businesses, one city mayor, and Indian Tribes stated that the use of the Moody Aaa corporate bond rate proposed by MMS in paragraph (b) is inequitable for the rate of return. Following are some of the reasons provided by the respondents for this viewpoint:

a. The prime rate represents a nearly risk-free return on short-term borrowing.

b. The use of Moody's Aaa bond rate assumes minimal risk and 100-percent debt financing.

c. For fairness, a rate of return must consider both cost of credit and equity capital.

d. A rate of return based solely on a prime lending rate would not make the investment in the transportation system a competitive project when compared with other projects.

e. The choice of Moody's Aaa rated debt is very conservative and arbitrary.

Industry commenters and trade groups recommended various alternatives to the Moody Aaa corporate bond rate:

a. A rate equal to 150 percent of the 20-year T-bill rate.

b. The prime rate plus 5 percent.

c. One and onehalf times the average 30-year T-bill rate.

d. The 20-year corporate industrial bond rated Baa.

e. A yearly average of the monthly rate for 20-year T-bills.

f. The 20-year corporate industrial bond rated Baa plus 9 percentage points.

g. One and one-half times the prime rate.

h. The FERC tariff rate of return.

i. The before-tax rate of return of double the Moody's Aaa bond rate.

j. A specific rate of return should be determined for each lessee.

MMS Response: The MMS has examined several options relating to rate of return and decided that a rate of return should be closely associated with the cost of money necessary to build a transportation system. The MMS is not persuaded that a rate of return should include a profitability factor as a part of the transportation allowance. The MMS has examined the use of the corporate bond rate very carefully and has concluded that the use of such a rate would be feasible and would be appropriate for use as a rate of return considering the risks associated with the transportation of gas and gas plant products. There is no doubt that there are some very high risks involved with some oil and gas ventures, such as wildcat drilling. However, the risk associated with building and developing a pipeline to move gas that has already been discovered is a much different risk (and a risk that can reasonably be insured against) than the risk associated with the drilling of a well. Considering the risks related to transportation systems, a rate of return based on an applicable corporate bond rate would be appropriate for transportation systems.

The MMS has considered the prime rate, the prime rate plus 5 points, one and one-half times the average 20-year Treasury Bill rate, the Moody's bond rate, Standard and Poor's bond rate, and the other rates suggested by the commenters. The MMS believes that the use of an appropriate rate of return based on the corporate bond rate adequately considers the risk associated with a transportation system and that there is no rational basis for increasing a rate of return by arbitrarily adding percentage points simply to increase the allowance granted to a lessee. After carefully considering the comments and the options available, MMS determined

that the rate of return should be based on Standard and Poor's BBB industrial bond rate. Section 206.157 (b)(2)(v) has been revised accordingly in the final rule. However, because of the substantial and diverse comments received on this issue, including comments on both the draft final rules that the BBB bond rate is not much better than the first proposal, MMS will issue a notice of proposed rulemaking to consider further modifications to this section.

7. Should MMS retain the provisions of Alternative 1 and/or Alternative 2?

Some industry commenters recommended that MMS retain both alternatives of depreciation and return on initial depreciable capital investment. One industry commenter and one trade group stated that both alternatives should be included in any cost-based methodology for determination of a transportation allowance. One industry commenter recommended that both methods be made available for use at the lessee's election on the basis of an individual transportation arrangement because adoption of this approach would assure the flexibility necessary to adapt to unforeseen changes in the business and transportation environments.

Two industry commenters and one trade group stated that MMS should retain Alternative 1. One industry spokesperson sought clarification on Alternative 1 to ensure both depreciation and return on depreciated investments are allowed.

One trade group representative endorsed Alternative 2, provided that its use is an option for the lessee. One industry commenter supported Alternative 2, suggesting that the initial capital investment should be the basis for depreciation of any newly acquired transmission facility or gas plant. One trade group representative stated that Alternative 2 should be applicable to instances where a lessee has purchased a transportation system that has previously been depreciated to some extent. One private business representative stated that Alternative 2 should be available without the limitation on new or newly acquired transportation systems because it provides a viable substitute where original cost records no longer exist.

One industry commenter recommended not adopting Alternative 2 because it provides a significantly lower rate of return to the lessee.

Two commenters stated that MMS should not tie the rate of return to a diminishing value. Both commenters stated that if the intention is to provide the lessee with a rate of return for his invested capital, the lessee should not be penalized by a diminishing return caused by tying the return into a depreciation option. One industry representative stated that, based on the current Moody's bond rate, Alternative 2 should only be advantageous for projects with over 30 years of life.

One industry commenter stated an inequity could result in the case of transferring transportation facilities from one party to another because it may be impossible to allocate specific capital costs to particular segments for purposes of determining the depreciation cost allowance and the return on undepreciated capital investment cost allowances. One industry commenter stated that MMS should accept a depreciation method recognized by FERC whether or not the method is one of the two suggested. According to the commenter, this would eliminate the administrative burden of maintaining another set of depreciation records. One Federal agency commenter suggested there be no restriction on the depreciation method used.

Several industry commenters stated that disallowing recapitalization is inequitable. One industry representative stated that the rule, as proposed, prohibits a new owner from recovering his costs because those costs would be based on the present market value of the pipeline. One industry commenter stated that it would be administratively burdensome to disallow recapitalization because it would require the lessee to maintain two separate sets of books on depreciation, one for normal business and one for royalty purposes. One industry representative stated that prohibiting establishment of a new capital cost based upon the sale or transfer of a pipeline is inconsistent with both the philosophy of arm's-length transactions and of approving an allowance based on actual costs.

Two industry commenters stated that the regulation should be more specific on how the lessee must adjust for continuing changes in reserves. For example, the continued development of different unitized depths in complex geologic areas or in areas with multiple leases will result in the continued redetermination of reserves.

MMS Response: The MMS has reviewed the comments received regarding both Alternative 1 and Alternative 2 and concluded that both alternatives should be retained. However, under the final rule, § 206.157(b)(2)(iv)(B), Alternative 2 can only be used for transportation facilities first placed in service after the effective date of these regulations.

The MMS has considered the issue of recapitalization and decided that it was appropriate for the Government to pay its share for the depreciation of a system transporting royalty-bearing gas only once.

The MMS has carefully considered the issue of basing the rate of return on a diminishing value and has decided that this procedure is consistent with longstanding Government policy on allowances and that MMS should continue this policy for transportation facilities in operation on the effective date of these regulations.

The use of reserve life as a depreciation method is at the election of the lessee. If the method does not serve the lessee's needs, then a different depreciation method may be chosen. If the reserve life method of depreciation is chosen, it would be entirely appropriate for the lessee to adjust the reserve life when changes in reserves occur.

The MMS has determined that a transportation system may be depreciated only once, and that the depreciation schedule established by the original transporter/lessee cannot be altered by a change in ownership.

8. Should costs be allocated among lease products?

Two industry commenters and one trade group suggested deletion of the sections requiring allocation of costs (§ 206.157 (b)(3) and (b)(4) of the final rule). Two industry representatives stated that requiring allocation of transportation costs is an unjustified expense to the lessee and a burdensome administrative task for both industry and MMS.

One industry commenter stated that allocation of costs among products is at odds with the basic valuation equation.

MMS Response: MMS believes that the cost to transport a product should correspond with the product transported. MMS recognizes that accountability is difficult and allocation may be a burdensome task but there is no acceptable way to avoid this responsibility.

Section 206.157(c).

The MMS received many comments from industry, States, and Indians on paragraph (c), which establishes reporting requirements for transportation allowances.

The comments received addressed the following issues: General comments pertaining to the requirement to file for allowances, comments on the initial 90-day submittal period, the subsequent annual requirement to submit Form MMS–4295, Gas Transportation

Allowance Report, establishment of alternate reporting dates, and miscellaneous comments.

1. The requirement to submit a Form MMS–4295 in order to claim a transportation allowance.

Two industry commenters commend the MMS for proposing an allowance that does not require prior approval. One industry commenter and one trade group disagree with proposed Form MMS–4295 because it requires too much information and puts a burden on industry. One trade group representative stated that MMS should substitute a form entitled "Intent to Take a Transportation Allowance" in lieu of the complicated annual filings proposed. One State representative stated that the reporting scheme would demand a major commitment of resources and would be difficult to administer. One trade group commenter stated that submission of Form MMS–4295 will greatly increase the paperwork of both industry and MMS. Two industry commenters stated that, without proper public review and comment, they cannot endorse the use of Form MMS–4295. Ten commenters—seven industry and three trade groups—stated that provision should be made for allowances currently in effect on the effective date of the regulations to continue until the allowance expires to avoid an undue administrative burden on MMS and lessees. Some commenters also pointed out that flexibility is needed to deal with special circumstances such as spot sales contracts.

MMS Response: Form MMS–4295 is required in order for MMS to monitor the transportation allowance program. The MMS believes it can monitor the transportation allowance deductions more effectively than with the preapproval of the allowances. The MMS has made the information on Form MMS–4295 as clear and uncomplicated as possible considering the complex nature of transportation allowances. The filing of a Form MMS–4295 equates to an "intent to deduct transportation."

For arm's-length contracts, paragraph (c)(1) requires the filing only of page one of the Form MMS–4295. Pursuant to paragraph (c)(2), for most non-arm's-length contracts, the lessee must submit the entire form. Lessees who receive an exception under subsection (b)(5) and are authorized to use their FERC tariff will be required to file only the first page of Form MMS–4295. See §§ 206.157 (c)(2)(i) and (c)(2)(viii).

For transportation allowances in effect on the effective date of these rules (which includes only those approvals from MMS which are in writing), no form needs to be filed until the allowance terminates. See § 206.157 (c)(1)(v) and (c)(2)(v). These continued allowances will be subject to audit.

The MMS has also included in paragraphs (c)(1)(vi) and (c)(2)(vii) of this section authority to establish reporting requirements different from those in the regulations where necessary to accommodate special circumstances.

2. Requirement to file a Form MMS–4295 within 90 days after the end of the reporting period.

One industry commenter stated that a 120-day filing period should be permitted for filing Form MMS–4295 to ease the administrative burden. This commenter suggested that if the form is not received within the prescribed 120 days, the lessee could be assessed a fee of $10.00 per day for each day the form is not received. One industry representative suggested that a minimum 180-day conversion should be allowed from the date of publication of the final regulations.

One trade group representative agreed that a 12-month term should be endorsed for both onshore and offshore allowances. One industry representative recommended that allowances be based on data from a full calendar year and be reported to MMS by April 1 for the preceding year. Nine commenters, seven industry and two trade groups, stated that an annual reporting request is unduly burdensome and that lessees should only be required to file Form MMS–4295 when there is a change in the allowance amount.

Industry representatives stated that failure to file a completed Form MMS–4295 should not result in a denial of allowances because this constitutes a substantial penalty.

One industry spokesperson stated that to ease MMS's workload, each lessee should be assigned a particular due date for filing all forms. One Indian trade group was concerned over the provision establishing different reporting dates from those specified in order to provide more effective administration.

One industry commenter on the second draft final rule stated that a 90-day filing deadline is unacceptable.

MMS Response: The final regulations in § 206.157(c)(1)(iii) and (c)(2)(iii) give the lessee 3 months after the end of the previous reporting period to file the required forms. The lessee will continue to use the previous allowance during that three-month period. Also, as described earlier, the final regulations allow for transportation allowances to be claimed retroactively for a period of not more than 3 months prior to the first day of the month that Form MMS–4295 is filed with MMS. Therefore, even if the lessee is not able to timely file the Form MMS–4295, the lessee could file the Form MMS–4295 and claim the transportation allowance on a corrected Form MMS2014 at a later date.

The MMS concurs with a 12-month term and the final regulations require that a Form MMS–4295 will be filed on the basis of a calendar year.

3. Miscellaneous comments received.

One industry representative stated that MMS should continue its policy of not requiring reporting or approval of reduction in sales prices which reflect transportation. One industry commenter recommended that deductions taken as an offset against price should be accepted by MMS without the necessity of filing Form MMS–4295.

MMS Response: In situations where the purchaser is reducing the contract price for a transportation cost and the lessee is incurring no out-of-pocket expense, a Form MMS–4295 is not required. In these situations, because the reduction in price represents a cost incurred past the point of first sale, a transportation allowance would not be allowed by the regulations. However, in determining the value of the gas, the reduction in price for the transportation costs past the point of sale would be considered. As explained above, MMS has placed some limits on the reduction before MMS approval is required.

Section 206.157(d).

MMS has added a new § 206.157(d) to the final regulations. This paragraph requires a lessee that deducts a transportation allowance from its royalty payments before complying with the requirements of this paragraph (i.e. filing the proper forms) to pay interest from the date it improperly took the deduction until the form is filed. As noted above, pursuant to paragraph (c), the lessee also will be required to pay back any allowance deducted more than 3 months prior to the first day of the month the proper forms are filed, plus interest.

Section 206.157(e).

This section was proposed as paragraph (d) and provides an adjustment procedure where the estimated allowance differs from the actual allowance.

Industry representatives commented that the MMS proposal for handling interest payments is unfair, and stated that "It is equitable that, if the lessee must pay any difference in royalty owed plus interest, MMS should also pay any difference plus interest statutorily authorized."

MMS Response: The MMS has no legal authority to pay interest to lessees on their overpayments.

Several industry commenters recommended that positive or negative differences between estimated and actual costs should be rolled forward into the transportation rate for the subsequent period because this would relieve the immense administrative burden on MMS and industry. One oil and gas company recommended that actual data from one period be used as the allowance for the following period, thus requiring no adjustments.

MMS Response: The MMS considered alternatives such as (1) rolling forward differences into subsequent periods or (2) using actual data from one period to be used as the next period's allowance, but determined that such procedures could be inequitable to lessees, MMS, Indian Tribes, and Indian allottees. Consequently, MMS has decided to retain the estimated and actual cost procedure.

Two oil and gas companies commented that refunds for estimates tendered in excess of actual costs should not be classified as refunds of a royalty payment under Section 10 of the OCS Lands Act because estimates are not "actual" payments of royalty. Overpayments could then be treated as line item adjustments not subject to the refund process. It was the firms' position that the OCS Lands Act, Section 10, does not require requests for refunds when estimated costs are less than actual costs and stated that the concept of estimate versus payment is clearly discernible. "Payment" is defined as a discharge of indebtedness, while "estimate" is a rough or approximate calculation, not an overpayment.

One oil and gas company commented that the current extensive review and audit process is causing lessees to lose the time value of money in the refunds which are due them under section 10 of the OCS Lands Act. Audits on such refunds were described as fruitless and wasteful, and it was suggested that MMS consider transportation allowance adjustments to be exceptions to the refund requirements. Overpayments could then be recovered by lineitem adjustments on Form MMS–2014.

Two oil and gas companies strongly emphasized that the requirement to submit written requests for refunds for under-deducted transportation costs in accordance with Section 10 of the OCS Lands Act will be an extraordinarily difficult financial and reporting burden for industry and the MMS.

MMS Response: It would not be proper for these rules to prescribe the refund procedures. MMS is reviewing the issue and will provide guidance to lessees.

Three oil and gas companies and one trade organization representative rejected using prior year actual costs for the current reporting period, stating that it automatically requires retroactive adjustment. They recommend that lessees be allowed to use forecast rates based on their knowledge and experience with the operations. Three oil and gas companies proposed that MMS establish an allowable range and not require retroactive adjustments if performance is within the allowable range.

One oil and gas company recommended using market-based allowances, requiring a single entry and resulting in fewer adjustments and fewer transportation records to be reviewed. One oil and gas company recommended that, to reduce costs, adjustments should be made by a single entry each year, not monthly.

MMS Response: The MMS was unable to develop an acceptable accounting methodology that would eliminate retroactive adjustments of prior period tentative transportation allowances for non-arm's-length and no-contract situations. The final regulations do, however, permit a lessee to adjust its estimates in the succeeding period based on forecasted rates. Moreover, because MMS now will accept FERC tariffs for most non-arm's-length transportation situations where they exist, fewer adjustments will be necessary because fewer lessees will be required to use the actual cost methodology.

Section 206.157(f).

Paragraph (f) of this section was proposed as paragraph (e) and, as proposed, provided that no cost is allowed for transportation which results from payments for actual or theoretical losses. The MMS received many different comments on this paragraph from industry, trade groups, and one U.S. Senator and an Indian tribal organization. Generally, the commenters stated that line losses are actual costs of doing business, should be allowable, and that this paragraph of the regulations should be deleted. The Indian commenter, however, said such deductions are not justifiable.

Industry commenters and the U.S. Senator commented that line losses are actual transportation costs which should be allowed by MMS. One industry commenter stated that line losses occur beyond the control of the lessee and are practical and legitimate occurrences. Another industry commenter stated that such allowances are real transportation costs borne by the lessee. Seven industry commenters stated that MMS should allow line losses not attributable to negligence.

Three commenters-two industry and one trade group representative—commented that line losses in arm's-length contracts and FERC tariffs should be allowed. One industry commenter stated that if a loss provision is a part of an arm's-length contract or a FERC tariff, MMS should accept such a provision, just as it accepts the dollars-and-cents rates in the contract or tariff because the losses are part of the total cost of the transportation arrangement. One industry representative stated that producer-owned pipelines should include transportation losses as part of operating expenses in the formulation of an allowance. Other commenters recommended deletion of this paragraph.

MMS Response: All of the issues of theoretical and actual line losses have been considered at length by MMS. Because of the difficulty of demonstrating that losses are valid and not the result of meter error or other difficult-to-measure causes, MMS has decided not to treat line losses as valid costs for purposes of computing transportation allowances in non-arm's-length and no-contract situations. However, the final rule provides that costs associated with payments for losses under arm's-length transportation agreements should be allowed because the payment is an out-of-pocket expense to the lessee. Also, the final rule provides that when a tariff approved by FERC or a State regulatory agency is authorized to be used by the lessee as its transportation allowance, any component of that tariff representing such losses will be allowed.

Section 206.157(g).

The MMS received comments on § 206.157(g), which was proposed as paragraph (f). This paragraph allows use of the transportation allowance rules where transportation is a component of a valuation procedure such as a net-back method.

The industry respondents stated that use of cost-based transportation allowances is inequitable when using net-back valuation because actual costs incurred should be recognized. According to these comments, if MMS collects royalty on the enhanced downstream value, MMS should bear its share of actual costs incurred to move the hydrocarbon for sale downstream.

MMS Response: The MMS remains convinced that the cost-based allowance procedure for determining

gas transportation allowances is appropriate for determining value under a net-back procedure. If there is an applicable tariff, upon application, that could be used instead.

Section 206.158 Processing allowances—general.

The processing allowance regulations are almost the same as the transportation allowance regulations. As expected, therefore, most of the comments were the same. Because responding to the same comments and explaining the same regulatory section is duplicative and unnecessary, in this section MMS generally will respond only to comments and explain regulatory provisions which are unique to gas processing allowances.

Section 206.158(a).

The MMS received many different comments from Indians, industry, and States, as well as from some other persons, on paragraph (a) of this section of the regulations, which generally provide for a processing allowance. Comments on gas processing allowances, which did not relate to any specific section of the regulations, are addressed in this paragraph of the gas processing regulations.

One industry representative cautioned that, although the final processing regulations must contain certainty, they should also be flexible enough to encourage innovative marketing of the gas plant products. Similarly, one State agency said that the proposed regulations must reflect the changing nature of industry, serve to encourage rather than discourage new projects, and allow existing operations to identify new markets.

MMS Response: The MMS believes that the regulations are complete and sufficiently flexible to accommodate different types of gas processing arrangements that might arise in the future. The MMS further believes that the regulations are reasonable. To not discourage new development, MMS has provided an exception process whereby a lessee may be able to justify a processing allowance in excess of the 66⅔-percent limitation and has provided the lessee with broad latitude to deduct processing costs under arm's-length contracts. For processing under non-arm's-length and no-contract situations, MMS has provided the lessee with several alternatives for depreciation and return on investment. MMS also has provided for an extraordinary cost allowance for processing gas production. The MMS does not believe that the objectives of certainty and flexibility should replace the Federal Government's responsibility to properly account for the removal of minerals from a Federal or Indian lease.

One industry commenter and one industry trade organization thought that this section should incorporate a provision to include the deduction of fractionation costs.

One industry commenter and one industry trade representative recommended that processing allowances continue to be granted on the basis of percentage of value.

MMS Response: The regulations, as adopted, accommodate fractionation costs as part of the processing allowance cost. Therefore, a specific provision is not necessary. The MMS has determined that an allowance based on a cost per unit is more equitable and will result in less difference between actual and estimated allowances than an allowance based on percentage, especially in times of rapid price fluctuations.

Section 206.158(b).

Paragraph (b) of this section requires allocation of processing costs among gas plant products. Comments were received principally from industry.

There was general opposition from industry to the allocation of processing allowances by gas plant product. They recommended either to delete this paragraph or to rewrite it in such a manner as to allow all processing costs in full to be deducted from the value of both the residue gas and gas plant products. One industry representative proposed a change which would allow the allocation of processing costs to both the value of gas plant products and residue gas.

One industry representative stated that the cost of processing should not be allocated to one product when it benefits all products. One industry trade group stated that the allocation of costs among products is contrary to the valuation principle that the value of production should equal the sum of all gross proceeds less the sum of all post-production costs.

Two industry representatives plus one industry trade group recommended that, if allocation of costs are necessary, allocation should be based on percentage of sales rather than on a cost per unit; that is, based on value rather than volume. Two industry representatives and one trade group thought that the allocation of costs presents an administrative burden for both industry and MMS.

Two industry commenters recommended the addition of the phrase "(fractionated or unfractionated)" between the words "liquids" and "shall" in the last sentence of this subsection.

MMS Response: It has been a longstanding MMS policy and regulatory requirement that no processing allowance be granted against the value of residue gas. Among the reasons for this is that processing is viewed as necessary to place the residue gas in marketable condition and that processing does not generally enhance the value of residue gas. Thus, generally no processing allowance is authorized against the value of the residue gas in the final rule. The MMS believes that allocating processing costs based on relative volume rather than on relative value is more equitable because the costs of extracting any given product may be unrelated to that product's value. Also, MMS will not include the addition of the phrase "(fractionated or unfractionated)" in the last sentence because it does not clarify the meaning of the sentence.

Section 206.158(c).

As proposed, paragraph (c) of this section generally limited the processing allowance deduction to two-thirds of the value of each gas plant product. The MMS received a large number of comments on this paragraph.

Most industry-related commenters expressed their objection to the 66⅔-percent limitation on the processing allowance, and the exclusion of residue gas value from the allowance determination. Other commenters supported this position.

One State representative suggested that the limitation creates a floor and feared that a 66⅔-percent processing allowance will be taken as an automatic deduction.

An industry trade organization commented that in processing a sour, low quality gas stream, the 66⅔-percent limitation does not reflect actual costs to industry. This trade group plus four industry commenters stated that in high-cost or lowquality areas, the limitation will discourage development.

Many industry commenters recommended, in lieu of a strict limitation, that the 66 2/3-percent level be a threshold above which an allowance will be granted according to specific criteria. For example, one industry commenter recommended a higher allowance upon MMS approval. Another industry commenter requested that a higher allowance be approved on the basis of "national interest" criteria.

Some industry commenters stated that MMS should allow lessees to carry forward processing costs otherwise allowable (except for the 66⅔-percent

limitation) from the current year to subsequent years.

The MMS also received several comments from parties who supported the proposed 66⅔-percent limitation on the processing allowance, including two oil producers, one interest owner, one State representative, and one State and Tribal organization. Another oil producer added that it opposed increasing the limitation. One interest owner stated that the limitation should be lowered.

An additional comment from a State and Tribal organization stated that it favors the exclusion of residue gas from the allowance determination. An Indian trade group stated its objection to the Director approving an allowance in excess of 66⅔-percent.

Six parties (one oil producer, one State representative, one interest owner, two industry parties, and one State and Tribal organization) stated their opposition to a "carry forward" provision for costs exceeding the 66⅔-percent limitation. One industry commenter stated that such a process would be "impractical."

One industry commenter suggested that the 66⅔-percent limitation should not apply to arm's-length processing contracts. It also was recommended that the 66⅔-percent calculation should be done before deducting transportation allowances.

Two industry commenters and three industry groups recommended that the rules should specify the conditions for which an allowance in excess of two-thirds would be approved.

MMS Response: The MMS has devoted considerable time and effort in evaluating the 66⅔-percent limitation on the processing allowance, and the exclusion of the value of residue gas from the allowance computation. Section 206.158(c)(2) of the final rule provides that the processing allowance deduction on the basis of an individual product cannot exceed 66⅔-percent of the value of each gas plant product at the point of sale determined in accordance with § 206.153. No processing allowance may be taken against the value of the residue gas, except for certain extraordinary allowances specifically approved by MMS in accordance with paragraph (d), discussed below.

The 66⅔-percent limit is to be applied against the value of the product already reduced by any transportation allowance for transportation costs incurred after the gas is processed. Transportation allowances related to transportation from the field to the processing plant would not be deducted before applying the 66⅔-percent limitation.

The MMS has retained in the final rule a procedure whereby the lessee may request an exception from the 66⅔-percent limitation. The lessee must demonstrate that any costs in excess of the limitation are reasonable, actual, and necessary. This procedure will allow MMS to monitor more closely those situations where the allowance based on reasonable, actual costs will be in excess of the 66⅔-percent limitations. Under no circumstances may the processing allowance equal 100 percent of the value of any product. As with transportation allowances, many commenters suggested that any additional allowance must be in the "best interests of the lessor." As stated earlier, MMS believes that this standard is too subjective and that the standard included in the rules will protect the lessors' interests.

The MMS will not include any specific standards in the rule for when the two thirds limit may be exceeded. This will require case-by-case review.

Industry respondents and industry trade groups stated their objection to the requirement regarding substitution of other products for residue gas in situations where residue gas is absent. One industry trade group stated that, in this situation, the lessee should be able to deduct the processing costs against the sum of all marketable products. Industry commenters recommended that this sentence be deleted. Industry commenters were also concerned that this paragraph would prohibit an allowance from being taken against all gas plant products if the residue gas was returned to the lease for reinjection or other uses.

MMS Response: The MMS did not intend, where residue gas was returned to the lease, that this provision would require the lessee to designate at least one gas plant product as being placed in marketable condition as a result of processing. The provision was intended to cover those situations where no residue gas was produced at the plant at all owing to the absence of, or very low levels of, hydrocarbons in the gas when produced from the well. However, because the extraordinary processing allowance procedure discussed below would most likely be applicable in these situations, MMS has modified the final rule to eliminate the requirement that the lessee designate a gas plant product against which no allowance would be granted. Instead, the final rule provides that MMS may designate a gas plant product against which no allowance would be applied if circumstances warrant.

Section 206.158(d)

The MMS received many comments on paragraph (d) of this section, which provides generally that no processing cost deduction will be allowed for the costs of placing lease production in marketable condition. Comments were received from industry, Indian Tribes, local businesses, a town mayor, a Federal agency, and individuals.

The major issue raised in this paragraph was whether or not costs associated with placing a product in marketable condition, generally referred to by the commenters as post-production costs, should be deductible from royalty.

All industry-related commenters, the local businesses, and one town mayor supported the concept that all post-production costs be allowable deductions from royalty.

Industry commenters expressed their view that certain post-production costs should be deductible from royalty. One industry trade group stated that the costs related to the manufacture and sale of separately marketable products are extraordinary and should be allowed. One industry commenter stated that ". . . other off-lease post-production costs and certain 'extraordinary' on-lease costs" should be deductible.

MMS Response: MMS already has addressed the post-production cost issue with regard to other sections of these regulations. Post-production costs, excluding those for transportation and processing, are not allowable deductions from royalty. Post-production costs for the services of gathering, separation, measurement, dehydration, compression, and sweetening are considered to be a requirement to place the lease production into marketable condition, at no cost to the lessor. These costs are not considered part of the processing costs and, therefore, are not deductible in a processing allowance.

MMS has included in the final regulations a new § 206.158(d)(2) which was included in the second draft final rule. Pursuant to this paragraph, if a lessee incurs extraordinary costs for processing gas production, it may apply to MMS for an extra allowance above that to which it otherwise would be entitled pursuant to these regulations. The allowance is discretionary with MMS, but may be granted only if the lessee can demonstrate that the costs are, by reference to standard industry conditions, extraordinary, unusual, or unconventional. Under this paragraph, an allowance could be provided against the value of the residue gas. The MMS

has removed any reference to "unique" processing operations. It is not MMS's intent to limit the allowance to one-of-a-kind plants. MMS also has included flexibility for longer approval periods.

Section 206.159. Determination of processing allowances.

Section 206.159(a).

The MMS received a large number of comments from States, Indians, and industry. Again, most of the issues raised in the comments were the same as for the corresponding section of the transportation allowance regulations and will not be repeated.

Two industry commenters responded in favor of the provision in § 206.159(a)(1) whereby MMS would accept costs incurred under arm's-length processing agreements as the reasonable, actual costs incurred by the lessee because they thought these arrangements reflect true processing costs experienced by the lessee. One Indian Tribal trade group opposed this proposal because of the concern that, under these procedures, the Indian lessor's royalty could be reduced to virtually nothing.

One industry commenter suggested changing section (a)(1) to read "If a lessee has an arm's-length contract or a negotiated Products Purchase Agreement (PPA) to process gas, the processing cost deduction shall be the reasonable actual cost incurred * * *"

MMS Response: The MMS believes that processing costs incurred by a lessee under arm's-length agreements represent actual costs to the lessee and should be appropriate as a processing allowance. The suggestion that a negotiated Products Purchase Agreement be recognized as properly defining the actual cost incurred is not adopted. A Products Purchase Agreement may not be an arm's-length contract. However, where the lessee's arm's-length processing agreement specifies that the costs are to be those contained in the Products Purchase Agreement, then those costs would be acceptable owing to the arm's-length processing agreement of the lessee. MMS has added a provision clarifying that the lessee has the burden of demonstrating that its contract is arm's-length. Under the provisions of these regulations, the lessor's royalty cannot be reduced to zero. Also, as with transportation allowances, MMS has added two paragraphs which provide that MMS will treat as non-arm's-length any processing contracts which reflect more than the consideration actually transferred from the lessee to the processor (i.e., the cost is inflated) or where there is misconduct by or between the contracting parties or the lessee otherwise breaches its duty to the lessor to market the production for the mutual benefit of the lessee and the lessor.

With regard to the requirement of § 206.159(a)(2) that processing costs be allocated among all products, one industry commenter was critical of the proposal to treat all NGL's (but no other plant products) as one product. The commenter thought this was discriminatory toward the lessees in favor of processors of wet gas, not only because some lessees typically will be able to recover total processing costs from the value of the NGL's, but if other products are produced, costs would need to be allocated to them, with the possibility that some of these costs would not be totally recovered. This industry representative stated that all of the marketable products should be treated as one product, including residue gas, for purposes of allocating processing costs. Another industry representative made proposals which would make the allocation procedure unnecessary.

MMS Response: The NGL's, historically, have been considered one plant product, for royalty purposes, because they are commonly extracted first as raw make at an extraction facility. MMS has determined that all other individual plant products must be evaluated separately for processing allowances for the reasons stated previously.

Section 206.159(b).

The MMS received a very large number of comments on § 206.159(b), which provides for a processing allowance determination where the lessee has a non-arm's-length contract for processing or no contract. Comments were from industry commenters, industry trade organizations, State representatives, a Federal agency, an interest owner, local businesses, and from a town mayor.

The major issues addressed regarding this paragraph were (1) the requirement of a lessee's actual costs versus use of a benchmark system, (2) the use of "Alternative 1" or "Alternative 2" for depreciation or a return on capital investment, and (3) the rate of return on capital investment. These issues are basically the same as for the transportation allowance and have been responded to. However, some comments were specific to processing costs.

Industry comments disagreed with the proposal under this paragraph to base allowances on cost accounting procedures.

Industry commenters explicitly voiced their support for a market value concept; i.e., MMS should accept the market value of service for the allowance determination. One industry commenter added that, under the proposed methodology, MMS ignores "competitive market forces." Another industry commenter requested that MMS adopt a "market-oriented" approach. Still another industry commenter stated that, if a non-arm's-length contract for processing reflects the market value for that service, it should be acceptable.

The industry commenters specifically recommended that MMS should adopt a benchmark system for allowance determinations under this section. These commenters suggested that comparable arm's-length contracts be used to determine the allowance for non-arm's-length processing arrangements in the same facility. One of the industry commenters added that the use of comparable arm's-length contracts will reduce the number of adjustments and other records to be filed.

One State representative opposed a benchmark system.

Four industry commenters and one industry trade group complained that cost accounting is a departure from the valuation requirements and that it discriminates against lessee affiliates.

Another industry commenter recommended that, if plant ownership interest is sufficiently small, it should be treated as an arm's-length arrangement.

MMS Response: The MMS considered a benchmark valuation system featuring comparable arm's-length contracts to determine processing allowances, with cost accounting being used as a last resort. MMS concluded that such a procedure is not the fairest and best way to determine gas processing allowances considering the overall interests of industry, the Federal Government, States, and Indian Tribes. The MMS does not believe that allowances generally should be valued on a "market-based system" the way products are valued for royalty determination purposes for several reasons.

First, the determination of an allowance on a "market-based system" would not be representative of a lessee's actual, reasonable costs. Second, if one lessee bases its allowance on actual costs, and another lessee processing gas in the same facility bases its allowance on market value, an inequity will result.

For these reasons, MMS has decided that generally the gas processing allowance is best determined on actual, reasonable costs plus a return on undepreciated capital investment, or its

initial capital investment. However, MMS has included in § 206.159(b)(4) of the final rules a provision whereby a lessee may apply to MMS for an exception from the requirement to use actual costs. MMS may grant such an exception, at its discretion, only if two conditions are met: (1) The lessee has arm's-length contracts for processing other gas production at the same processing plant; and (2) at least 50 percent of the gas processed at the plant is processed pursuant to arm's-length processing contracts. MMS has decided not to include a third requirement that the persons purchasing processing services from the lessee had a reasonable alternative to processing at the lessee's plant. Industry commenters noted that there often is no choice for the purchaser, thus the third requirement would render the exception unrealistic. If the exception is granted, the lessee must use as its allowance the volume-weighted average of the prices it charges other persons pursuant to arm's-length contracts at the same plant. Although some State and Indian commenters expressed concern over deviating from a true cost-based approach, MMS is satisfied that if these conditions are met, the processing allowance will reflect the market and that MMS will be able to monitor the use of these allowances.

Three industry commenters recommended that the 50-percent threshold be reduced to 25 percent. The MMS did not adopt this change because there did not appear to be broad support for a change to the 50-percent threshold.

Two industry commenters stated that State and Federal income taxes should be considered as allowable costs on the premise that such costs are real, tangible costs to the lessee.

Two other industry commenters suggested that plant dismantling and abandonment costs should be allowable, advising that such costs are a real cost of doing business.

MMS Response: The MMS views income taxes to be an apportionment of profit rather than a valid operating expense. Therefore, income taxes are not an appropriate expense that should be included in the processing allowance. The MMS takes the position that, because it does not participate in the profit or losses from the sale of processing facilities, no costs for dismantling and abandonment should be included in processing allowances.

The basic issue regarding requirements to allocate processing costs among all plant products is discussed under § 206.158(b). However, specific comments pertaining to the allocation under non-arm's-length and no-contract situations are discussed here.

Industry commenters disagreed with the requirement to allocate costs on generally accepted oil and gas accounting principles. One of these commenters recommended deleting this requirement. Other commenters advised that generally accepted principles for cost allocation do not exist. One commenter suggested instead that allocations be based on (1) cost-benefit analysis, and (2) cause-and-effect relationships.

One industry commenter recommended that this requirement be modified to include an allocation of costs to residue gas.

MMS Response: The MMS believes that if cost-benefit analysis and cause-and-effect relationships are generally acceptable procedures in cost allocation, these procedures would be acceptable to MMS. MMS will consider cost allocation procedures for unique situations on the basis of individual cases in order to arrive at an equitable allocation procedure. As stated previously, MMS believes that it is not appropriate to allocate processing costs to residue gas.

Section 206.159(c).

The MMS received several comments on paragraph (c) of this section, which addresses reporting requirements for processing allowances. Again, this paragraph is virtually identical to the corresponding provision for transportation allowances, and the response to comments for that section is, for the most part, applicable here.

The two major areas of concern were (1) use of Form MMS–4109, and (2) the terms of the reporting periods and filing timetables.

Industry commenters and Indian Tribes expressed some opposition to Form MMS–4109. One industry respondent and one industry trade group objected to commenting on the form until it is published, adding that it should not conflict with any rights of the lessee. Several industry commenters opposed the filing of Form MMS–4109 at all. One of the industry commenters stated that processing rates under an arm's-length or non-arm's-length contract should be accepted at face value. An industry trade group claimed that filing of the form would be an unnecessary burden for both industry and MMS. Another industry commenter stated that it opposed any reporting requirements such as annual renewals or contract change updates. A Tribe opposed industry taking an allowance on the honor system and merely filing a form to claim it.

MMS Response: The MMS believes that Form MMS–4109 must be required in order for MMS to monitor the processing allowance program. The MMS believes it can effectively monitor the processing allowance deductions without the preapproval of the allowances. The MMS has made the information on Form MMS–4109 as clear and uncomplicated as possible considering the complex nature of processing allowances. The filing of a Form MMS–4109 does not conflict with any lease provisions or rights of the lessees. The MMS agrees that its procedure for determining a processing allowance places initial reliance on the gas industry. However, this program will be under continuous review and oversight by MMS. Thus, the ability to effectively review, evaluate, and audit processing allowances has been maintained under the new regulations.

The MMS received several comments on the Form MMS–4109 format. These comments will be considered in designing the final form.

The initial concern about reporting periods was MMS's proposal to create a new reporting period for all allowances which would commence the date the new regulations are effective. Industry commenters opposed this, recommending instead that all existing allowances be grandfathered under the new regulations. Another industry commenter requested 180 days for conversion to the new reporting period.

Another topic addressed by the respondents was the term of the reporting period. Industry commenters favored a reporting period that extends as long as the contract terms are effective, instead of an arbitrary 12-month period. One of the industry commenters stated that resources are wasted by requiring the lessee to file year after year even though there are no changes. However, one industry commenter and one industry trade group endorsed the 12-month reporting period. The industry commenter specifically requested a calendar-year period.

Two industry commenters recommended a longer grace period in which to file subsequent Forms MMS–4109. These commenters both suggested 120 days to file updated forms.

MMS Response: The MMS concurs with a 12-month term and the regulations have been changed to allow filing of Form MMS–4109 by calendar year. The regulations have also been changed to allow a grace period of 3 months during which the lessee continues to use the previous allowance. The MMS also decided that existing allowances (but only those approved in

writing by MMS) will continue in effect until they expire, subject to later audit, with the exception of processing allowances for OCS production, which are based on non-arm's-length or no-contract situations. Because these allowances are based upon a procedure radically different from the procedure adopted in the final rule, they will continue in effect until they expire or until the end of the calendar year, whichever occurs first.

Section 206.159(d)

Paragraph (d) of this section is the same as for transportation allowances. If a lessee deducts a processing allowance without filing the proper forms, it will owe interest on the amount of the deduction until the proper forms are filed, subject to the 3-month retroactivity provision.

Section 206.159(e).

As with transportation allowance adjustments, the issues regarding paragraph (e) of this section were (1) the requirement to file adjustments, (2) the refund procedure under Section 10 of the OCS Lands Act, and (3) the payment of interest.

It was the general consensus that adjustments were a very large burden on both industry and MMS and that some way should be found to eliminate the need for so many adjustments resulting from differences between actual and estimated processing allowances. Six industry representatives and two industry trade groups recommended that positive or negative differences between estimated and actual costs should be rolled forward into the processing allowance for the subsequent period, or prospectively.

One industry commenter asserted that retroactive adjustments should not be necessary if the actual allowance falls within an allowable range of the estimated allowance, and two other industry commenters suggested rolling forward small differences into next year's costs within an allowable range.

One industry commenter proposed single-entry adjustments for an entire year instead of month-by-month adjustments. This party also made the comment that if a market-based allowance were permitted, it would be more certain and fewer adjustments would be necessary.

MMS Response: The MMS expended considerable effort in an attempt to arrive at an accounting methodology that would eliminate retroactive adjustments of processing allowances and continue to be fair to industry, MMS, and Indian lessors, but was unable to do so.

One industry representative stated that overpayments, when estimates were less than actual costs, should not be judged as refunds of a payment of royalty under section 10 of the OCS Lands Act because estimates are not "actual" payments of royalty. Overpayments could then be treated as line-item adjustments not subject to the refund process.

MMS Response: The refund procedure will not be specified in these regulations. MMS is reviewing the issue and will provide guidance to the lessees on refund procedures.

Industry representatives commented that the MMS-proposed procedure for handling interest payments was not fair. These commenters believed that, if the lessee must pay any difference plus interest, MMS should also pay any difference plus any interest statutorily authorized. Another issue of concern was the payment of interest requirement.

MMS Response: The MMS has no legal authority to pay interest to lessees on their overpayments.

Section 206.159(f).

Paragraph (f) of this section requires that the provisions in this section will apply to determine processing costs in situations where value must be established under other methods such as net-back.

One industry commenter recommended that the definition of "net-back method" be clarified.

MMS Response: A definition of the netback method has been included in § 206.151, which is slightly different from that proposed. The MMS believes this revised definition clarifies MMS's intent.

IV. Procedural Matters

Executive Order 12291

The Department of the Interior (DOI) has determined that this document is not a major rule and does not require a regulatory analysis under Executive Order 12291. This proposed rulemaking is to consolidate Federal and Indian gas royalty valuation regulations, to clarify the DOI gas royalty valuation policy, and to provide for consistent royalty valuation policy among all leasable minerals.

Regulatory Flexibility Act

Because this rule primarily consolidates and streamlines existing regulations for consistent application, there are no significant additional requirements or burdens placed upon small business entities as a result of implementation of this rule. Therefore, the DOI has determined that this rulemaking will not have a significant economic effect on a substantial number of small entities and does not require a regulatory flexibility analysis under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

Paperwork Reduction Act

The information collection and recordkeeping requirements located at §§ 206.157 and 206.159 of this rule have been approved by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.* and assigned clearance number 1010-0075.

Lessee reporting requirements will be reduced. All gas sales contracts, transportation agreements and gas processing contracts, as well as any other agreements affecting value, will be required to be retained by the lessee, but will only be required to be submitted upon request rather than routinely, as under the existing regulations.

National Environmental Policy Act of 1969

It is hereby determined that this rulemaking does not constitute a major Federal action significantly affecting the quality of the human environment and a detailed statement pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)) is not required.

List of Subjects

30 CFR Part 202

Coal, Continental shelf, Geothermal energy, Government contracts, Indian lands, Mineral royalties, Natural gas, Petroleum Public lands-mineral resources, Reporting and recordkeeping requirements.

30 CFR Part 206

Coal, Continental shelf, Geothermal energy, Government contracts, Indian lands, Mineral royalties, Natural gas, Petroleum, Public lands-mineral resources, Reporting and recordkeeping requirements.

Date: January 6, 1988.

J. Steven Griles,

Assistant Secretary, Land and Minerals Management.

For the reasons set out in the preamble, 30 CFR Parts 202 and 206 are amended as follows:

TITLE 30—MINERAL RESOURCES

PART 202—ROYALTIES

1. The authority citation for Part 202 is revised to read as follows:

Authority: 25 U.S.C. 396 *et seq.*; 25 U.S.C. 396a *et seq.*; 25 U.S.C. 2101 *et seq.*; 30 U.S.C.

181 *et seq.*; 30 U.S.C. 351 *et seq.*; 30 U.S.C. 1001 *et seq.*; 30 U.S.C. 1701 *et seq.*; 43 U.S.C. 1301 *et seq.*; 43 U.S.C. 1331 *et seq.*; and 43 U.S.C. 1801 *et seq.*

2. A new Subpart D consisting of §§ 202.150, 202.151, and 202.152 is added to read as follows:

Subpart D—Federal and Indian Gas

Sec.
202.150 Royalty on gas.
202.151 Royalty on processed gas.
202.152 Standards for reporting and paying royalties on gas.

Subpart D—Federal and Indian Gas

§ 202.150 Royalty on gas.

(a) Royalties due on gas production from leases subject to the requirements of this subpart, except helium produced from Federal leases, shall be at the rate established by the terms of the lease. Royalty shall be paid in value unless MMS requires payment in kind. When paid in value, the royalty due shall be the value, for royalty purposes, determined pursuant to 30 CFR Part 206 of this title multiplied by the royalty rate in the lease.

(b)(1) All gas (except gas unavoidably lost or used on, or for the benefit of, the lease, including that gas used off-lease for the benefit of the lease when such off-lease use is permitted by the MMS or BLM, as appropriate) produced from a Federal or Indian lease to which this subpart applies is subject to royalty.

(2) When gas is used on, or for the benefit of, the lease at a production facility handling production from more than one lease with the approval of MMS or BLM, as appropriate, or at a production facility handling unitized or communitized production, only that proportionate share of each lease's production (actual or allocated) necessary to operate the production facility may be used royalty free.

(3) Where the terms of any lease are inconsistent with this subpart, the lease terms shall govern to the extent of that inconsistency.

(c) If BLM determines that gas was avoidably lost or wasted from an onshore lease, or that gas was drained from an onshore lease for which compensatory royalty is due, or if MMS determines that gas was avoidably lost or wasted from an OCS lease, then the value of that gas shall be determined in accordance with 30 CFR Part 206.

(d) If a lessee receives insurance compensation for unavoidably lost gas, royalties are due on the amount of that compensation. This paragraph shall not apply to compensation through self-insurance.

(e)(1) In those instances where the lessee of any lease committed to a Federally approved unitization or communitization agreement does not actually take the proportionate share of the production attributable to its Federal or Indian lease under the terms of the agreement, the full share of production attributable to the lease under the terms of the agreement nonetheless is subject to the royalty payment and reporting requirements of this title. Except as provided in paragraph (e)(2) of this section, the value for royalty purposes of production attributable to unitized or communitized leases will be determined in accordance with 30 CFR Part 206. In applying the requirements of 30 CFR Part 206, the circumstances involved in the actual disposition of the portion of the production to which the lessee was entitled but did not take shall be considered as controlling in arriving at the value for royalty purposes of that portion, as if the person actually selling or disposing of the production were the lessee of the Federal or Indian lease.

(2) If a Federal or Indian lessee takes less than its proportionate share of agreement production, upon request of the lessee MMS may authorize a royalty valuation method different from that required by paragraph (e)(1) of this section, but consistent with the purpose of these regulations, for any volumes not taken by the lessee but for which royalties are due.

(3) For purposes of this subchapter, all persons actually taking volumes in excess of their proportionate share of production in any month under a unitization or communitization agreement shall be deemed to have taken ratably from all persons actually taking less than their proportionate share of the agreement production for that month.

(4) If a lessee takes less than its proportionate share of agreement production for any month but royalties are paid on the full volume of its proportionate share in accordance with the provisions of this section, no additional royalty will be owed for that lease for prior periods at the time the lessee subsequently takes more than its proportionate share to balance its account or when the lessee is paid a sum of money by the other agreement participants to balance its account.

(f) For production from Federal and Indian leases which are committed to federally-approved unitization or communitization agreements, upon request of a lessee MMS may establish the value of production pursuant to a method other than the method required by the regulations in this title if: (1) The proposed method for establishing value is consistent with the requirements of the applicable statutes, lease terms and agreement terms; (2) to the extent practical, persons with an interest in the agreement, including royalty interests, are given notice and an opportunity to comment on the proposed valuation method before it is authorized; and (3) to the extent practical, persons with an interest in a Federal or Indian lease committed to the agreement, including royalty interests, must agree to use the proposed method for valuing production from the agreement for royalty purposes.

§ 202.151 Royalty on processed gas.

(a) A royalty, as provided in the lease, shall be paid on the value of: (1) Any condensate recovered downstream of the point of royalty settlement without resorting to processing; and (2) residue gas and all gas plant products resulting from processing the gas produced from a lease subject to this subpart. The MMS shall authorize a processing allowance for the reasonable, actual costs of processing the gas produced from Federal and Indian leases. Processing allowances shall be determined in accordance with Subpart D of 30 CFR Part 206.

(b) A reasonable amount of residue gas shall be allowed royalty free for operation of the processing plant, but no allowance shall be made for boosting residue gas or other expenses incidental to marketing, except as provided in 30 CFR Part 206. In those situations where a processing plant processes gas from more than one lease, only that proportionate share of each lease's residue gas necessary for the operation of the processing plant shall be allowed royalty free.

(c) No royalty is due on residue gas, or any gas plant product resulting from processing gas, which is reinjected into a reservoir within the same lease, unit area, or communitized area, when the reinjection is included in a plan of development or operations and the plan has received BLM or MMS approval for onshore or offshore operations, respectively, until such time as they are finally produced from the reservoir for sale or other disposition off-lease.

§ 202.152 Standards for reporting and paying royalties on gas.

(a)(1) Gas volumes and Btu heating values, if applicable, shall be determined under the same degree of water saturation. Gas volumes shall be reported in units of one thousand cubic feet (mcf), and Btu heating value shall be reported at a rate of Btu's per cubic foot, at a standard pressure base of 14.73 pounds per square inch absolute (psia) and a standard temperature base of 60 °F, except that for OCS leases in

the Gulf of Mexico, gas volumes and Btu heating values shall be reported at a standard pressure base of 15.025 psia and a standard temperature base of 60 °F. Gas volumes and Btu heating values shall be reported, for royalty purposes, on the same water vapor saturated or unsaturated basis prescribed by Federal Energy Regulatory Commission (FERC) regulation, or on the basis prescribed in the lessee's gas sales contract provided that the sales contract does not conflict with FERC regulation.

(2) The frequency and method of Btu measurement as set forth in the lessee's contract shall be used to determine Btu heating values for reporting purposes. However, the lessee shall measure the Btu value at least semiannually by recognized standard industry testing methods even if the lessee's contract provides for less frequent measurement.

(b)(1) Residue gas and gas plant product volumes shall be reported as specified in this paragraph.

(2) Carbon dioxide (CO_2), nitrogen (N_2), helium (He), residue gas, and any other gas marketed as a separate product shall be reported by using the same standards specified in paragraph (a) of this section.

(3) Natural gas liquids (NGL) volumes shall be reported in standard U.S. gallons (231 cubic inches) at 60 °F.

(4) Sulfur (S) volumes shall be reported in long tons (2,240 pounds).

PART 206—PRODUCT VALUATION

1. The authority citation for Part 206 continues to read as follows:

Authority: 25 U.S.C. 396 *et seq.;* 25 U.S.C. 396a *et seq.;* 25 U.S.C. 2101 *et seq.;* 30 U.S.C. 181 *et seq.;* 30 U.S.C. 351 *et seq.;* 30 U.S.C. 1001 *et seq.;* 30 U.S.C. 1701 *et seq.;* 43 U.S.C. 1301 *et seq.;* 43 U.S.C. 1331 *et seq.;* and 43 U.S.C. 1801 *et seq.*

2. A new § 206.10 is added to Subpart A to read as follows:

Subpart A—General Provisions

§ 206.10 Information collection.

The information collection requirements contained in 30 CFR Part 206 have been approved by the Office of Management and Budget (OMB) under 44 U.S.C. 3501 *et seq.* The forms and approved OMB clearance numbers are as follows:

Form No., name, and filing date	OMB No.
MMS-4109—Gas Processing Allowance Summary Report—due within 3 months following the last day of the month for which an allowance is claimed, unless a longer period is approved by MMS.	1010-0075
MMS-4110—Oil Transportation Allowance Report—due within 3 months following the last day of the month for which an allowance is claimed, unless a longer period is approved by MMS.	1010-0061
MMS-4295—Gas Transportation Allowance Report—due within 3 months following the last day of the month for which an allowance is claimed unless a longer period is approved by MMS.	1010-0075

The information is being collected by the Department of the Interior to meet its congressionally mandated accounting and audit responsibilities relating to Federal and Indian mineral royalty management. The information will be used to determine the transportation and processing allowances that may be deducted from royalty payments due on Federal and Indian lands. The reports are required to receive a benefit.

§§ 206.106 and 206.107 [Removed]

3. Sections 206.106 and 206.107 are removed from Subpart C.

4. Subpart D is revised to read as follows:

Subpart D—Federal and Indian Gas

Sec.

206.150 Purpose and scope.
206.151 Definitions.
206.152 Valuation standards—unprocessed gas.
206.153 Valuation standards—processed gas.
206.154 Determination of quantities and qualities for computing royalties.
206.155 Accounting for comparison.
206.156 Transportation allowances—general.
206.157 Determination of transportation allowances.
206.158 Processing allowances—general.
206.159 Determination of processing allowances.

Subpart D—Federal and Indian Gas

§ 206.150 Purpose and scope.

(a) This subpart is applicable to all gas production from Federal and Indian (Tribal and allotted) oil and gas leases (except leases on the Osage Indian Reservation). The purpose of this subpart is to establish the value of production for royalty purposes consistent with the mineral leasing laws, other applicable laws and lease terms.

(b) If the specific provisions of any statute, treaty, settlement agreement between the United States (or Indian lessor) and a lessee resulting from administrative or judicial litigation, or oil and gas lease subject to the requirements of this subpart are inconsistent with any regulation in this subpart, then the lease, statute, treaty provision or settlement agreement shall govern to the extent of that inconsistency.

(c) All royalty payments made to MMS or to any Tribe or allottee are subject to audit and adjustment.

(d) The regulations in this subpart are intended to ensure that the trust responsibilities of the United States with respect to the administration of Indian oil and gas leases are discharged in accordance with the requirements of the governing mineral leasing laws, treaties, and lease terms.

(e)(1) Notice to Lessees 1 is terminated.

(2) Notice to Lessees 1A is terminated.

(3) Notice to Lessees 5 is terminated.

(4) Notice to Lessees and Operators (NTL) on the Outer Continental Shelf (OCS) concerning royalty payments on oil and gas lost or used on leases or units on the OCS is terminated.

§ 206.151 Definitions.

For purposes of this subpart:

"Allowance" means an approved or an MMS-initially accepted deduction in determining value for royalty purposes. "Processing allowance" means an allowance for the reasonable, actual costs incurred by the lessee for processing gas, or an approved or MMS-initially accepted deduction for costs of such processing, determined pursuant to this subpart. "Transportation allowance" means an allowance for the reasonable, actual costs incurred by the lessee for moving unprocessed gas, residue gas, or gas plant products to a point of sale or point of delivery off the lease, unit area, communitized area, or away from a processing plant, excluding gathering, or an approved or MMS-initially accepted deduction for costs of such transportation, determined pursuant to this subpart.

"Area" means a geographic region at least as large as the defined limits of an oil and/or gas field, in which oil and/or gas lease products have similar quality, economic, and legal characteristics.

"Arm's length contract" means a contract or agreement that has been arrived at in the marketplace between independent, nonaffiliated persons with opposing economic interests regarding that contract. For purposes of this subpart, two persons are affiliated if one person controls, is controlled by, or is under common control with another person. For purposes of this subpart, based on the instruments of ownership of the voting securities of an entity, or based on other forms of ownership:

(a) Ownership in excess of 50 percent constitutes control;

(b) Ownership of 10 through 50 percent creates a presumption of control; and

(c) Ownership of less than 10 percent creates a presumption of noncontrol which MMS may rebut if it demonstrates actual or legal control, including the existence of interlocking directorates.

Notwithstanding any other provisions of this subpart, contracts between relatives, either by blood or by marriage, are not arm's-length contracts. The MMS may require the lessee to certify ownership control. To be considered arm's-length for any production month, a contract must meet the requirements of this definition for that production month as well as when the contract was executed.

"Audit" means a review, conducted in accordance with generally accepted accounting and auditing standards, of royalty payment compliance activities of lessees or other interest holders who pay royalties, rents, or bonuses on Federal and Indian leases.

"BIA" means the Bureau of Indian Affairs of the Department of the Interior.

"BLM" means the Bureau of Land Management of the Department of the Interior.

"Compression" means the process of raising the pressure of gas.

"Condensate" means liquid hydrocarbons (normally exceeding 40 degrees of API gravity) recovered at the surface without resorting to processing. Condensate is the mixture of liquid hydrocarbons that results from condensation of petroleum hydrocarbons existing initially in a gaseous phase in an underground reservoir.

"Contract" means any oral or written agreement, including amendments or revisions thereto, between two or more persons and enforceable by law that with due consideration creates an obligation.

"Field" means a geographic region situated over one or more subsurface oil and gas reservoirs encompassing at least the outermost boundaries of all oil and gas accumulations known to be within those reservoirs vertically projected to the land surface. Onshore fields are usually given names and their official boundaries are often designated by oil and gas regulatory agencies in the respective States in which the fields are located. Outer Continental Shelf (OCS) fields are named and their boundaries are designated by MMS.

"Gas" means any fluid, either combustible or noncombustible, hydrocarbon or nonhydrocarbon, which is extracted from a reservoir and which has neither independent shape nor volume, but tends to expand indefinitely. It is a substance that exists in a gaseous or rarefied state under standard temperature and pressure conditions.

"Gas plant products" means separate marketable elements, compounds, or mixtures, whether in liquid, gaseous, or solid form, resulting from processing gas, excluding residue gas.

"Gathering" means the movement of lease production to a central accumulation and/or treatment point on the lease, unit or communitized area, or to a central accumulation or treatment point off the lease, unit or communitized area as approved by BLM or MMS OCS operations personnel for onshore and OCS leases, respectively.

"Gross proceeds" (for royalty payment purposes) means the total monies and other consideration accruing to an oil and gas lessee for the disposition of unprocessed gas, residue gas, or gas plant products. Gross proceeds includes, but is not limited to, payments to the lessee for certain services such as compression, dehydration, measurement, and/or field gathering to the extent that the lessee is obligated to perform them at no cost to the Federal Government or Indian lessor, and payments for gas processing rights. Gross proceeds, as applied to gas, also includes but is not limited to: Take-or-pay payments; reimbursements for severance taxes; and other reimbursements. Tax reimbursements are part of the gross proceeds accruing to a lessee even though the Federal or Indian royalty interest may be exempt from taxation. Payments or credits for advanced exploration or development costs or prepaid reserve payments that are subject to recoupment through credits against the purchase price or through reduced prices in later sales and which are made before production commences become part of gross proceeds as of the time of first production. Monies and other consideration, including the forms of consideration identified in this paragraph, to which a lessee is contractually or legally entitled but which it does not seek to collect through reasonable efforts are also part of gross proceeds.

"Indian allottee" means any Indian for whom land or an interest in land is held in trust by the United States or who holds title subject to Federal restriction against alienation.

"Indian Tribe" means any Indian Tribe, band, nation, pueblo, community, rancheria, colony, or other group of Indians for which any land or interest in land is held in trust by the United States or which is subject to Federal restriction against alienation.

"Lease" means any contract, profit-share arrangement, joint venture, or other agreement issued or approved by the United States under a mineral leasing law that authorizes exploration for, development or extraction of, or removal of lease products—or the land area covered by that authorization, whichever is required by the context.

"Lease products" means any leased minerals attributable to, originating from, or allocated to Outer Continental Shelf or onshore Federal or Indian leases.

"Lessee" means any person to whom the United States, an Indian Tribe, or an Indian allottee issues a lease, and any person who has been assigned an obligation to make royalty or other payments required by the lease. This includes any person who has an interest in a lease as well as an operator or payor who has no interest in the lease but who has assumed the royalty payment responsibility.

"Like-quality lease products" means lease products which have similar chemical, physical, and legal characteristics.

"Marketable condition" means lease products which are sufficiently free from impurities and otherwise in a condition that they will be accepted by a purchaser under a sales contract typical for the field or area.

"Marketing affiliate" means an affiliate of the lessee whose function is to acquire only the lessee's production and to market that production.

"Minimum royalty" means that minimum amount of annual royalty that the lessee must pay as specified in the lease or in applicable leasing regulations.

"Net-back method" (or work-back method) means a method for calculating market value of gas at the lease. Under this method, costs of transportation, processing, or manufacturing are deducted from the proceeds received for the gas, residue gas or gas plant products, and any extracted, processed, or manufactured products, or from the value of the gas, residue gas or gas plant products, and any extracted, processed, or manufactured products, at the first point at which reasonable values for any such products may be determined by a sale pursuant to an arm's-length contract or comparison to other sales of such products, to ascertain value at the lease.

"Net output" means the quantity of residue gas and each gas plant product that a processing plant produces.

"Net profit share" (for applicable Federal and Indian leases) means the specified share of the net profit from

production of oil and gas as provided in the agreement.

"Outer Continental Shelf (OCS") means all submerged lands lying seaward and outside of the area of land beneath navigable waters as defined in section 2 of the Submerged Lands Act (43 U.S.C. 1301) and of which the subsoil and seabed appertain to the United States and are subject to its jurisdiction and control.

"Person" means any individual, firm, corporation, association, partnership, consortium, or joint venture (when established as a separate entity).

"Posted price" means the price, net of all adjustments for quality and location, specified in publicly available price bulletins or other price notices available as part of normal business operations for quantities of unprocessed gas, residue gas, or gas plant products in marketable condition.

"Processing" means any process designed to remove elements or compounds (hydrocarbon and nonhydrocarbon) from gas, including absorption, adsorption, or refrigeration. Field processes which normally take place on or near the lease, such as natural pressure reduction, mechanical separation, heating, cooling, dehydration, and compression, are not considered processing. The changing of pressures and/or temperatures in a reservoir is not considered processing.

"Residue gas" means that hydrocarbon gas consisting principally of methane resulting from processing gas.

"Section 6 lease" means an OCS lease subject to section 6 of the Outer Continental Shelf Lands Act, as amended, 43 U.S.C. 1335.

"Selling arrangement" means the individual contractual arrangements under which sales or dispositions of gas, residue gas and gas plant products are made. Selling arrangements are described by illustration in the MMS Royalty Management Program Oil and Gas Payor Handbook.

"Spot sales agreement" means a contract wherein a seller agrees to sell to a buyer a specified amount of unprocessed gas, residue gas, or gas plant products at a specified price over a fixed period, usually of short duration, which does not normally require a cancellation notice to terminate, and which does not contain an obligation, nor imply an intent, to continue in subsequent periods.

"Warranty contract" means a long-term contract entered into prior to 1970, including any amendments thereto, for the sale of gas wherein the producer agrees to sell a specific amount of gas and the gas delivered in satisfaction of this obligation may come from fields or sources outside of the designated fields.

§ 206.152 Valuation standards—unprocessed gas.

(a)(1) This section applies to the valuation of all gas that is not processed and all gas that is processed but is sold or otherwise disposed of by the lessee pursuant to an arm's-length contract prior to processing. Where the lessee's contract includes a reservation of the right to process the gas and the lessee exercises that right, or where the lessee's contract for the sale of gas prior to processing provides for the value to be determined based upon a percentage of the purchaser's proceeds resulting from processing the gas, § 206.153 shall apply instead of this section. This section also applies to processed gas which must be valued prior to processing in accordance with § 206.155.

(2) The value of production, for royalty purposes, of gas subject to this subpart shall be the value of gas determined pursuant to this section less applicable allowances determined pursuant to this subpart.

(3)(i) For any Indian leases which provide that the Secretary may consider the highest price paid or offered for a major portion of production (major portion) in determining value of production for royalty purposes, if data are available to compute a major portion MMS will, where practicable, compare the value determined in accordance with this section with the major portion. The value to be used in determining the value of production for royalty purposes shall be the higher of those two values.

(ii) For purposes of this paragraph, major portion means the highest price paid or offered at the time of production for the major portion of gas production from the same field. The major portion will be calculated using like-quality gas sold under arm's-length contracts from the same field (or, if necessary to obtain a reasonable sample, from the same area) for each month. All such sales will be arrayed from highest price to lowest price (at the bottom). The major portion is that price at which 50 percent (by volume) plus 1 mcf of the gas (starting from the bottom) is sold.

(b)(1)(i) The value of gas which is sold pursuant to an arm's-length contract shall be the gross proceeds accruing to the lessee, except as provided in paragraphs (b)(1)(ii) and (b)(1)(iii) of this section. The lessee shall have the burden of demonstrating that its contract is arm's-length. The value which the lessee reports, for royalty purposes, is subject to monitoring, review, and audit. For purposes of this section, gas which is sold or otherwise transferred to the lessee's marketing affiliate and then sold by the marketing affiliate pursuant to an arm's-length contract shall be valued in accordance with this paragraph based upon the sale by the marketing affiliate.

(ii) In conducting reviews and audits, MMS will examine whether the contract reflects the total consideration actually transferred either directly or indirectly from the buyer to the seller for the gas. If the contract does not reflect the total consideration, then the MMS may require that the gas sold pursuant to that contract be valued in accordance with paragraph (c) of this section. Value may not be less than the gross proceeds accruing to the lessee, including the additional consideration.

(iii) If the MMS determines that the gross proceeds accruing to the lessee pursuant to an arm's-length contract do not reflect the reasonable value of the production because of misconduct by or between the contracting parties, or because the lessee otherwise has breached its duty to the lessor to market the production for the mutual benefit of the lessee and the lessor, then MMS shall require that the gas production be valued pursuant to paragraphs (c)(2) or (c)(3) of this section, and in accordance with the notification requirements of paragraph (e) of this section. When MMS determines that the value may be unreasonable, MMS will notify the lessee and give the lessee an opportunity to provide written information justifying the lessee's value.

(2) Notwithstanding the provisions of paragraph (b)(1) of this section, the value of gas sold pursuant to a warranty contract shall be determined by MMS, and due consideration will be given to all valuation criteria specified in this section. The lessee must request a value determination in accordance with paragraph (g) of this section for gas sold pursuant to a warranty contract; provided, however, that any value determination for a warranty contract in effect on the effective date of these regulations shall remain in effect until modified by MMS.

(3) MMS may require a lessee to certify that its arm's-length contract provisions include all of the consideration to be paid by the buyer, either directly or indirectly, for the gas.

(c) The value of gas subject to this section which is not sold pursuant to an arm's-length contract shall be the reasonable value determined in accordance with the first applicable of the following methods:

(1) The gross proceeds accruing to the lessee pursuant to a sale under its non-arm's-length contract (or other

disposition other than by an arm's-length contract), provided that those gross proceeds are equivalent to the gross proceeds derived from, or paid under, comparable arm's-length contracts for purchases, sales, or other dispositions of like-quality gas in the same field (or, if necessary to obtain a reasonable sample, from the same area). In evaluating the comparability of arm's-length contracts for the purposes of these regulations, the following factors shall be considered: price, time of execution, duration, market or markets served, terms, quality of gas, volume, and such other factors as may be appropriate to reflect the value of the gas;

(2) A value determined by consideration of other information relevant in valuing like-quality gas, including gross proceeds under arm's-length contracts for like-quality gas in the same field or nearby fields or areas, posted prices for gas, prices received in arm's-length spot sales of gas, other reliable public sources of price or market information, and other information as to the particular lease operation or the saleability of the gas; or

(3) A net-back method or any other reasonable method to determine value.

(d)(1) Notwithstanding any other provisions of this section, except paragraph (h) of this section, if the maximum price permitted by Federal law at which gas may be sold is less than the value determined pursuant to this section, then MMS shall accept such maximum price as the value. For purposes of this section, price limitations set by any State or local government shall not be considered as a maximum price permitted by Federal law.

(2) The limitation prescribed in paragraph (d)(1) of this section shall not apply to gas sold pursuant to a warranty contract and valued pursuant to paragraph (b)(2) of this section.

(e)(1) Where the value is determined pursuant to paragraph (c) of this section, the lessee shall retain all data relevant to the determination of royalty value. Such data shall be subject to review and audit, and MMS will direct a lessee to use a different value if it determines that the reported value is inconsistent with the requirements of these regulations.

(2) Any Federal or Indian lessee will make available upon request to the authorized MMS, State, or Indian representatives, to the Office of the Inspector General of the Department of the Interior, or other person authorized to receive such information, arm's-length sales and volume data for like-quality production sold, purchased or otherwise obtained by the lessee from the field or area or from nearby fields or areas.

(3) A lessee shall notify MMS if it has determined value pursuant to paragraph (c)(2) or (c)(3) of this section. The notification shall be by letter to the MMS Associate Director for Royalty Management or his/her designee. The letter shall identify the valuation method to be used and contain a brief description of the procedure to be followed. The notification required by this paragraph is a one-time notification due no later than the end of the month following the month the lessee first reports royalties on a Form MMS–2014 using a valuation method authorized by paragraph (c)(2) or (c)(3) of this section, and each time there is a change in a method under paragraph (c)(2) or (c)(3) of this section.

(f) If MMS determines that a lessee has not properly determined value, the lessee shall pay the difference, if any, between royalty payments made based upon the value it has used and the royalty payments that are due based upon the value established by MMS. The lessee shall also pay interest on that difference computed pursuant to 30 CFR 218.54. If the lessee is entitled to a credit, MMS will provide instructions for the taking of that credit.

(g) The lessee may request a value determination from MMS. In that event, the lessee shall propose to MMS a value determination method, and may use that method in determining value for royalty purposes until MMS issues its decision. The lessee shall submit all available data relevant to its proposal. The MMS shall expeditiously determine the value based upon the lessee's proposal and any additional information MMS deems necessary. In making a value determination MMS may use any of the valuation criteria authorized by this subpart. That determination shall remain effective for the period stated therein. After MMS issues its determination, the lessee shall make the adjustments in accordance with paragraph (f) of this section.

(h) Notwithstanding any other provision of this section, under no circumstances shall the value of production for royalty purposes be less than the gross proceeds accruing to the lessee for lease production, less applicable allowances determined pursuant to this subpart.

(i) The lessee is required to place gas in marketable condition at no cost to the Federal Government or Indian lessor unless otherwise provided in the lease agreement. Where the value established pursuant to this section is determined by a lessee's gross proceeds, that value shall be increased to the extent that the gross proceeds have been reduced because the purchaser, or any other person, is providing certain services the cost of which ordinarily is the responsibility of the lessee to place the gas in marketable condition.

(j) Value shall be based on the highest price a prudent lessee can receive through legally enforceable claims under its contract. If there is no contract revision or amendment, and the lessee fails to take proper or timely action to receive prices or benefits to which it is entitled, it must pay royalty at a value based upon that obtainable price or benefit. Contract revisions or amendments shall be in writing and signed by all parties to an arm's-length contract. If the lessee makes timely application for a price increase or benefit allowed under its contract but the purchaser refuses, and the lessee takes reasonable measures, which are documented, to force purchaser compliance, the lessee will owe no additional royalties unless or until monies or consideration resulting from the price increase or additional benefits are received. This paragraph shall not be construed to permit a lessee to avoid its royalty payment obligation in situations where a purchaser fails to pay, in whole or in part or timely, for a quantity of gas.

(k) Notwithstanding any provision in these regulations to the contrary, no review, reconciliation, monitoring, or other like process that results in a redetermination by the MMS of value under this section shall be considered final or binding as against the Federal Government, its beneficiaries, the Indian Tribes, or allottees until the audit period is formally closed.

(l) Certain information submitted to MMS to support valuation proposals, including transportation or extraordinary cost allowances, is exempted from disclosure by the Freedom of Information Act, 5 U.S.C. 552, or other Federal Law. Any data specified by law to be privileged, confidential, or otherwise exempt will be maintained in a confidential manner in accordance with applicable law and regulations. All requests for information about determinations made under this subpart are to be submitted in accordance with the Freedom of Information Act regulation of the Department of the Interior, 43 CFR Part 2. Nothing in this section is intended to limit or diminish in any manner whatsoever the right of an Indian lessor to obtain any and all information as such lessor may be lawfully entitled from MMS or such lessor's lessee

directly under the terms of the lease, 30 U.S.C. 1733, or other applicable law.

§ 206.153 Valuation standards—processed gas.

(a)(1) This section applies to the valuation of all gas that is processed by the lessee and any other gas production to which this subpart applies and that is not subject to the valuation provisions of § 206.152 of this subpart. This section applies where the lessee's contract includes a reservation of the right to process the gas and the lessee exercises that right, or where the lessee's contract for the sale of gas prior to processing provides for the value to be determined based upon a percentage of the purchaser's proceeds resulting from processing the gas (in which event these regulations will apply to determine value as if the person actually selling or disposing of the residue gas or gas plant products were the lessee of the Federal or Indian lease).

(2) The value of production, for royalty purposes, of gas subject to this section shall be the combined value of the residue gas and all gas plant products determined pursuant to this section, plus the value of any condensate recovered downstream of the point of royalty settlement without resorting to processing determined pursuant to § 206.102 of this part, less applicable transportation allowances and processing allowances determined pursuant to this subpart.

(3)(i) For any Indian leases which provide that the Secretary may consider the highest price paid or offered for a major portion of production (major portion) in determining value for royalty purposes, if data are available to compute a major portion MMS will, where practicable, compare the values determined in accordance with this section for any lease product with the major portion determined for that lease product. The value to be used in determining the value of production for royalty purposes shall be the higher of those two values.

(ii) For purposes of this paragraph, major portion means the highest price paid or offered at the time of production for the major portion of gas production from the same field, or for residue gas or gas plant products from the same processing plant, as applicable. The major portion will be calculated using like-quality lease products sold under arm's-length contracts from the same field or processing plant (or, if necessary to obtain a reasonable sample, from the same area or nearby processing plants) for each month. All such sales will be arrayed from highest price to lowest price (at the bottom). The major portion is that price at which 50 percent (by volume) plus 1 mcf of the gas (starting from the bottom) is sold, or for gas plant products, 50 percent (by volume) plus 1 unit.

(b)(1)(i) The value of the residue gas or any gas plant product which is sold pursuant to an arm's-length contract shall be the gross proceeds accruing to the lessee, except as provided in paragraphs (b)(1)(ii) and (b)(1)(iii) of this section. The lessee shall have the burden of demonstrating that its contract is arm's-length. The value that the lessee reports for royalty purposes is subject to monitoring, review, and audit. For purposes of this section, residue gas or any gas plant product which is sold or otherwise transferred to the lessee's marketing affiliate and then sold by the marketing affiliate pursuant to an arm's-length contract shall be valued in accordance with this paragraph based upon the sale by the marketing affiliate.

(ii) In conducting these reviews and audits, MMS will examine whether or not the contract reflects the total consideration actually transferred either directly or indirectly from the buyer to the seller for the residue gas or gas plant product. If the contract does not reflect the total consideration, then the MMS may require that the residue gas or gas plant product sold pursuant to that contract be valued in accordance with paragraph (c) of this section. Value may not be less than the gross proceeds accruing to the lessee, including the additional consideration.

(iii) If the MMS determines that the gross proceeds accruing to the lessee pursuant to an arm's-length contract do not reflect the reasonable value of the residue gas or gas plant product because of misconduct by or between the contracting parties, or because the lessee otherwise has breached its duty to the lessor to market the production for the mutual benefit of the lessee and the lessor, then MMS shall require that the residue gas or gas plant product be valued pursuant to paragraphs (c)(2) or (c)(3) of this section, and in accordance with the notification requirements of paragraph (e) of this section. When MMS determines that the value may be unreasonable, MMS will notify the lessee and give the lessee an opportunity to provide written information justifying the lessee's value.

(2) Notwithstanding the provisions of paragraph (b)(1) of this section, the value of residue gas sold pursuant to a warranty contract shall be determined by MMS, and due consideration will be given to all valuation criteria specified in this section. The lessee must request a value determination in accordance with paragraph (g) of this section for gas sold pursuant to a warranty contract; provided, however, that any value determination for a warranty contract in effect on the effective date of these regulations shall remain in effect until modified by MMS.

(3) MMS may require a lessee to certify that its arm's-length contract provisions include all of the consideration to be paid by the buyer, either directly or indirectly, for the residue gas or gas plant product.

(c) The value of residue gas or any gas plant product which is not sold pursuant to an arm's-length contract shall be the reasonable value determined in accordance with the first applicable of the following methods:

(1) The gross proceeds accruing to the lessee pursuant to a sale under its non-arm's-length contract (or other disposition other than by an arm's-length contract), provided that those gross proceeds are equivalent to the gross proceeds derived from, or paid under, comparable arm's-length contracts for purchases, sales, or other dispositions of like quality residue gas or gas plant products from the same processing plant (or, if necessary to obtain a reasonable sample, from nearby plants). In evaluating the comparability of arm's-length contracts for the purposes of these regulations, the following factors shall be considered: price, time of execution, duration, market or markets served, terms, quality of residue gas or gas plant products, volume, and such other factors as may be appropriate to reflect the value of the residue gas or gas plant products;

(2) A value determined by consideration of other information relevant in valuing like-quality residue gas or gas plant products, including gross proceeds under arm's-length contracts for like-quality residue gas or gas plant products from the same gas plant or other nearby processing plants, posted prices for residue gas or gas plant products, prices received in spot sales of residue gas or gas plant products, other reliable public sources of price or market information, and other information as to the particular lease operation or the saleability of such residue gas or gas plant products; or

(3) A net-back method or any other reasonable method to determine value.

(d)(1) Notwithstanding any other provisions of this section, except paragraph (h) of this section, if the maximum price permitted by Federal law at which any residue gas or gas plant products may be sold is less than the value determined pursuant to this section, then MMS shall accept such maximum price as the value. For the

purposes of this section, price limitations set by any State or local government shall not be considered as a maximum price permitted by Federal law.

(2) The limitation prescribed by paragraph (d)(1) of this section shall not apply to residue gas sold pursuant to a warranty contract and valued pursuant to paragraph (b)(2) of this section.

(e)(1) Where the value is determined pursuant to paragraph (c) of this section, the lessee shall retain all data relevant to the determination of royalty value. Such data shall be subject to review and audit, and MMS will direct a lessee to use a different value if it determines upon review or audit that the reported value is inconsistent with the requirements of these regulations.

(2) Any Federal or Indian lessee will make available upon request to the authorized MMS, State, or Indian representatives, to the Office of the Inspector General of the Department of the Interior, or other persons authorized to receive such information, arm's-length sales and volume data for like-quality residue gas and gas plant products sold, purchased or otherwise obtained by the lessee from the same processing plant or from nearby processing plants.

(3) A lessee shall notify MMS if it has determined any value pursuant to paragraph (c)(2) or (c)(3) of this section. The notification shall be by letter to the MMS Associate Director for Royalty Management or his/her designee. The letter shall identify the valuation method to be used and contain a brief description of the procedure to be followed. The notification required by this paragraph is a one-time notification due no later than the end of the month following the month the lessee first reports royalties on a Form MMS–2014 using a valuation method authorized by paragraph (c)(2) or (c)(3) of this section, and each time there is a change in a method under paragraph (c)(2) or (c)(3) of this section.

(f) If MMS determines that a lessee has not properly determined value, the lessee shall pay the difference, if any, between royalty payments made based upon the value it has used and the royalty payments that are due based upon the value established by MMS. The lessee shall also pay interest computed on that difference pursuant to 30 CFR 218.54. If the lessee is entitled to a credit, MMS will provide instructions for the taking of that credit.

(g) The lessee may request a value determination from MMS. In that event, the lessee shall propose to MMS a value determination method, and may use that method in determining value for royalty purposes until MMS issues its decision. The lessee shall submit all available data relevant to its proposal. The MMS shall expeditiously determine the value based upon the lessee's proposal and any additional information MMS deems necessary. In making a value determination, MMS may use any of the valuation criteria authorized by this subpart. That determination shall remain effective for the period stated therein. After MMS issues its determination, the lessee shall make the adjustments in accordance with paragraph (f) of this section.

(h) Notwithstanding any other provision of this section, under no circumstances shall the value of production for royalty purposes be less than the gross proceeds accruing to the lessee for residue gas and/or any gas plant products, less applicable transportation allowances and processing allowances determined pursuant to this subpart.

(i) The lessee is required to place residue gas and gas plant products in marketable condition at no cost to the Federal Government or Indian lessor unless otherwise provided in the lease agreement. Where the value established pursuant to this section is determined by a lessee's gross proceeds, that value shall be increased to the extent that the gross proceeds have been reduced because the purchaser, or any other person, is providing certain services the cost of which ordinarily is the responsibility of the lessee to place the residue gas or gas plant products in marketable condition.

(j) Value shall be based on the highest price a prudent lessee can receive through legally enforceable claims under its contract. Absent contract revision or amendment, if the lessee fails to take proper or timely action to receive prices or benefits to which it is entitled it must pay royalty at a value based upon that obtainable price or benefit. Contract revisions or amendments shall be in writing and signed by all parties to an arm's-length contract. If the lessee makes timely application for a price increase or benefit allowed under its contract but the purchaser refuses, and the lessee takes reasonable measures, which are documented, to force purchaser compliance, the lessee will owe no additional royalties unless or until monies or consideration resulting from the price increase or additional benefits are received. This paragraph shall not be construed to permit a lessee to avoid its royalty payment obligation in situations where a purchaser fails to pay, in whole or in part, or timely, for a quantity of residue gas or gas plant product.

(k) Notwithstanding any provision in these regulations to the contrary, no review, reconciliation, monitoring, or other like process that results in a redetermination by MMS of value under this section shall be considered final or binding against the Federal Government, its beneficiaries, the Indian Tribes, or allottees, until the audit period is formally closed.

(l) Certain information submitted to MMS to support valuation proposals, including transportation allowances, processing allowances or extraordinary cost allowances, is exempted from disclosure by the Freedom of Information Act, 5 U.S.C. 552, or other Federal law. Any data specified by law to be privileged, confidential, or otherwise exempt, will be maintained in a confidential manner in accordance with applicable law and regulations. All requests for information about determinations made under this Part are to be submitted in accordance with the Freedom of Information Act regulation of the Department of the Interior, 43 CFR Part 2. Nothing in this section is intended to limit or diminish in any manner whatsoever the right of an Indian lessor to obtain any and all information as such lessor may be lawfully entitled from the MMS or such lessor's lessee directly under the terms of the lease, 30 U.S.C. 1733, or other applicable law.

§ 206.154 Determination of quantities and qualities for computing royalties.

(a)(1) Royalties shall be computed on the basis of the quantity and quality of unprocessed gas at the point of royalty settlement approved by BLM or MMS for onshore and OCS leases, respectively.

(2) If the value of gas determined pursuant to § 206.152 of this subpart is based upon a quantity and/or quality that is different from the quantity and/or quality at the point of royalty settlement, as approved by BLM or MMS, that value shall be adjusted for the differences in quantity and/or quality.

(b)(1) For residue gas and gas plant products, the quantity basis for computing royalties due is the monthly net output of the plant even though residue gas and/or gas plant products may be in temporary storage.

(2) If the value of residue gas and/or gas plant products determined pursuant to § 206.153 of this subpart is based upon a quantity and/or quality of residue gas and/or gas plant products that is different from that which is attributable to a lease, determined in accordance with paragraph (c) of this

section, that value shall be adjusted for the differences in quantity and/or quality.

(c) The quantity of the residue gas and gas plant products attributable to a lease shall be determined according to the following procedure:

(1) When the net output of the processing plant is derived from gas obtained from only one lease, the quantity of the residue gas and gas plant products on which computations of royalty are based is the net output of the plant.

(2) When the net output of a processing plant is derived from gas obtained from more than one lease producing gas of uniform content, the quantity of the residue gas and gas plant products allocable to each lease shall be in the same proportions as the ratios obtained by dividing the amount of gas delivered to the plant from each lease by the total amount of gas delivered from all leases.

(3) When the net output of a processing plant is derived from gas obtained from more than one lease producing gas of nonuniform content, the quantity of the residue gas allocable to each lease will be determined by multiplying the amount of gas delivered to the plant from the lease by the residue gas content of the gas, and dividing the arithmetical product thus obtained by the sum of the similar arithmetical products separately obtained for all leases from which gas is delivered to the plant, and then multiplying the net output of the residue gas by the arithmetic quotient obtained. The net output of gas plant products allocable to each lease will be determined by multiplying the amount of gas delivered to the plant from the lease by the gas plant product content of the gas, and dividing the arithmetical product thus obtained by the sum of the similar arithmetical products separately obtained for all leases from which gas is delivered to the plant, and then multiplying the net output of each gas plant product by the arithmetic quotient obtained.

(4) A lessee may request MMS approval of other methods for determining the quantity of residue gas and gas plant products allocable to each lease. If approved, such method will be applicable to all gas production from Federal and Indian leases that is processed in the same plant.

(d)(1) No deductions may be made from the royalty volume or royalty value for actual or theoretical losses. Any actual loss of unprocessed gas that may be sustained prior to the royalty settlement metering or measurement point will not be subject to royalty provided that such loss is determined to have been unavoidable by BLM or MMS, as appropriate.

(2) Except as provided in paragraph (d)(1) of this section and 30 CFR 202.151(c), royalties are due on 100 percent of the volume determined in accordance with paragraphs (a) through (c) of this section. There can be no reduction in that determined volume for actual losses after the quantity basis has been determined or for theoretical losses that are claimed to have taken place. Royalties are due on 100 percent of the value of the unprocessed gas, residue gas, and/or gas plant products as provided in this subpart, less applicable allowances. There can be no deduction from the value of the unprocessed gas, residue gas, and/or gas plant products to compensate for actual losses after the quantity basis has been determined, or for theoretical losses that are claimed to have taken place.

§ 206.155 Accounting for comparison.

(a) Except as provided in paragraph (b) of this section, where the lessee (or a person to whom the lessee has transferred gas pursuant to a non-arm's-length contract or without a contract) processes the lessee's gas and after processing the gas the residue gas is not sold pursuant to an arm's-length contract, the value, for royalty purposes, shall be the greater of (1) the combined value, for royalty purposes, of the residue gas and gas plant products resulting from processing the gas determined pursuant to § 206.153 of this subpart, plus the value, for royalty purposes, of any condensate recovered downstream of the point of royalty settlement without resorting to processing determined pursuant to § 206.102 of this subpart; or (2) the value, for royalty purposes, of the gas prior to processing determined in accordance with § 206.152 of this subpart.

(b) The requirement for accounting for comparison contained in the terms of leases, particularly Indian leases, will govern as provided in § 206.150(b) of this subpart. When accounting for comparison is required by the lease terms, such accounting for comparison shall be determined in accordance with paragraph (a) of this section.

§ 206.156 Transportation allowances—general.

(a) Where the value of gas has been determined pursuant to § 206.152 or § 206.153 of this subpart at a point (e.g., sales point or point of value determination) off the lease, MMS shall allow a deduction for the reasonable actual costs incurred by the lessee to transport unprocessed gas, residue gas, and gas plant products from a lease to a point off the lease including, if appropriate, transportation from the lease to a gas processing plant off the lease and from the plant to a point away from the plant.

(b) Transportation costs must be allocated among all products produced and transported as provided in § 206.157.

(c)(1) Except as provided in paragraph (c)(3) of this section, for unprocessed gas valued in accordance with § 206.152 of this subpart, the transportation allowance deduction on the basis of a selling arrangement shall not exceed 50 percent of the value of the unprocessed gas determined in accordance with § 206.152 of this subpart.

(2) Except as provided in paragraph (c)(3) of this section, for gas production valued in accordance with § 206.153 of this subpart the transportation allowance deduction on the basis of a selling arrangement shall not exceed 50 percent of the value of the residue gas or gas plant product determined in accordance with § 206.153 of this subpart. For purposes of this section, natural gas liquids shall be considered one product.

(3) Upon request of a lessee, MMS may approve a transportation allowance deduction in excess of the limitations prescribed by paragraphs (c)(1) and (c)(2) of this section. The lessee must demonstrate that the transportation costs incurred in excess of the limitations prescribed in paragraphs (c)(1) and (c)(2) of this section were reasonable, actual, and necessary. An application for exception shall contain all relevant and supporting documentation necessary for the MMS to make a determination. Under no circumstances shall the value for royalty purposes under any selling arrangement be reduced to zero.

(d) If, after a review and/or audit, MMS determines that a lessee has improperly determined a transportation allowance authorized by this subpart, then the lessee shall pay any additional royalties, plus interest, determined in accordance with 30 CFR 218.54, or shall be entitled to a credit, without interest.

§ 206.157 Determination of transportation allowances.

(a) *Arm's-length transportation contracts.* (1)(i) For transportation costs incurred by a lessee pursuant to an arm's-length contract, the transportation allowance shall be the reasonable, actual costs incurred by the lessee for transporting the unprocessed gas, residue gas and/or gas plant products

under that contract, except as provided in paragraphs (a)(1)(ii) and (a)(1)(iii) of this section, subject to monitoring, review, audit, and adjustment. The lessee shall have the burden of demonstrating that its contract is arm's-length. Such allowances shall be subject to the provisions of paragraph (f) of this section. Before any deduction may be taken, the lessee must submit a completed page one of Form MMS–4295 (and Schedule 1), Gas Transportation Allowance Report, in accordance with paragraph (c)(1) of this section. A transportation allowance may be claimed retroactively for a period of not more than 3 months prior to the first day of the month that Form MMS–4295 is filed with MMS, unless MMS approves a longer period upon a showing of good cause by the lessee.

(ii) In conducting reviews and audits, MMS will examine whether or not the contract reflects more than the consideration actually transferred either directly or indirectly from the lessee to the transporter for the transportation. If the contract reflects more than the total consideration, then the MMS may require that the transportation allowance be determined in accordance with paragraph (b) of this section.

(iii) If the MMS determines that the consideration paid pursuant to an arm's-length transportation contract does not reflect the reasonable value of the transportation because of misconduct by or between the contracting parties, or because the lessee otherwise has breached its duty to the lessor to market the production for the mutual benefit of the lessee and the lessor, then MMS shall require that the transportation allowance be determined in accordance with paragraph (b) of this section. When MMS determines that the value of the transportation may be unreasonable, MMS will notify the lessee and give the lessee an opportunity to provide written information justifying the lessee's transportation costs.

(2)(i) If an arm's-length transportation contract includes more than one product in a gaseous phase and the transportation costs attributable to each product cannot be determined from the contract, the total transportation costs shall be allocated in a consistent and equitable manner to each of the products transported in the same proportion as the ratio of the volume of each product (excluding waste products which have no value) to the volume of all products in the gaseous phase (excluding waste products which have no value). Except as provided in this paragraph, no allowance may be taken for the costs of transporting lease production which is not royalty bearing without MMS approval.

(ii) Notwithstanding the requirements of paragraph (i), the lessee may propose to MMS a cost allocation method on the basis of the values of the products transported. MMS shall approve the method unless it determines that it is not consistent with the purposes of the regulations in this part.

(3) If an arm's-length transportation contract includes both gaseous and liquid products and the transportation costs attributable to each cannot be determined from the contract, the lessee shall propose an allocation procedure to MMS. The lessee may use the transportation allowance determined in accordance with its proposed allocation procedure until MMS issues its determination on the acceptability of the cost allocation. The lessee shall submit all relevant data to support its proposal. The initial proposal must be submitted by June 30, 1988 or within 3 months after the last day of the month for which the lessee requests a transportation allowance, whichever is later (unless MMS approves a longer period). The MMS shall then determine the gas transportation allowance based upon the lessee's proposal and any additional information MMS deems necessary.

(4) Where the lessee's payments for transportation under an arm's-length contract are not based on a dollar per unit, the lessee shall convert whatever consideration is paid to a dollar value equivalent for the purposes of this section.

(5) Where an arm's-length sales contract price or a posted price includes a provision whereby the listed price is reduced by a transportation factor, MMS will not consider the transportation factor to be a transportation allowance. The transportation factor may be used in determining the lessee's gross proceeds for the sale of the product. The transportation factor may not exceed 50 percent of the base price of the product without MMS approval.

(b) *Non-arm's-length or no contract.* (1) If a lessee has a non-arm's-length transportation contract or has no contract, including those situations where the lessee performs transportation services for itself, the transportation allowance will be based upon the lessee's reasonable actual costs as provided in this paragraph. All transportation allowances deducted under a non-arm's-length or no contract situation are subject to monitoring, review, audit, and adjustment. Before any estimated or actual deduction may be taken, the lessee must submit a completed Form MMS–4295 in accordance with paragraph (c)(2) of this section. A transportation allowance may be claimed retroactively for a period of not more than 3 months prior to the first day of the month that Form MMS–4295 is filed with MMS, unless MMS approves a longer period upon a showing of good cause by the lessee. The MMS will monitor the allowance deductions to ensure that deductions are reasonable and allowable. When necessary or appropriate, MMS may direct a lessee to modify its estimated or actual transportation allowance deduction.

(2) The transportation allowance for non-arm's-length or no-contract situations shall be based upon the lessee's actual costs for transportation during the reporting period, including operating and maintenance expenses, overhead, and either depreciation and a return on undepreciated capital investment in accordance with paragraph (b)(2)(iv)(A) of this section, or a cost equal to the initial depreciable investment in the transportation system multiplied by a rate of return in accordance with paragraph (b)(2)(iv)(B) of this section. Allowable capital costs are generally those costs for depreciable fixed assets (including costs of delivery and installation of capital equipment) which are an integral part of the transportation system.

(i) Allowable operating expenses include: Operations supervision and engineering; operations labor; fuel; utilities; materials; ad valorem property taxes; rent; supplies; and any other directly allocable and attributable operating expense which the lessee can document.

(ii) Allowable maintenance expenses include: Maintenance of the transportation system; maintenance of equipment; maintenance labor; and other directly allocable and attributable maintenance expenses which the lessee can document.

(iii) Overhead directly attributable and allocable to the operation and maintenance of the transportation system is an allowable expense. State and Federal income taxes and severance taxes and other fees, including royalties, are not allowable expenses.

(iv) A lessee may use either depreciation or a return on depreciable capital investment. After a lessee has elected to use either method for a transportation system, the lessee may not later elect to change to the other alternative without approval of the MMS.

(A) To compute depreciation, the lessee may elect to use either a straight-line depreciation method based on the life of equipment or on the life of the reserves which the transportation system services, or a unit of production method. After an election is made, the lessee may not change methods without MMS approval. A change in ownership of a transportation system shall not alter the depreciation schedule established by the original transporter/lessee for purposes of the allowance calculation. With or without a change in ownership, a transportation system shall be depreciated only once. Equipment shall not be depreciated below a reasonable salvage value.

(B) The MMS shall allow as a cost an amount equal to the allowable initial capital investment in the transportation system multiplied by the rate of return determined pursuant to paragraph (b)(2)(v) of this section. No allowance shall be provided for depreciation. This alternative shall apply only to transportation facilities first placed in service after March 1, 1988.

(v) The rate of return shall be the industrial rate associated with Standard and Poor's BBB rating. The rate of return shall be the monthly average rate as published in *Standard and Poor's Bond Guide* for the first month of the reporting period for which the allowance is applicable and shall be effective during the reporting period. The rate shall be redetermined at the beginning of each subsequent transportation allowance reporting period (which is determined pursuant to paragraph (c) of this section).

(3)(i) The deduction for transportation costs shall be determined on the basis of the lessee's cost of transporting each product through each individual transportation system. Where more than one product in a gaseous phase is transported, the allocation of costs to each of the products transported shall be made in a consistent and equitable manner in the same proportion as the ratio of the volume of each product (excluding waste products which have no value) to the volume of all products in the gaseous phase (excluding waste products which have no value). Except as provided in this paragraph, the lessee may not take an allowance for transporting a product which is not royalty bearing without MMS approval.

(ii) Notwithstanding the requirements of paragraph (i), the lessee may propose to the MMS a cost allocation method on the basis of the values of the products transported. MMS shall approve the method unless it determines that it is not consistent with the purposes of the regulations in this part.

(4) Where both gaseous and liquid products are transported through the same transportation system, the lessee shall propose a cost allocation procedure to MMS. The lessee may use the transportation allowance determined in accordance with its proposed allocation procedure until MMS issues its determination on the acceptability of the cost allocation. The lessee shall submit all relevant data to support its proposal. The initial proposal must be submitted by June 30, 1988 or within 3 months after the last day of the month for which the lessee begins the transportation, whichever is later, unless MMS approves a longer period. The MMS shall then determine the transportation allowance based upon the lessee's proposal and any additional information MMS deems necessary.

(5) A lessee may apply to the MMS for an exception from the requirement that it compute actual costs in accordance with paragraphs (b)(1) through (b)(4) of this section. The MMS will grant the exception only if the lessee has a tariff for the transportation system approved by the Federal Energy Regulatory Commission (FERC) (for both Federal and Indian leases) or a state regulatory agency (for Federal leases). The MMS shall deny the exception request if it determines that: (i) The tariff is excessive as compared to arm's-length transportation charges by the lessee or others providing similar transportation services; or (ii) if there are no arm's-length transportation charges by the lessee or others providing similar transportation services, the tariff significantly exceeds the lessee's actual costs for transportation as determined under this section.

(c) *Reporting requirements*—(1) *Arm's-length contracts.* (i) With the exception of those transportation allowances specified in paragraphs (c)(1)(v) and (c)(1)(vi) of this section, the lessee shall submit page one of the initial Form MMS–4295 (and Schedule 1) prior to, or at the same time as, the transportation allowance determined pursuant to an arm's-length contract is reported on Form MMS–2014, Report of Sales and Royalty Remittance. A Form MMS–4295 received by the end of the month that the Form MMS–2014 is due shall be considered to be timely received.

(ii) The initial Form MMS–4295 shall be effective for a reporting period beginning the month that the lessee is first authorized to deduct a transportation allowance and shall continue until the end of the calendar year, or until the applicable contract or rate terminates or is modified or amended, whichever is earlier.

(iii) After the initial reporting period and for succeeding reporting periods, lessees must submit page one of Form MMS–4295 (and Schedule 1) within 3 months after the end of the calendar year, or after the applicable contract or rate terminates or is modified or amended, whichever is earlier, unless MMS approves a longer period (during which period the lessee shall continue to use the allowance from the previous reporting period).

(iv) The MMS may require that a lessee submit arm's-length transportation contracts, production agreements, operating agreements, and related documents. Documents shall be submitted within a reasonable time, as determined by MMS.

(v) Transportation allowances which are based on arm's-length contracts and which are in effect at the time these regulations become effective will be allowed to continue until such allowances terminate. For the purposes of this section, only those allowances that have been approved by MMS in writing shall qualify as being in effect at the time these regulations become effective.

(vi) The MMS may establish, in appropriate circumstances, reporting requirements which are different from the requirements of this section.

(2) *Non-arm's-length or no contract.* (i) With the exception of those transportation allowances specified in paragraphs (c)(2)(v), (c)(2)(vii), and (c)(2)(viii) of this section, the lessee shall submit an initial Form MMS–4295 prior to, or at the same time as, the transportation allowance determined pursuant to a non-arm's-length contract or no-contract situation is reported on Form MMS–2014, Report of Sales and Royalty Remittance. A Form MMS–4295 received by the end of the month that the Form MMS–2014 is due shall be considered to be timely received. The initial report may be based upon estimated costs.

(ii) The initial Form MMS–4295 shall be effective for a reporting period beginning the month that the lessee first is authorized to deduct a transportation allowance and shall continue until the end of the calendar year, or until the transportation under the non-arm's-length contract or the no contract situation terminates, whichever is earlier.

(iii) For calendar-year reporting periods succeeding the initial reporting period, the lessee shall submit a completed Form MMS–4295 containing the actual costs for the previous reporting period. If the transportation is continuing, the lessee shall include on

Form MMS–4295 its estimated costs for the next calendar year. The estimated transportation allowance shall be based on the actual costs for the previous reporting period plus or minus any adjustments which are based on the lessee's knowledge of decreases or increases which will affect the allowance. Form MMS–4295 must be received by MMS within 3 months after the end of the previous reporting period, unless MMS approves a longer period (during which period the lessee shall continue to use the allowance from the previous reporting period).

(iv) For new transportation facilities or arrangements, the lessee's initial Form MMS–4295 shall include estimates of the allowable transportation costs for the applicable period. Cost estimates shall be based upon the most recently available operations data for the transportation system, or if such data are not available, the lessee shall use estimates based upon industry data for similar transportation systems.

(v) Non-arm's-length contract or no contract based transportation allowances which are in effect at the time these regulations become effective will be allowed to continue until such allowances terminate. For the purposes of this section, only those allowances that have been approved by MMS in writing shall qualify as being in effect at the time these regulations become effective.

(vi) Upon request by MMS, the lessee shall submit all data used to prepare its Form MMS–4295. The data shall be provided within a reasonable period of time, as determined by MMS.

(vii) The MMS may establish in appropriate circumstances, reporting requirements which are different from the requirements of this section.

(viii) If the lessee is authorized to use its FERC-approved tariff as its transportation cost in accordance with subsection (b)(5) of this section, it shall follow the reporting requirements of subsection (c)(1) of this section.

(3) The MMS may establish reporting dates for individual lessees different than those specified in this subpart in order to provide more effective administration. Lessees will be notified of any change in their reporting period.

(4) Transportation allowances must be reported as a separate line item on Form MMS–2014, unless MMS approves a different reporting procedure.

(d) *Interest assessments for incorrect or late reports and failure to report.* (1) If a lessee deducts a transportation allowance on its Form MMS–2014 without complying with the requirements of this section, the lessee shall pay interest only on the amount of such deduction until the requirements of this section are complied with. The lessee also shall repay the amount of any allowance which is disallowed by this section.

(2) If a lessee erroneously reports a transportation allowance which results in an underpayment of royalties, interest shall be paid on the amount of that underpayment.

(3) Interest required to be paid by this section shall be determined in accordance with 30 CFR 218.54.

(e) *Adjustments.* (1) If the actual transportation allowance is less than the amount the lessee has estimated and taken during the reporting period, the lessee shall be required to pay additional royalties due, plus interest computed pursuant to 30 CFR 218.54, retroactive to the first month the lessee is authorized to deduct a transportation allowance. If the actual transportation allowance is greater than the amount the lessee has estimated and taken during the reporting period, the lessee shall be entitled to a credit without interest.

(2) For lessees transporting production from onshore Federal and Indian leases, the lessee must submit a corrected Form MMS–2014 to reflect actual costs, together with any payment, in accordance with instructions provided by MMS.

(3) For lessees transporting gas production from leases on the OCS, if the lessee's estimated transportation allowance exceeds the allowance based on actual costs, the lessee must submit a corrected Form MMS–2014 to reflect actual costs, together with its payment, in accordance with instructions provided by MMS. If the lessee's estimated transportation allowance is less than the allowance based on actual costs, the refund procedure will be specified by MMS.

(f) *Actual or theoretical losses.* Notwithstanding any other provisions of this subpart, for other than arm's-length contracts no cost shall be allowed for transportation which results from payments (either volumetric or for value) for actual or theoretical losses. This section does not apply when the transportation allowance is based upon a FERC or state regulatory agency approved tariff.

(g) *Other transportation cost determinations.* The provisions of this section shall apply to determine transportation costs when establishing value using a net-back valuation procedure or any other procedure that requires deduction of transportation costs.

§ 206.158 Processing allowances—general.

(a) Where the value of gas is determined pursuant to § 206.153 of this subpart, a deduction shall be allowed for the reasonable actual costs of processing.

(b) Processing costs must be allocated among the gas plant products. A separate processing allowance must be determined for each gas plant product and processing plant relationship. Natural gas liquids (NGL's) shall be considered as one product.

(c)(1) Except as provided in paragraph (d)(2) of this section, the processing allowance shall not be applied against the value of the residue gas. Where there is no residue gas MMS may designate an appropriate gas plant product against which no allowance may be applied.

(2) Except as provided in paragraph (c)(3) of this section, the processing allowance deduction on the basis of an individual product shall not exceed 66⅔ percent of the value of each gas plant product determined in accordance with § 206.153 of this subpart (such value to be reduced first for any transportation allowances related to postprocessing transportation authorized by § 206.156 of this subpart).

(3) Upon request of a lessee, MMS may approve a processing allowance in excess of the limitation prescribed by paragraph (c)(2) of this section. The lessee must demonstrate that the processing costs incurred in excess of the limitation prescribed in paragraph (c)(2) of this section were reasonable, actual, and necessary. An application for exception shall contain all relevant and supporting documentation for MMS to make a determination. Under no circumstances shall the value for royalty purposes of any gas plant product be reduced to zero.

(d)(1) Except as provided in paragraph (d)(2) of this section, no processing cost deduction shall be allowed for the costs of placing lease products in marketable condition, including dehydration, separation, compression, or storage, even if those functions are performed off the lease or at a processing plant. Where gas is processed for the removal of acid gases, commonly referred to as "sweetening," no processing cost deduction shall be allowed for such costs unless the acid gases removed are further processed into a gas plant product. In such event, the lessee shall be eligible for a processing allowance as determined in accordance with this subpart. However, MMS will not grant any processing allowance for processing

lease production which is not royalty bearing.

(2)(i) If the lessee incurs extraordinary costs for processing gas production from a gas production operation, it may apply to MMS for an allowance for those costs which shall be in addition to any other processing allowance to which the lessee is entitled pursuant to this section. Such an allowance may be granted only if the lessee can demonstrate that the costs are, by reference to standard industry conditions and practice, extraordinary, unusual, or unconventional.

(ii) Prior MMS approval to continue an extraordinary processing cost allowance is not required. However, to retain the authority to deduct the allowance the lessee must report the deduction to MMS in a form and manner prescribed by MMS.

(e) If MMS determines that a lessee has improperly determined a processing allowance authorized by this subpart, then the lessee shall pay any additional royalties, plus interest determined in accordance with 30 CFR 218.54, or shall be entitled to a credit, without interest.

§ 206.159 Determination of processing allowances.

(a) *Arm's-length processing contracts.* (1)(i) For processing costs incurred by a lessee pursuant to an arm's-length contract, the processing allowance shall be the reasonable actual costs incurred by the lessee for processing the gas under that contract, except as provided in paragraphs (a)(1)(ii) and (a)(1)(iii) of this section, subject to monitoring, review, audit, and adjustment. The lessee shall have the burden of demonstrating that its contract is arm's-length. Before any deduction may be taken, the lessee must submit a completed page one of Form MMS–4109, Gas Processing Allowance Summary Report, in accordance with paragraph (c)(1) of this section. A processing allowance may be claimed retroactively for a period of not more than 3 months prior to the first day of the month that Form MMS–4109 is filed with MMS, unless MMS approves a longer period upon a showing of good cause by the lessee.

(ii) In conducting reviews and audits, MMS will examine whether the contract reflects more than the consideration actually transferred either directly or indirectly from the lessee to the processor for the processing. If the contract reflects more than the total consideration, then the MMS may require that the processing allowance be determined in accordance with paragraph (b) of this section.

(iii) If the MMS determines that the consideration paid pursuant to an arm's-length processing contract does not reflect the reasonable value of the processing because of misconduct by or between the contracting parties, or because the lessee otherwise has breached its duty to the lessor to market the production for the mutual benefit of the lessee and the lessor, then MMS shall require that the processing allowance be determined in accordance with paragraph (b) of this section when MMS determines that the value of the processing may be unreasonable, MMS will notify the lessee and give the lessee an opportunity to provide an opportunity to provide written information justifying the lessee's processing costs.

(2) If an arm's-length processing contract includes more than one gas plant product and the processing costs attributable to each product can be determined from the contract, then the processing costs for each gas plant product shall be determined in accordance with the contract. No allowance may be taken for the costs of processing lease production which is not royalty-bearing.

(3) If an arm's-length processing contract includes more than one gas plant product and the processing costs attributable to each product cannot be determined from the contract, the lessee shall propose an allocation procedure to MMS. The lessee may use its proposed allocation procedure until MMS issues its determination. The lessee shall submit all relevant data to support its proposal. The initial proposal must be submitted by June 30, 1988, or within 3 months after the last day of the month for which the lessee requests a processing allowance, whichever is later (unless MMS approves a longer period). The MMS shall then determine the processing allowance based upon the lessee's proposal and any additional information MMS deems necessary. No processing allowance will be granted for the costs of processing lease production which is not royalty bearing.

(4) Where the lessee's payments for processing under an arm's-length contract are not based on a dollar per unit basis, the lessee shall convert whatever consideration is paid to a dollar value equivalent for the purposes of this section.

(b) *Non-arm's-length or no contract.* (1) If a lessee has a non-arm's-length processing contract or has no contract, including those situations where the lessee performs processing for itself, the processing allowance will be based upon the lessee's reasonable actual costs as provided in this paragraph. All processing allowances deducted under a non-arm's-length or no-contract situation are subject to monitoring, review, audit, and adjustment. Before any estimated or actual deduction may be taken, the lessee must submit a completed Form MMS–4109 in accordance with paragraph (c)(2) of this section. A processing allowance may be claimed retroactively for a period of not more than 3 months prior to the first day of the month that Form MMS–4109 is filed with MMS, unless MMS approves a longer period upon a showing of good cause by the lessee. The MMS will monitor the allowance deduction to ensure that deductions are reasonable and allowable. When necessary or appropriate, MMS may direct a lessee to modify its estimated or actual processing allowance.

(2) The processing allowance for non-arm's-length or no-contract situations shall be based upon the lessee's actual costs for processing during the reporting period, including operating and maintenance expenses, overhead, and either depreciation and a return on undepreciated capital investment in accordance with paragraph (b)(2)(iv)(A) of this section, or a cost equal to the initial depreciable investment in the processing plant multiplied by a rate of return in accordance with paragraph (b)(2)(iv)(B) of this section. Allowable capital costs are generally those costs for depreciable fixed assets (including costs of delivery and installation of capital equipment) which are an integral part of the processing plant.

(i) Allowable operating expenses include: Operations supervision and engineering; operations labor; fuel; utilities; materials; ad valorem property taxes; rent; supplies; and any other directly allocable and attributable operating expense which the lessee can document.

(ii) Allowable maintenance expenses include: maintenance of the processing plant; maintenance of equipment; maintenance labor; and other directly allocable and attributable maintenance expenses which the lessee can document.

(iii) Overhead directly attributable and allocable to the operation and maintenance of the processing plant is an allowable expense. State and Federal income taxes and severance taxes, including royalties, are not allowable expenses.

(iv) A lessee may use either depreciation or a return on depreciable capital investment. When a lessee has elected to use either method for a processing plant, the lessee may not later elect to change to the other

alternative without approval of the MMS.

(A) To compute depreciation, the lessee may elect to use either a straight-line depreciation method based on the life of equipment or on the life of the reserves which the processing plant services, or a unit-of-production method. After an election is made, the lessee may not change methods without MMS approval. A change in ownership of a processing plant shall not alter the depreciation schedule established by the original processor/lessee for purposes of the allowance calculation. With or without a change in ownership, a processing plant shall be depreciated only once. Equipment shall not be depreciated below a reasonable salvage value.

(B) The MMS shall allow as a cost an amount equal to the allowable initial capital investment in the processing plant multiplied by the rate of return determined pursuant to paragraph (b)(2)(v) of this section. No allowance shall be provided for depreciation. This alternative shall apply only to plants first placed in service after March 1, 1988.

(v) The rate of return shall be the industrial rate associated with Standard and Poor's BBB rating. The rate of return shall be the monthly average rate as published in *Standard and Poor's Bond Guide* for the first month of the reporting period for which the allowance is applicable and shall be effective during the reporting period. The rate shall be redetermined at the beginning of each subsequent processing allowance reporting period (which is determined pursuant to paragraph (c)(2) of this section).

(3) The processing allowance for each gas plant product shall be determined based on the lessee's reasonable and actual cost of processing the gas. Allocation of costs to each gas plant product shall be based upon generally accepted accounting principles. The lessee may not take an allowance for the costs of processing lease production which is not royalty bearing.

(4) A lessee may apply to MMS for an exception from the requirement that it compute actual costs in accordance with paragraphs (b)(1) through (b)(3) of this section. The MMS may grant the exception only if: (i) The lessee has arm's-length contracts for processing other gas production at the same processing plant; and (ii) at least 50 percent of the gas processed annually at the plant is processed pursuant to arm's-length processing contracts; if the MMS grants the exception, the lessee shall use as its processing allowance the volume weighted average prices charged other persons pursuant to arm's-length contracts for processing at the same plant.

(c) *Reporting requirements.* (1) Arm's-length contracts. (i) With the exception of those processing allowances specified in paragraphs (c)(1)(v) and (c)(1)(vi) of this section, the lessee shall submit page one of the initial Form MMS–4109 (and Schedule 1) prior to the time, or at the same time as, the processing allowance determined pursuant to an arm's-length contract is reported on Form MMS–2014, Report of Sales and Royalty Remittance. A Form MMS–4109 received by the end of the month that the Form MMS–2014 is due shall be considered to be timely received.

(ii) The initial Form MMS–4109 shall be effective for a reporting period beginning the month that the lessee is first authorized to deduct a processing allowance and shall continue until the end of the calendar year, or until the applicable contract or rate terminates or is modified or amended, whichever is earlier.

(iii) After the initial reporting period and for succeeding reporting periods, lessees must submit page one of Form MMS–4109 within 3 months after the end of the calendar year, or after the applicable contract or rate terminates or is modified or amended, whichever is earlier, unless MMS approves a longer period (during which period the lessee shall continue to use the allowance from the previous reporting period).

(iv) The MMS may require that a lessee submit arm's-length processing contracts and related documents. Documents shall be submitted within a reasonable time, as determined by MMS.

(v) Processing allowances which are based on arm's-length contracts and which are in effect at the time these regulations become effective will be allowed to continue until such allowances terminate. For the purpose of this section, only those allowances that have been approved by MMS in writing shall qualify as being in effect at the time these regulations became effective.

(vi) The MMS may establish, in appropriate circumstances, reporting requirements which are different from the requirements of this section.

(2) Non-arm's-length or no contract.

(i) With the exception of those processing allowances specified in paragraphs (c)(2)(v), (c)(2)(vii) and (c)(2)(viii) of this section, the lessee shall submit an initial Form MMS–4109 prior to, or at the same time as, the processing allowance determined pursuant to a non-arm's-length contract or no contract situation is reported on Form MMS–2014, Report of Sales and Royalty Remittance. A Form MMS–4109 received by the end of the month that the Form MMS–2014 is due shall be considered to be timely received. The initial report may be based upon estimated costs.

(ii) The initial Form MMS–4109 shall be effective for a reporting period beginning the month that the lessee first is authorized to deduct a processing allowance and shall continue until the end of the calendar year, or until the processing under the non-arm's-length contract or the no-contract situation terminates, whichever is earlier.

(iii) For calendar-year reporting periods succeeding the initial reporting period, the lessee shall submit a completed Form MMS–4109 containing the actual costs for the previous reporting period. If gas processing is continuing, the lessee shall include on Form MMS–4109 its estimated costs for the next calendar year. The estimated gas processing allowance shall be based on the actual costs for the previous period plus or minus any adjustments which are based on the lessee's knowledge of decreases or increases which will affect the allowance. Form MMS–4109 must be received by MMS within 3 months after the end of the previous reporting period, unless MMS approves a longer period (during which period the lessee shall continue to use the allowance from the previous reporting period).

(iv) For new processing plants, the lessee's initial Form MMS–4109 shall include estimates of the allowable gas processing costs for the applicable period. Cost estimates shall be based upon the most recently available operations data for the plant, or if such data are not available, the lessee shall use estimates based upon industry data for similar gas processing plants.

(v) Processing allowances based on non-arm's-length or nocontract situations which are in effect at the time these regulations become effective will be allowed to continue until such allowances terminate for gas production from onshore Federal and Indian leases. For gas production from OCS leases such allowances will be allowed to continue until they terminate or until the end of the calendar year, whichever is earlier. For the purposes of this section, only those allowances that have been approved by MMS in writing shall qualify as being in effect at the time these regulations become effective.

(vi) Upon request by MMS, the lessee shall submit all data used by the lessee to prepare its Form MMS–4109. The data

shall be provided within a reasonable period of time, as determined by MMS.

(vii) The MMS may establish, in appropriate circumstances, reporting requirements which are different from the requirements of this section.

(viii) If the lessee is authorized to use the volume weighted average prices charged other persons as its processing allowance in accordance with paragraph (b)(4) of this section, it shall follow the reporting requirements of paragraph (c)(1) of this section.

(3) The MMS may establish reporting dates for individual leases different from those specified in this subpart in order to provide more effective administration. Lessees will be notified of any change in their reporting period.

(4) Processing allowances must be reported as a separate line on the Form MMS–2014, unless MMS approves a different reporting procedure.

(d) *Interest assessments for incorrect or late reports and failure to report.* (1) If a lessee deducts a processing allowance on its Form MMS–2014 without complying with the requirements of this section, the lessee shall pay interest only on the amount of such deduction until the requirements of this section are complied with. The lessee also shall repay the amount of any allowance which is disallowed by this section.

(2) If a lessee erroneously reports a processing allowance which results in an underpayment of royalties, interest shall be paid on the amount of that underpayment.

(3) Interest required to be paid by this section shall be determined in accordance with 30 CFR 218.54.

(e) *Adjustments.* (1) If the actual gas processing allowance is less than the amount the lessee has estimated and taken during the reporting period, the lessee shall be required to pay additional royalties due plus interest computed pursuant to 30 CFR 218.54, retroactive to the first day of the first month the lessee is authorized to deduct a processing allowance. If the actual processing allowance is greater than the amount the lessee has estimated and taken during the reporting period, the lessee shall be entitled to a credit without interest.

(2) For lessees processing production from onshore Federal and Indian leases, the lessee must submit a corrected Form MMS–2014 to reflect actual costs, together with any payment, in accordance with instructions provided by MMS.

(3) For lessees processing gas production from leases on the OCS, if the lessee's estimated processing allowance exceeds the allowance based on actual costs, the lessee must submit a corrected Form MMS–2014 to reflect actual costs, together with its payment, in accordance with instructions provided by MMS. If the lessee's estimated costs were less than the actual costs, the refund procedure will be specified by MMS.

(f) *Other processing cost determinations.* The provisions of this section shall apply to determine processing costs when establishing value using a net back valuation procedure or any other procedure that requires deduction of processing costs.

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Part V

United States Sentencing Commission

Sentencing Guidelines for United States Courts; Notice of Amendments to Sentencing Guidelines and Official Commentary; Request for Public Comment, and Notice of Hearing; Notice

UNITED STATES SENTENCING COMMISSION

Sentencing Guidelines for United States Courts

AGENCY: United States Sentencing Commission.

ACTION: Notice of amendments to sentencing guidelines and official commentary. Request for public comment. Notice of hearing.

SUMMARY: Pursuant to its emergency authority, the Commission formally adopted the revisions to the guidelines, policy statements and commentary dated October 1987, which were published in the **Federal Register** on November 20, 1987, (52 FR 44674). The Commission then adopted the amendments listed below. By law, these amendments are temporary, but the Commission is considering their permanent adoption. The Commission may report other permanent amendments to Congress on or before May 1, 1988. The Commission invites public comment on these amendments and all other aspects of the guidelines.

DATES: The effective date of the Commission's actions is January 15, 1988. Public comment on all aspects of the sentencing guidelines, policy statements and official commentary should be received by the Commission no later than March 14, 1988, in order for the Commission to consider the comments in conjunction with the next set of regular amendments, which must be sent to Congress by May 1, 1988. The Commission plans to hold public hearings in Washington, D.C., on March 21 and 22, 1988, on these and any other proposed amendments.

ADDRESSES: Comments should be sent to: United States Sentencing Commission, 1331 Pennsylvania Avenue, NW., Suite 1400, Washington, DC 20004, Attention: Sentencing Guidelines Comment.

FOR FURTHER INFORMATION CONTACT: Paul K. Martin, Communications Director for the Commission, telephone (202) 662–8800.

SUPPLEMENTARY INFORMATION: The United States Sentencing Commission is an independent commission in the judicial branch of the United States Government. Under 28 U.S.C. 994(x), promulgation of guidelines by the Commission pursuant to 28 U.S.C. 994 is subject to the Administrative Procedure Act rulemaking provisions of 5 U.S.C. 553. However, Section 21(a) of the Sentencing Act of 1987 (Pub. L. 100–182, Dec. 7, 1987) authorizes the Commission to adopt temporary guidelines or amendments under certain limited circumstances. The Commission understands the advance notice, comment and hearing provisions that apply to the promulgation of permanent guidelines to be inapplicable under such circumstances. Absent contrary action, temporary guidelines or amendments remain in effect until and during the pendency of the next report to Congress pursuant to 28 U.S.C. 994(p).

The Commission concluded that questions as to the controlling status of the October 1987 revisions vis-a-vis the earlier published version had created unnecessary confusion and uncertainty in interpreting the guidelines; the elimination of this confusion and uncertainty constituted an urgent and compelling reason to re-adopt the October 1987 version under the emergency guidelines promulgation authority. In addition, the Commission has learned that users of the guidelines found certain aspects of the guidelines or commentary to be unclear, causing inconsistent interpretations. Furthermore, in a number of instances, clerical or technical errors had been made in the guidelines and commentary; these errors were likely to lead to errors in applying the guidelines, and in one instance rendered the guideline inconsistent with existing law. The Commission determined that the prevention of application errors and the avoidance of unnecessary litigation constituted urgent and compelling reasons to make various amendments. Finally, the Commission concluded that certain guidelines should be revised promptly to conform to recently-enacted legislation pertaining to criminal offenses, as contemplated by Section 21(a)(2) of the Sentencing Act of 1987. The specific reason(s) for each amendment are listed immediately after that amendment in the material that follows.

Authority: Section 21(a) of the Sentencing Act of 1987 (Pub. L. 100–182, Dec. 7, 1987).

William W. Wilkins, Jr.,
Chairman.

Appendix C—Amendments to the Sentencing Guidelines Manual of October 1987

Pursuant to the Emergency Guidelines Promulgation Authority provided in section 21 of the Sentencing Act of 1987 (Pub. L. 100–182, Dec. 7, 1987), the Sentencing Commission has:

(1) Re-promulgated, effective January 15, 1988, the revisions in official commentary, policy statement revision, and correction of typographical errors in certain guidelines which were previously adopted by the Commission and issued in the Guidelines Manual (October 1987); and

(2) Promulgated, also effective January 15, 1988, additional temporary amendments to previously issued sentencing guidelines and official commentary as set forth in this Appendix.

The format under which the temporary amendments are presented in this Appendix is designed to facilitate a comparison between previously existing and amended provisions, in the event it becomes necessary to reference the former guideline or commentary language.

§ 1B1.1. Application Instructions

1. Section 1B1.1(b) is amended by inserting "in the order listed" immediately following "Chapter Two".

Section 1B1.1(d) is amended by deleting "one" and "three" and inserting in lieu thereof "(a)" and "(c)" respectively.

The Commentary to § 1B1.1 captioned "Application Notes" is amended by inserting, as an additional note, the following:

"4. The offense level adjustments from more than one specific offense characteristic within an offense guideline are cumulative (added together) unless the guideline specifies that only the greater (or greatest) is to be used. Within each specific offense characteristic subsection, however, the offense level adjustments are alternative; only the one that best describes the conduct is to be used. E.g., in § 2A2.2(b)(3), pertaining to degree of bodily injury, the subsection that best describes the level of bodily injury is used; the adjustments for different degrees of bodily injury (subsections (A), (B), and (C)) are not added together.".

The purposes of this amendment are to correct a clerical error and to clarify the operation of the guidelines by consolidating the former § 1B1.4 (Determining the Offense Level) with this section.

§ 1B1.2. Applicable Guidelines

2. Section 1B1.2(a) is amended by deleting "guideline" the first time it appears and inserting in lieu thereof "offense guideline section".

Section 1B1.2(a) is amended by inserting, as an additional sentence at the end of the subsection, the following:

"Similarly, stipulations to additional offenses are treated as if the defendant had been convicted of separate counts charging those offenses.".

Section 1B1.2(b) is amended by deleting:

"The court shall determine any applicable specific offense

characteristic, victim related adjustment, or departure from the guidelines attributable to offense conduct according to the principles in § 1B1.3 (Relevant Conduct).",

and inserting in lieu thereof:

"After determining the appropriate offense guideline section pursuant to subsection (a) of this section, determine the applicable guideline range in accordance with § 1B1.3 (Relevant Conduct).".

The Commentary to § 1B1.2 captioned "Application Notes" is amended in Note 2 by deleting:

"any applicable victim related adjustment from Chapter Three, Part A, and any guideline departures attributable to the offense conduct from Chapter Five, Part K, using a 'relevant conduct' standard, as that standard is defined in § 1B1.3.",

and inserting in lieu thereof:

"and any other applicable sentencing factor pursuant to the 'relevant conduct' definition in § 1B1.3.".

The Commentary to § 1B1.2 captioned "Application Notes" is amended in Note 3 by deleting:

"In such instances, the court should consider all conduct, circumstances, and injury relevant to the offense (as well as all relevant offender characteristics). See § 1B1.3 (Relevant Conduct).",

and inserting in lieu thereof:

"See §§ 1B1.3 (Relevant Conduct) and 1B1.4 (Information to be Used in Imposing Sentence)."

The purposes of this amendment are to correct a clerical error and to clarify the operation of the guidelines.

§ 1B1.3. Relevant Conduct (Retitled Relevant Conduct (Factors that Determine the Guideline Range))

3. Section 1B1.3 and the Commentary thereto is amended by deleting the entire text thereof, including the title, as follows:

"Relevant Conduct

To determine the seriousness of the offense conduct, all conduct, circumstances, and injuries relevant to the offense of conviction shall be taken into account.

(a) Unless otherwise specified under the guidelines, conduct and circumstances relevant to the offense of conviction means:
acts or omissions committed or aided and abetted by the defendant, or by a person for whose conduct the defendant is legally accountable, that (1) are part of the same course of conduct, or a common scheme or plan, as the offense of conviction, or (2) are relevant to the defendant's state of mind or motive in committing the offense of conviction, or (3) indicate the defendant's degree of dependence upon criminal activity for a livelihood.

(b) Injury relevant to the offense of conviction means harm which is caused intentionally, recklessly or by criminal negligence in the course of conduct relevant to the offense of conviction.

Commentary

Application Note:

1. In sentencing, the court should consider all relevant offense and offender characteristics. For purposes of assessing offense conduct, the relevant conduct and circumstances of the offense of conviction are as follows:

a. Conduct directed toward preparation for or commission of the offense of conviction, and efforts to avoid detection and responsibility for the offense of conviction;

b. Conduct indicating that the offense of conviction was to some degree part of a broader purpose, scheme, or plan;

c. Conduct that is relevant to the state of mind or motive of the defendant in committing the crime;

d. Conduct that is relevant to the defendant's involvement in crime as a livelihood.

The first three criteria are derived from two sources, Rule 8(a) of the Federal Rules of Criminal Procedure, governing joinder of similar or related offenses, and Rule 404(b) of the Federal Rules of Evidence, permitting admission of evidence of other crimes to establish motive, intent, plan, and common scheme. These rules provide standards that govern consideration at trial of crimes "of the same or similar character," and utilize concepts and terminology familiar to judges, prosecutors, and defenders. The governing standard should be liberally construed in favor of considering information generally appropriate to sentencing. When other crimes are inadmissible under the Rule 404(b) standard, such crimes may not be "relevant to the offense of conviction" under the criteria that determine this question for purposes of Chapter Two; such crimes would, however, be considered in determining the relevant offender characteristics to the extent authorized by Chapter Three (Adjustments), and Chapter Four (Criminal History and Criminal Livelihood) and Chapter Five, Part H (Specific Offender Characteristics). This construction is consistent with the existing rule that "[n]o limitation shall be placed on the information concerning the background, character, and conduct of a person convicted of an offense * * * for the purpose of imposing an appropriate sentence," 18 U.S.C. 3577, so long as the information "has sufficient indicia of reliability to support its probable accuracy." United States v. Marshall, 519 F. Supp. 751 (D. Wis. 1981), aff'd, 719 F.2d 887 (7th Cir. 1983).

The last of these criteria is intended to ensure that a judge may consider at sentencing, information that, although not specifically within other criteria of relevance, indicates that the defendant engages in crime for a living. Inclusion of this information in sentencing considerations is consistent with 28 U.S.C. 994(d)(11).",

and inserting in lieu thereof the following:

"Relevant Conduct (Factors that Determine the Guideline Range)

The conduct that is relevant to determining the applicable guideline range includes that set forth below.

(a) Chapters Two (Offense Conduct) and Three (Adjustments). Unless otherwise specified, (i) the base offense level where the guideline specifies more than one base offense level, (ii) specific offense characteristics and (iii) cross references in Chapter Two, and (iv) adjustments in Chapter Three, shall be determined on the basis of the following:

(1) All acts and omissions committed or aided and abetted by the defendant, or for which the defendant would be otherwise accountable, that occurred during the commission of the offense of conviction, in preparation for that offense, or in the course of attempting to avoid detection or responsibility for that offense, or that otherwise were in furtherance of that offense;

(2) Solely with respect to offenses of a character for which § 3D1.2(d) would require grouping of multiple counts, all such acts and omissions that were part of the same course of conduct or common scheme or plan as the offense of conviction;

(3) All harm or risk of harm that resulted from the acts or omissions specified in subsections (a)(1) and (a)(2) above, if the harm or risk was caused intentionally, recklessly or by criminal negligence, and all harm or risk that was the object of such acts or omissions;

(4) The defendant's state of mind, intent, motive and purpose in committing the offense; and

(5) Any other information specified in the applicable guideline.

(b) Chapter Four (Criminal History and Criminal Livelihood). To determine the criminal history category and the applicability of the career offender and criminal livelihood guidelines, the court shall consider all conduct relevant to a determination of the factors enumerated in the respective guidelines in Chapter Four.

Commentary

Application Notes:

1. Conduct "for which the defendant is otherwise accountable," as used in subsection (a)(1), includes conduct that the defendant counseled, commanded, induced, procured, or willfully caused. (Cf. 18 U.S.C. 2.) If the conviction is for conspiracy, it includes conduct in furtherance of the conspiracy that was known to or was

reasonably foreseeable by the defendant. If the conviction is for solicitation, misprision or accessory after the fact, it includes all conduct relevant to determining the offense level for the underlying offense that was known to or reasonably should have been known by the defendant. See generally §§ 2X1.1–2X4.1.

2. "Such acts and omissions," as used in subsection (a)(2), refers to acts and omissions committed or aided and abetted by the defendant, or for which the defendant would be otherwise accountable. This subsection applies to offenses of types for which convictions on multiple counts would be grouped together pursuant to § 3D1.2(d); multiple convictions are not required.

3. "Harm" includes bodily injury, monetary loss, property damage and any resulting harm.

4. If the offense guideline includes creating a risk or danger of harm as a specific offense characteristic, whether that risk or danger was created is to be considered in determining the offense level. See, e.g., § 2K1.4 (Arson); § 2Q1.2 (Mishandling of Hazardous or Toxic Substances or Pesticides). If, however, the guideline refers only to harm sustained (e.g., § 2A2.2 (Assault); § 2B3.1 (Robbery)) or to actual, attempted or intended harm (e.g., § 2F1.1 (Fraud); § 2X1.1 (Attempt, Solicitation or Conspiracy)), the risk created enters into the determination of the offense level only insofar as it is incorporated into the base offense level. Unless clearly indicated by the guidelines, harm that is merely risked is not to be treated as the equivalent of harm that occurred. When not adequately taken into account by the applicable offense guideline, creation of a risk may provide a ground for imposing a sentence above the applicable guideline range. See generally § 1B1.4 (Information to be Used in Imposing Sentence); § 5K2.0 (Grounds for Departure). The extent to which harm that was attempted or intended enters into the determination of the offense level should be determined in accordance with § 2X1.1 (Attempt, Solicitation or Conspiracy) and the applicable offense guideline.

5. A particular guideline (in the base offense level or in a specific offense characteristic) may expressly direct that a particular factor be applied only if the defendant was convicted of a particular statute. E.g., in § 2K2.3, a base offense level of 12 is used "if convicted under 26 U.S.C. 5861." Unless such an express direction is included, conviction under the statute is not required. Thus, use of a statutory reference to describe a particular set of circumstances does not require a conviction under the referenced statute. Examples of this usage are found in § 2K1.3(b)(4) ("if the defendant was a person prohibited from receiving explosives under 18 U.S.C. 842(i), or if the defendant knowingly distributed explosives to a person prohibited from receiving explosives under 18 U.S.C. 842(i), increase by 10 levels"); and § 2A3.4(b)(2) ("if the abusive contact was accomplished as defined in 18 U.S.C. 2242, increase by 4 levels").

Background: This section prescribes rules for determining the applicable guideline sentencing range, whereas § 1B1.4 (Information to be Used in Imposing Sentence) governs the range of information that the court may consider in adjudging sentence once the guideline sentencing range has been determined. Conduct that is not formally charged or is not an element of the offense of conviction may enter into the determination of the applicable guideline sentencing range. The range of information that may be considered at sentencing is broader than the range of information upon which the applicable sentencing range is determined.

Subsection (a) establishes a rule of construction by specifying, in the absence of more explicit instructions in the context of a specific guideline, the range of conduct that is relevant to determining the applicable offense level (except for the determination of the applicable offense guideline, which is governed by § 1B1.2(a)). No such rule of construction is necessary with respect to Chapter Four because the guidelines in that Chapter are explicit as to the specific factors to be considered.

Subsection (a)(2) provides for consideration of a broader range of conduct with respect to one class of offenses, primarily certain property, tax, fraud and drug offenses for which the guidelines depend substantially on quantity, than with respect to other offenses such as assault, robbery and burglary. The distinction is made on the basis of § 3D1.2(d), which provides for grouping together (i.e., treating as a single count) all counts charging offenses of a type covered by this subsection. However, the applicability of subsection (a)(2) does not depend upon whether multiple counts are alleged. Thus, in an embezzlement case, for example, embezzled funds that may not be specified in any count of conviction are nonetheless included in determining the offense level if they are part of the same course of conduct or part of the same scheme or plan as the count of conviction. Similarly, in a drug distribution case, quantities and types of drugs not specified in the count of conviction are to be included in determining the offense level if they were part of the same course of conduct or part of a common scheme or plan as the count of conviction. On the other hand, in a robbery case in which the defendant robbed two banks, the amount of money taken in one robbery would not be taken into account in determining the guideline range for the other robbery, even if both robberies were part of a single course of conduct or the same scheme or plan. (This is true whether the defendant is convicted of one or both robberies.)

Subsections (a)(1) and (a)(2) adopt different rules because offenses of the character dealt with in subsection (a)(2) (i.e., to which § 3D1.2(d) applies) often involve a pattern of misconduct that cannot readily be broken into discrete, identifiable units that are meaningful for purposes of sentencing. For example, a pattern of embezzlement may consist of several acts of taking that cannot separately be identified, even though the overall conduct is clear. In addition, the distinctions that the law makes as to what constitutes separate counts or offenses often turn on technical elements that are not especially meaningful for purposes of sentencing. Thus, in a mail fraud case, the scheme is an element of the offense and each mailing may be the basis for a separate count; in an embezzlement case, each taking may provide a basis for a separate count. Another consideration is that in a pattern of small thefts, for example, it is important to take into account the full range of related conduct. Relying on the entire range of conduct, regardless of the number of counts that are alleged or on which a conviction is obtained, appears to be the most reasonable approach to writing workable guidelines for these offenses. Conversely, when § 3D1.2(d) does not apply, so that convictions on multiple counts are considered separately in determining the guideline sentencing range, the guidelines prohibit aggregation of quantities from other counts in order to prevent "double counting" of the conduct and harm from each count of conviction. Continuing offenses present similar practical problems. The reference to § 3D1.2(d), which provides for grouping of multiple counts arising out of a continuing offense when the offense guideline takes the continuing nature into account, also prevents double counting.

Subsection (a)(4) requires consideration of the defendant's "state of mind, intent, motive or purpose in committing the offense." The defendant's state of mind is an element of the offense that may constitute a specific offense characteristic. See, e.g., § 2A1.4 (Involuntary Manslaughter) (distinction made between recklessness and criminal negligence). The guidelines also incorporate broader notions of intent or purpose that are not elements of the offense, e.g., whether the offense was committed for profit, or for the purpose of facilitating a more serious offense. Accordingly, such factors must be considered in determining the applicable guideline range.".

The purpose of this amendment is to clarify the guideline. The amended language restates the intent of § 1B1.3 as originally promulgated.

§ 1B1.4. Determining the Offense Level (Retitled Information to be Used in Imposing Sentence (Selecting a Point Within the Guideline Range or Departing from the Guidelines))

4. Section 1B1.4 and the Commentary thereto is amended by deleting the entire text thereof, including the title, as follows:

"Determining the Offense Level

In determining the offense level:

(a) Determine the base offense level from Chapter Two;

(b) Make any applicable adjustments for specific offense characteristics from Chapter Two in the order listed;

(c) Make any applicable adjustments from Chapter Three;

(d) Make any applicable adjustments from Chapter Four, Part B (Career Offenders and Criminal Livelihood).

Commentary

Application Notes:

1. A particular guideline (in the base offense level or in a specific offense characteristic) may expressly direct that a particular factor be applied only if the defendant was convicted of a particular statute. E.g., in § 2K2.3, a base offense level of 12 is used "if convicted under 26 U.S.C. 5861." Unless such an express direction is included, conviction under the statute is not required. Thus, use of a statutory reference to describe a particular set of circumstances does not require a conviction under the referenced statute. Examples of this usage are found in § 2K1.3(b)(4) ("if the defendant was a person prohibited from receiving explosives under 18 U.S.C. 842(i), or if the defendant knowingly distributed explosives to a person prohibited from receiving explosives under 18 U.S.C. 842(i), increase by 10 levels"); and § 2A3.4(b)(2) ("if the abusive contact was accomplished as defined in 18 U.S.C. 2242, increase by 4 levels"). In such cases, the particular circumstances described are to be evaluated under the "relevant conduct" standard of § 1B1.3.

2. Once the appropriate base offense level is determined, all specific offense characteristics are to be applied in the order listed.

3. The offense level adjustments from more than one specific offense characteristic within an offense guideline are cumulative (added together) unless the guideline specifies that only the greater (or greatest) is to be used. Within each specific offense characteristic subsection, however, the offense level adjustments are alternative; only the one that best describes the conduct is to be used. E.g., in § 2A2.2(b)(3), pertaining to degree of bodily injury, the subsection that best describes the level of bodily injury is used; the adjustments from different degrees of bodily injury (subsections (A), (B) and (C)) are not added together).

4. The adjustments in Chapter Three that may apply include Part A (Victim-Related Adjustments), Part B (Role in the Offense), Part C (Obstruction), Part D (Multiple Counts), and Part E (Acceptance of Responsibility).",

and inserting in lieu thereof the following:

"Information to be Used in Imposing Sentence (Selecting a Point Within the Guideline Range or Departing from the Guidelines)

In determining the sentence to impose within the guideline range, or whether a departure from the guidelines is warranted, the court may consider, without limitation, any information concerning the background, character and conduct of the defendant, unless otherwise prohibited by law. See 18 U.S.C. 3661.

Commentary

Background: This section distinguishes between factors that determine the applicable guideline sentencing range (§ 1B1.3) and information that a court may consider in imposing sentence within that range. The section is based on 18 U.S.C. 3661, which recodifies 18 U.S.C. 3557. The recodification of this 1970 statute in 1984 with an effective date of 1987 (99 Stat. 1728), makes it clear that Congress intended that no limitation would be placed on the information that a court may consider in imposing an appropriate sentence under the future guideline sentencing system. A court is not precluded from considering information that the guidelines do not take into account. For example, if the defendant committed two robberies, but as part of a plea negotiation entered a guilty plea to only one, the robbery that was not taken into account by the guidelines would provide a reason for sentencing at the top of the guideline range. In addition, information that does not enter into the determination of the applicable guideline sentencing range may be considered in determining whether and to what extent to depart from the guidelines. Some policy statements do, however, express a Commission policy that certain factors should not be considered for any purpose, or should be considered only for limited purposes. See, e.g., Chapter Five, Part H (Specific Offender Characteristics).".

The purposes of this amendment are to remove material made redundant by the reorganization of this Part and to replace it with material that clarifies the operation of the guidelines. The material formerly in this section is now covered by § 1B1.1

§ 2B1.2. Receiving Stolen Property

5. Section 2B1.2 is amended by transposing the texts of subsections (b)(2) and (3).

The Commentary to § 2B1.2 captioned "Application Notes" is amended by deleting:

"3. For consistency with § 2B1.1, it is the Commission's intent that specific offense characteristic (b)(3) be applied before (b)(2).",

and by renumbering Note 4 as Note 3.

The purpose of this amendment is to correct a clerical error in the guideline. Correction of the error makes the deleted Commentary unnecessary.

§ 2B2.1. Burglary of a Residence

6. The Commentary to § 2B2.1 captioned "Application Notes" is amended in Note 4 by inserting "or other dangerous weapon" immediately following "firearm".

The purpose of the amendment is to correct a clerical error.

§ 2B5.1. Offenses Involving Counterfeit Obligations of the United States

7. The Commentary to § 2B5.1 captioned "Statutory Provisions" is amended by deleting "473" and inserting in lieu thereof "474", and by deleting "510," and ", 2314, 2315".

The purpose of this amendment is to correct a clerical error.

§ 2B5.2. Forgery; Offenses Involving Counterfeit Instruments Other Than Obligations of the United States

8. The Commentary to § 2B5.2 is amended by deleting "Statutory Provision: 18 U.S.C. 510" and inserting in lieu thereof "Statutory Provisions: 18 U.S.C. 471–473, 500, 510, 1003, 2314, 2315".

The purpose of this amendment is to correct a clerical error.

§ 2C1.1. Offering, Giving, Soliciting, or Receiving a Bribe; Extortion Under Color of Official Right

9. The Commentary to § 2C1.1 captioned "Application Notes" is amended in Note 3 by deleting "§ 3C1.1(c)(1)" and inserting in lieu thereof "§ 2C1.1(c)(1)".

The purpose of this amendment is to correct a typographical error.

§ 2D1.1. Unlawful Manufacturing, Importing, Exporting, or Trafficking (Including Possession With Intent To Commit These Offenses)

10. The Commentary to § 2D1.1 captioned "Application Notes" is amended in the Measurement Conversion Table in Note 10 by deleting "1 lb=.45 kg" and inserting in lieu thereof "1 lb=.4536 kg", by deleting "1 kg=2.2 lbs", by deleting "1 gal=3.8 liters" and inserting in lieu thereof "1 gal=3.785 liters", and by deleting "1 qt=.95 liters" and inserting in lieu thereof "1 qt=.946 liters".

The purpose of this amendment is to correct a clerical error.

11. The Commentary to § 2D1.1 captioned "Application Notes" is amended by deleting:

"11. If it is uncertain whether the quantity of drugs involved falls into one category in the table or an adjacent category, the court may use the intermediate level for sentencing purposes. For example, sale of 700–900 grams of heroin is at level 30, while sale of 400–699 grams is at level 28. If the exact quantity is uncertain, but near 700 grams, use of level 29 would be permissible.".

The purpose of this amendment is to delete an erroneous reference to interpolation, which cannot apply as the guideline is written.

12. The Commentary to § 2D1.1 captioned "Application Notes" is amended by inserting, as a new note, the following:

"11. Types and quantities of drugs not specified in the count of conviction may be considered in determining the offense level. See § 1B1.3(a)(2) (Relevant Conduct). If the amount seized does not reflect the scale of the offense, see Application Note 2 of the Commentary to § 2D1.4. If the offense involved negotiation to traffic in a controlled

substance, see Application Note 1 of the Commentary to § 2D1.4.".

The purpose of this amendment is to clarify the Commentary.

§ 2D1.2. Involving Juveniles in the Trafficking of Controlled Substances

13. Section 2D1.2(a)(1) is amended by deleting "less than fourteen years of age" and inserting in lieu thereof "fourteen years of age or less".

Section 2D1.2(a)(2) is amended by deleting "fourteen" and inserting in lieu thereof "fifteen".

The Commentary to § 2D1.2 captioned "Statutory Provision" is amended by deleting "21 U.S.C. 845(b)" and inserting in lieu thereof "21 U.S.C. 845b".

The Commentary to § 2D1.2 captioned "Background" is amended by deleting:

"(provided for by the minimum base offense level of 13) in addition to the punishment imposed for the applicable crime in which the defendant involved a juvenile. An increased penalty for the employment or use of persons under age fourteen is statutorily directed by 21 U.S.C. 845b(d).",

and inserting in lieu thereof:

An increased penalty for the employment or use of persons fourteen years of age or younger reflects the enhanced sentence authorized by 21 U.S.C. 845b(d).".

The purpose of this amendment is to correct clerical errors in the guideline and Commentary.

§ 2D1.3. Distributing Controlled Substances to Individuals Younger Than Twenty-One Years, To Pregnant Women, or Within 1,000 Feet of a School or College

14. The Commentary to § 2D1.3 captioned "Application Notes" is amended in Note 1 by deleting:

"If more than one enhancement provision is applicable in a particular case, the punishment imposed under the separate enhancement provisions should be added together in calculating the appropriate guideline sentence.",

and inserting in lieu thereof:

"If both subsections (a)(1) and (a)(2) apply to a single distribution (e.g., the distribution of 10 grams of a controlled substance to a pregnant woman under twenty-one years of age), the enhancements are applied cumulatively, i.e., by using four times rather than two times the amount distributed.".

The purpose of this amendment is to clarify the Commentary.

§ 2D2.1. Unlawful Possession

15. Section 2D2.1(a)(1) is amended by deleting "or LSD," immediately following "opiate".

Section 2D2.1(a)(2) is amended by inserting ", LSD," immediately following "cocaine".

The purpose of this amendment is to correct a clerical error.

§ 2D2.3. Operating or Directing the Operation of a Common Carrier Under the Influence of Alcohol or Drugs

16. The Commentary to § 2D2.3 captioned "Statutory Provision" is amended by deleting "21 U.S.C. 342" and inserting in lieu thereof "18 U.S.C. 342".

The purpose of this amendment is to correct a typographical error.

§ 2J1.7. Commission of Offense While on Release

17. The Commentary to § 2J1.7 captioned "Application Notes" is amended by deleting:

"1. By statute, a term of imprisonment imposed for this offense runs consecutively to any other term of imprisonment. 18 U.S.C. 3147.

2. This guideline assumes that the sentence imposed for the offense committed while on release, which may have been imposed by a state court, is reasonably consistent with that which the guidelines would provide for a similar federal offense. If this is not the case, a departure may be warranted. See Chapter Five, Part K (Departures).

3. If the defendant was convicted in state court for the offense committed while on release, the term of imprisonment referred to in subdivision (b) is the maximum term of imprisonment authorized under state law.",

and inserting in lieu thereof:

"1. This guideline applies whenever a sentence pursuant to 18 U.S.C. 3147 is imposed.

2. By statute, a term of imprisonment imposed for a violation of 18 U.S.C. 3147 runs consecutively to any other term of imprisonment. Consequently, a sentence for such a violation is exempt from grouping under the multiple count rules. See § 3D1.2.".

The Commentary to § 2JI.7 captioned "Background" is amended by deleting "necessarily" and inserting in lieu thereof "generally".

The purposes of this amendment are to clarify the Commentary and to delete erroneous references.

§ 2J1.8. Bribery of Witness

18. Section 2J1.8(c)(1) is amended by deleting "perjury" and inserting in lieu thereof "bribery of a witness".

The Commentary to § 2J1.8 captioned "Application Notes" is amended by deleting:

"4. Subsection (c) refers to bribing a witness regarding his testimony in respect to a criminal offense."

The purpose of this amendment is to correct a clerical error. Correction of this error makes the deleted Commentary unnecessary.

§ 2K2.2. Receipt, Possession, or Transportation of Firearms and Other Weapons in Violation of National Firearms Act

19. The Commentary to § 2K2.2 captioned "Application Note" is amended by deleting "Application Note" and inserting in lieu thereof "Application Notes", and by inserting, as an additional Application Note, the following:

"2. Subsection (c)(1) refers to any situation in which the defendant possessed a firearm to facilitate another offense that he committed or attempted.".

The purpose of this amendment is to clarify the guideline.

§ 2L1.1. Smuggling, Transporting, or Harboring an Unlawful Alien

20. Section 2L1.1(a) is amended by deleting "6" and inserting in lieu thereof "9".

Section 2L1.1(b)(1) is amended by deleting "for profit or with knowledge" and inserting in lieu thereof "other than for profit, and without knowledge", and by deleting "increase by 3 levels" and inserting in lieu thereof "decrease by 3. levels".

The Commentary to § 2L1.1 captioned "Background" is amended by deleting:

"A specific offense characteristic provides an enhancement if the defendant committed the offense for profit or with knowledge that the alien was excludable as a subversive.",

and inserting in lieu thereof:

"A specific offense characteristic provides a reduction if the defendant did not commit the offense for profit and did not know that the alien was excludable as a subversive.".

The purpose of this amendment is to make the guideline conform to the typical case.

21. Section 2L1.2(b)(2) is amended by deleting "bringing illegal aliens into the United States" and inserting in lieu thereof "smuggling, transporting, or harboring an unlawful alien, or a related offense".

The Commentary to § 2L1.1 captioned "Application Notes" is amended in Note 2 by deleting "bringing illegal aliens into the United States" and inserting in lieu thereof "smuggling, transporting, or harboring an unlawful alien, or a related offense".

The purpose of this amendment is to correct a clerical error in the guideline and conform the Commentary to the corrected guideline.

22. The Commentary to § 2L1.1 captioned "Application Notes" is amended by inserting, as an additional note, the following:

"8. The Commission has not considered offenses involving large numbers of aliens or dangerous or inhumane treatment. An upward departure should be considered in those circumstances.".

The purpose of this amendment is to clarify the factors considered by the Commission in promulgating the guideline.

§ 2L1.2. Unlawfully Entering or Remaining in the United States

23. Section 2L1.2(a) is amended by deleting "6" and inserting in lieu thereof "8".

Section 2L1.2(b) is amended by deleting the following:

"(b) Specific Offense Characteristic
(1) If the defendant previously has unlawfully entered or remained in the United States, increase by 2 levels.".

The Commentary to § 2L1.2 captioned "Statutory Provisions" is amended by deleting "§§ 1325, 1326" and inserting in lieu thereof "§ 1325 (second or subsequent offense only), 8 U.S.C. 1326".

The Commentary to § 2L1.2 captioned "Application Notes" is amended in Note 1 by deleting:

"The adjustment at § 2L1.2(b)(1) is to be applied where the previous entry resulted in deportation (voluntary or involuntary) with or without a criminal conviction. If the previous entry resulted in a conviction, this adjustment is to be applied in addition to any points added to the criminal history score for such conviction in Chapter Four, Part A (Criminal History).",

and inserting in lieu thereof:

"This guideline applies only to felonies. First offenses under 8 U.S.C. 1325 are petty offenses for which no guideline has been promulgated.".

The purpose of this amendment is to delete coverage of a petty offense.

§ 2L2.2. Fraudulently Acquiring Evidence of Citizenship or Documents Authorizing Entry for Own Use

24. The Commentary to § 2L2.2 captioned "Application Notes" is amended in Note 1 by deleting "an enhancement equivalent to that at § 2L1.2(b)(1)," and inserting in lieu thereof "a result equivalent to § 2L1.2.".

The purpose of this amendment is to make the Commentary consistent with § 2L1.2, as amended.

§ 2L2.4. Fraudulently Acquiring or Improperly Using a United States Passport

25. The Commentary to § 2L2.4 captioned "Application Notes" is amended in Note 1 by deleting "an enhancement equivalent to that at § 2LI.2(b)(1)," and inserting in lieu thereof "a result equivalent to § 2L1.2.".

The purpose of this amendment is to make the Commentary consistent with § 2L1.2, as amended.

§ 2Q2.1. Specially Protected Fish, Wildlife, and Plants

26. The Commentary to § 2Q2.1 captioned "Statutory Provisions" is amended by deleting "707" and inserting in lieu thereof "707(b)".

The purpose of this amendment is to correct a clerical error.

§ 2X1.1. Attempt, Solicitation, or Conspiracy Not Covered by a Specific Guideline

27. The Commentary to § 2X1.1 captioned "Application Notes" is amended in Note 1 by deleting "§ 2A4.1" and inserting in lieu thereof "§ 2D1.4".

The purpose of this amendment is to correct a typographical error.

§ 3A1.2. Official Victim

28. The Commentary to § 3A1.2 captioned "Application Notes" is amended in Note 1 by deleting:

" 'Victim' refers to an individual directly victimized by the offense. This term does not include an organization, agency, or the government itself.",

and inserting in lieu thereof:

"This guideline applies when specified individuals are victims of the offense. This guideline does not apply when the only victim is an organization, agency, or the government.".

The purpose of this amendment is to clarify the Commentary.

§ 3E1.1. Acceptance of Responsibility

29. Section 3E1.1(a) is amended by deleting "the offense of conviction" and inserting in lieu thereof "his criminal conduct".

The purpose of this amendment is to clarify the guideline.

§ 4B1.1. Career Offender

30. Section 4B1.1 is amended by deleting "(2) the instant offense is a crime of violence or trafficking in a controlled substance" and inserting in lieu thereof "(2) the instant offense of conviction is a felony that is either a crime of violence or a controlled substance offense".

The purposes of this amendment are to correct a clerical error and to clarify the guideline.

31. Section 4B1.1 is amended by deleting:

"Offense statutory maximum	Offense level
(A) Life	37
(B) 20 years or more	34
(C) 10 years or more, but less than 20 years	26
(D) 5 years or more, but less than 10 years	17
(E) More than 1 year, but less than 5 years	12
(F) 1 year or less	4",

and inserting in lieu thereof:

"Offense statutory maximum	Offense level
(A) Life	37
(B) 25 years or more	34
(C) 20 years or more, but less than 25 years	32
(D) 15 years or more, but less than 20 years	29
(E) 10 years or more, but less than 15 years	24
(F) 5 years or more, but less than 10 years	17
(G) More than 1 year, but less than 5 years	12".

The Commentary to § 4B1.1 captioned "Background" is amended by deleting:

"The guideline levels for career offenders were established by using the statutory maximum for the offense of conviction to determine the class of felony provided in 18 U.S.C. 3559. Then the maximum authorized sentence of imprisonment for each class of felony was determined as provided by 18 U.S.C. 3581. A guideline range for each class of felony was then chosen so that the maximum of the guideline range was at or near the maximum provided in 18 U.S.C. 3581.".

The purpose of this amendment is to correct the guideline so that the table relating offense statutory maxima to offense levels is consistent with the current authorized statutory maximum terms.

§ 4B1.2. Definitions

32. Section 4B1.2(2) is amended by inserting "845b, 856" immediately following "841," and by deleting "§§ 405B and 416 of the Controlled Substance Act as amended in 1986," immediately following "959;".

Section 4B1.2(3) is amended by deleting:

"(1) The defendant committed the instant offense subsequent to sustaining at least two felony convictions for either a crime of violence or a controlled substance offense (i.e., two crimes of violence, two controlled substance offenses, or one crime of violence and one controlled substance offense), and (2)",

and inserting in lieu thereof:

"(A) The defendant committed the instant offense subsequent to sustaining at least two felony convictions of either a crime of violence or a controlled substance offense (i.e., two felony convictions of a crime of violence, two felony convictions of a controlled substance offense, or one felony conviction of a crime of violence and one felony conviction of a controlled substance offense), and (B)".

The Commentary to § 4B1.2 captioned "Application Notes" is amended in Note 2 by deleting "means any of the federal offenses identified in the statutes referenced in § 4B1.2, or substantially equivalent state offenses" and inserting in lieu thereof "includes any federal or state offense that is substantially similar to any of those listed in subsection (2) of the guideline", by inserting "importing," immediately following "manufacturing,", and by inserting "import," immediately following "manufacture,".

The Commentary to § 4B1.2 captioned "Application Notes" is amended in Note 3 by deleting "Felony" and inserting in lieu thereof "Prior felony".

The purposes of this amendment are to correct a clerical error and to clarify the guideline.

§ 5C2.1. Imposition of a Term of Imprisonment

33. The Commentary to § 5C2.1 captioned "Application Notes" is amended in Note 4 by deleting "at least six" and inserting in lieu thereof "more than six", by deleting "6–22" whenever it appears and inserting in lieu thereof in each instance "8–14", and by deleting "three" whenever it appears and inserting in lieu thereof in each instance "four".

The purpose of this amendment is to correct a clerical error.

§ 5D3.2. Term of Supervised Release

34. Section 5D3.2(b) is amended by deleting:

"(1) Three years for a defendant convicted of a Class A or B felony;

(2) Two years for a defendant convicted of a Class C or D felony;

(3) One year for a defendant convicted of a Class E felony or a misdemeanor.",

and inserting in lieu thereof:

"(1) At least three years but not more than five years for a defendant convicted of a Class A or B felony;

(2) At least two years but not more than three years for a defendant convicted of a Class C or D felony;

(3) One year for a defendant convicted of a Class E felony or a Class A misdemeanor.".

The purpose of this amendment is to permit implementation of the longer terms of supervised release authorized by the Sentencing Act of 1987.

§ 5E4.1. Restitution

35. Section 5E4.1(a) is amended by inserting immediately preceding the period at the end of the subsection:

", and may be ordered as a condition of probation or supervised release in any other case".

The purpose of this amendment is to clarify the guideline.

§ 5E4.2. Fines for Individual Defendants

36. Section 5E4.2 is amended by deleting:

"(b) The generally applicable minimum and maximum fine for each offense level is shown in the Fine Table in subsection (c) below. Unless a statute expressly authorizes a greater amount, no fine may exceed $250,000 for a felony or a misdemeanor resulting in the loss of human life; $25,000 for any other misdemeanor; or $1,000 for an infraction. 18 U.S.C. 3571(b)(1).

(c) (1) The minimum fine range is the greater of:

(A) The amount shown in column A of the table below; or

(B) Any monetary gain to the defendant, less any restitution made or ordered.

(2) Except as specified in (4) below, the maximum fine is the greater of:

(A) The amount shown in column B of the table below;

(B) Twice the estimated loss caused by the offense; or

(C) Three times the estimated gain to the defendant.",

and inserting in lieu thereof:

"(b) Except as provided in subsections (f) and (i) below, or otherwise required by statute, the fine imposed shall be within the range specified in subsection (c) below.

(c)(1) The minimum of the fine range is the greater of:

(A) The amount shown in column A of the table below; or

(B) The pecuniary gain to the defendant, less restitution made or ordered.

(2) Except as specified in (4) below, the maximum of the fine range is the greater of:

(A) The amount shown in column B of the table below;

(B) Twice the gross pecuniary loss caused by the offense; or

(C) Three times the gross pecuniary gain to all participants in the offense.".

The Commentary to § 5E4.2 captioned "Application Notes" is amended by deleting:

"2. The maximum fines generally authorized by statute are restated in subsection (b). These apply to each count of conviction. Ordinarily, the maximum fines on each count are independent and cumulative. However, if the offenses 'arise from a common scheme or plan' and 'do not cause separable or distinguishable kinds of harm or damage,' the aggregate fine may not exceed 'twice the amount imposable for the most serious offense.' 18 U.S.C. 3572(b) (former 18 U.S.C. 3623(c)(2)).

3. Alternative fine limits are provided in subsection (c)(2). The term 'estimated gain' is used to emphasize that the Commission does not intend precise or detailed calculation of the monetary gain (nor of the loss) in using the alternative fine limits. In many cases, circumstances will make it unnecessary to consider these standards other than in the most general terms.",

and inserting in lieu thereof:

"2. In general, the maximum fine permitted by law as to each count of conviction is $250,000 for a felony or for any misdemeanor resulting in death; $100,000 for a Class A misdemeanor; and $5,000 for any other offense. 18 U.S.C. 3571(b)(3)–(7). However, higher or lower limits may apply when specified by statute. 18 U.S.C. 3571 (b)(1), (e). As an alternative maximum, the court may fine the defendant up to the greater of twice the gross gain or twice the gross loss. 18 U.S.C. 3571 (b)(2), (d).

3. Alternative fine limits are provided in subsection (c). The terms 'pecuniary gain' and 'pecuniary loss' are taken from 18 U.S.C. 3571(d). The Commission does not intend precise or detailed calculation of the gain or loss in using the alternative fine limits. In many cases, circumstances will make it unnecessary to consider these standards other than in the most general terms.".

The Commentary to § 5E4.2 captioned "Application Notes" is amended in Note 4 by deleting "Any restitution" and inserting in lieu thereof "Restitution".

The Commentary to § 5E4.2 captioned "Background" is amended by deleting:

"defendant. In addition, the Commission concluded that greater latitude with a gain based fine was justified; when the court finds it necessary to rely on the gain, rather than the loss, to set the fine, ordering restitution usually will not be feasible because of the difficulty in computing the amount.",

and inserting in lieu thereof:

"participants. In addition, in many suchcases restitution will not be feasible.".

The purposes of this amendment are to make theguideline consistent with 18 U.S.C. 3571, asamended, to clarify the Commentary, and to correctclerical errors in the guideline and Commentary.

Appendix A—Statutory Index

37. Appendix A is amended by inserting the followingstatutes in the appropriate place according tostatutory title and section number:

"7 U.S.C. 2024(b)..... 2F1.1",
"7 U.S.C. 2024(c)..... 2F1.1",
"18 U.S.C. 874..... 2B3.2, 2B3.3",
"18 U.S.C. 914..... 2F1.1",
"18 U.S.C. 923..... 2K2.3",
"18 U.S.C. 1030(a)(1)..... 2M3.2",
"18 U.S.C. 1030(a)(2)..... 2F1.1",
"18 U.S.C. 1030(a)(3)..... 2F1.1",
"18 U.S.C. 1030(a)(4)..... 2F1.1",
"18 U.S.C. 1030(a)(5)..... 2F1.1",
"18 U.S.C. 1030(a)(6)..... 2F1.1",
"18 U.S.C. 1030(b)..... 2X1.1",
"18 U.S.C. 1501..... 2A2.2, 2A2.3",
"18 U.S.C. 1720..... 2F1.1",
"18 U.S.C. 4082(d)..... 2P1.1",
"19 U.S.C. 1304..... 2T3.1",
"20 U.S.C. 1097(c)..... 2B4.1",
"20 U.S.C. 1097(d)..... 2F1.1",
"38 U.S.C. 3502..... 2F1.1",
"42 U.S.C. 1307(a)..... 2F1.1",
"42 U.S.C. 1395nn(c)..... 2F1.1",
"45 U.S.C. 359(a)..... 2F1.1".

The purpose of this amendment is to make thestatutory index more comprehensive.

38. Appendix A is amended by deleting:

"16 U.S.C. 703..... 2Q2.1",
"16 U.S.C. 707..... 2Q2.1",

and inserting in lieu thereof:

"16 U.S.C. 707(b)..... 2Q2.1";

by deleting:

"18 U.S.C. 112(a)..... 2A2.1, 2A2.2,2A2.3",

and inserting in lieu thereof:

"18 U.S.C. 112(a)..... 2A2.2, 2A2.3";

by deleting:

"18 U.S.C. 510(a)..... 2B5.1",

and inserting in lieu thereof:

"18 U.S.C. 510..... 2B5.2";

by deleting:

"18 U.S.C. 1005..... 2F1.1, 2S1.3",

and inserting in lieu thereof:

"18 U.S.C. 1005..... 2F1.1";

by deleting:

"18 U.S.C. 1701..... 2B1.1, 2H3.3",

and inserting in lieu thereof:

"18 U.S.C. 1700..... 2H3.3";

by deleting:

"18 U.S.C. 2113(a)..... 2B1.1, 2B3.1",

and inserting in lieu thereof:

"18 U.S.C. 2113(a)..... 2B1.1, 2B2.2,2B3.1, 2B3.2";

by deleting "2B5.1," from the line beginning with"18 U.S.C. 2314"; and

by deleting "2B5.1," from the line beginning with"18 U.S.C. 2315".

The purpose of this amendment is to correct clerical errors.

[FR Doc. 88-717 Filed 1-14-88; 8:45 am]
BILLING CODE 2210-01-M

Federal Register

Friday
January 15, 1988

Part VI

Office of Management and Budget

Cumulative Report on Rescissions and Deferrals; Notice

OFFICE OF MANAGEMENT AND BUDGET

Cumulative Report on Rescissions and Deferrals

January 1, 1988.

This report is submitted in fulfillment of the requirements of section 1014(e) of the Impoundment Control Act of 1974 (Public Law 93–344). Section 1014(e) provides for a monthly report listing all budget authority for this fiscal year for which, as of the first day of the month, a special message has been transmitted to the Congress.

This report gives the status as of January 1, 1988 of 19 deferrals contained in the two special messages of FY 1988. There have been no rescissions proposed. These messages were transmitted to the Congress on October 1 and 29, 1987.

Rescissions (Table A and Attachment A)

As of January 1, 1988, there were no rescission proposals pending before the Congress.

Deferrals (Table B and Attachment B)

As of January 1, 1988, $1,819 million in budget authority was being deferred from obligation. Attachment B shows the history and status of each deferral reported during FY 1988.

Information from Special Messages

The special messages containing information on the deferrals covered by this cumulative report are printed in the Federal Registers listed below:

Vol. 52, FR p. 37739, Thursday, October 8 1987

Vol. 52, FR p. 42400, Wednesday, November 4, 1987

James C. Miller III,

Director.

BILLING CODE 3110-01-M

TABLE A

STATUS OF 1983 RESCISSIONS

	Amount (In million of dollars)
Rescissions proposed by the President	0
Accepted by the Congress	0
Rejected by the Congress	0
Pending before the Congress	0

****

TABLE B

STATUS OF 1988 DEFERRALS

	Amount (In million of dollars)
Deferrals proposed by the President	1,873.0
Routine Executive releases through January 1, 1987 (OMB/Agency releases of $54.3 million and cumulative adjustments of $0)	-54.3
Overturned by the Congress	0
Currently before the Congress	1,818.8

Attachments

Attachment A - Status of Rescissions - Fiscal Year 1988

As of January 1, 1988 Amounts in Thousands of Dollars Agency/Bureau/Account	Rescission Number	Amount Previously Considered by Congress	Amount Currently before Congress	Date of Message	Amount Rescinded	Amount Made Available	Date Made Available	Congressional Action
NONE								

Attachment B - Status of Deferrals - Fiscal Year 1988

As of January 1, 1988 Amounts in Thousands of Dollars Agency/Bureau/Account	Deferral Number	Amount Transmitted Original Request	Amount Transmitted Subsequent Change	Date of Message	Cumulative OMB/Agency Releases	Congressionally Required Releases	Congressional Action	Cumulative Adjustments	Amount Deferred as of 01-1-88
FUNDS APPROPRIATED TO THE PRESIDENT									
International Security Assistance									
Economic support fund	D88-1	40,000		10-1-87	35,000				5,000
Special Assistance for Central America									
Promotion of stability and security in Central America	D88-2	1,000		10-1-87					1,000
DEPARTMENT OF AGRICULTURE									
Forest Service									
Expenses, brush disposal	D88-3	120,425		10-1-87					120,425
Timber salvage sales	D88-4	34,841		10-1-87	10,456				24,385
Cooperative work	D88-5	628,025		10-1-87					628,025
Gifts, donations, and bequests for forest and rangeland research	D88-6	104		10-1-87					104
DEPARTMENT OF DEFENSE - MILITARY									
Military Construction									
Military construction, Defense	D88-7	900		10-1-87					900
Family Housing									
Family housing, Defense	D88-8	51,015		10-1-87					51,015
DEPARTMENT OF DEFENSE - CIVIL									
Wildlife Conservation, Military Reservations									
Wildlife conservation, Defense	D88-9	636		10-1-87					636
DEPARTMENT OF ENERGY									
Power Marketing Administration									
Alaska Power Administration, Operation and maintenance	D88-14	120		10-29-87					120
Southeastern Power Administration, Operation and maintenance	D88-15	2,000		10-29-87	2,000				0

Attachment B - Status of Deferrals - Fiscal Year 1988

As of January 1, 1988 Amounts in Thousands of Dollars Agency/Bureau/Account	Deferral Number	Amount Transmitted Original Request	Amount Transmitted Subsequent Change	Date of Message	Cumulative OMB/Agency Releases	Congressionally Required Releases	Congressional Action	Cumulative Adjustments	Amount Deferred as of 01-1-88
Southwestern Power Administration, Operation and maintenance.....	D88-16	6,000		10-29-87					6,000
Western Area Power Administration, Construction, rehabilitation, operation and maintenance.....	D88-17	774		10-29-87					774
DEPARTMENT OF HEALTH AND HUMAN SERVICES									
Office of Assistant Secretary for Health Scientific activities overseas (special foreign currency program).....	D88-18	2,391		10-29-87					2,391
Social Security Administration Limitation on administrative expenses (construction).....	D88-10	6,171		10-1-87					6,171
DEPARTMENT OF JUSTICE									
Office of Justice Programs Crime victims fund.....	D88-19	85,000		10-29-87	6,800				78,200
DEPARTMENT OF STATE									
Bureau for Refugee Programs United States emergency refugee and migration assistance fund, executive.....	D88-11	11,638		10-1-87					11,638
DEPARTMENT OF TRANSPORTATION									
Federal Aviation Administration Facilities and equipment (Airport and airway trust fund).....	D88-12	879,049		10-1-87					879,049

Attachment B - Status of Deferrals - Fiscal Year 1988

As of January 1, 1988 Amounts in Thousands of Dollars Agency/Bureau/Account	Deferral Number	Amount Transmitted Original Request	Amount Transmitted Subsequent Change	Date of Message	Cumulative OMB/Agency Releases	Congressionally Required Releases	Congressional Action	Cumulative Adjustments	Amount Deferred as of 01-1-88
DEPARTMENT OF THE TREASURY									
Office of Revenue Sharing									
Local government fiscal assistance trust fund.....	D88-13	2,933		10-1-87					2,933
TOTAL, DEFERRALS.....		1,873,023	0		54,256	0		0	1,818,767

[FR Doc. 88-780 Filed 1-14-88; 8:45 am]
BILLING CODE 3110-01-C

federal register

Friday
January 15, 1988

Part VII

Office of the United States Trade Representative

Generalized System of Preferences; Information On Imports During First Ten Months of 1987 and Invitation of Comments

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Generalized System of Preferences (GSP); Information On Imports During First 10 Months of 1987 and Invitation of Comments

This notice is for information only and has no legal effect. It is provided to inform the public of certain import statistics covering the period of January through October 1987 and to afford the public an opportunity to comment on certain discretionary decisions the President must make on or about April 1, 1988 with respect to the GSP program. These decisions concern the GSP "competitive need" limits set forth in section 504(c) and section 504(d)(2) of the Trade Act of 1974 (19 U.S.C. 2464(c)), and possible redesignation of articles previously removed, or "graduated," from GSP. Presidential decisions concerning the application of competitive need limits and all other product-related decisions stemming from the 1987 GSP Annual Review (52 FR 28896) are expected to be announced on or about April 1 and implemented on July 1, 1988.

NOTE: If the proposed Harmonized System tariff nomenclature (HS) is implemented prior to July 1, 1988, thus replacing the current Tariff Schedules of the United States (TSUS), product-specific decisions concerning the GSP program announced on or about April 1, 1988 and based on the TSUS will likely be subject to change.

In addition, the contents of this notice would also be likely to change.

If the HS is implemented prior to July 1, 1988, the conversion of the GSP program reflected in United States International Trade Commission (USITC) Publication 2030 ("Harmonized Tariff Schedule of the United States") will go into effect upon the date of implementation. The public will be notified of any additional changes in the HS-based GSP program as listed in USITC Publication 2030 after the HS has been implemented. USITC Publication 2030 can be obtained by contacting: United States Government Printing Office, Superintendent of Documents, Washington, DC 20402, (202) 783–3238.

The HS is a new international product nomenclature developed under the auspices of the Customs Cooperation Council (CCC) for the purpose of classifying goods in international trade. Legislation concerning the implementation of this new tariff nomenclature system is currently being considered by the Congress. Should this legislation be passed by Congress and signed into law by the President, the HS will replace the current TSUS (51 FR 44163, 52 FR 7057, 52 FR 12281). (End Note.)

Pursuant to section 504(c), any GSP-eligible beneficiary country that exported to the United States during the most recent calendar year a quantity of any GSP-eligible article in excess of (1) $25 million indexed to the nominal growth of the U.S. Gross National Product since 1974, or (2) 50 percent of the value of total U.S. imports of the article, is to be removed by GSP eligibility not later than July 1 of the next calendar year. Based on preliminary data and subject to revision, the aforementioned dollar limit is expected to be approximately $76,096,551 million for calendar year 1987.

As a result of the Trade and Tariff Act of 1984, a general review of the GSP was initiated in February of 1985 (50 FR 6294) and the results of the review announced on January 2, 1987 (52 FR 389). The purpose of the review was to determine whether beneficiary countries have become "sufficiently competitive" in GSP-eligible products, on a product and country specific basis. For countries found to be sufficiently competitive with respect to a product, the percentage competitive need limit was reduced to 25 percent and the dollar limit was reduced to $25 million indexed to the nominal growth of U.S. GNP since 1984. Based on preliminary data and subject to revision, the aforementioned dollar limit for countries found to be sufficiently competitive is expected to be approximately $29,710,777 million for calendar year 1987.

Section 504(d)(2) of the Trade Act of 1974, as amended, permits the President to disregard the 50 percent competitive need limit with respect to any eligible article if the value of total imports of the article during the most recent calendar year did not exceed $5 million, adjusted annually to reflect changes in the U.S. Gross National Product. This *de minimis* level is expected to be approximately $8,936,688 million for calendar year 1987.

A proclamation will be issued to be effective July 1, 1987 (unless the HS is implemented prior to July 1 as previously discussed), making the adjustments that are required by section 504(c) of the Trade Act and announcing the discretionary decisions referred to in this notice, on the basis of official data covering all of calendar year 1987.

It should be emphasized that the information set forth below covers only the first 10 months of 1987 (January through October). While this is not complete information, it is being published now in order to provide the maximum possible advance indication as to adjustments that may be made to meet the requirements of section 504(c) of the Trade Act and to afford the opportunity for comment on potential discretionary decisions.

List I below shows specific GSP-eligible articles for which countries have already exceeded competitive need limitations (country supplied over $76,096,551 million, or $29,710,777 in the case where a country has been found sufficiently competitive in the product, during January-October 1987) or have been graduated from the GSP in earlier years pursuant to the President's discretionary authority.

List II below shows specific GSP-eligible articles for which countries are approaching the competitive need limitations (country accounted for over 47 percent of the value of total U.S. imports and/or over $59 million, or, for countries found to be "sufficiently competitive", over 22 percent and/or over $23 million during January-October 1987).

List III below shows specific GSP-eligible articles for which countries, despite accounting for more than 50 percent (or 25 percent in the case of a country found sufficiently competitive in a product) of the value of total U.S. imports of an article, may be eligible to receive GSP benefits through the *de minimis* waiver (country accounted for more than the applicable percentage limit and the value of total U.S. imports was less than $8,936,688 million during January-October 1987).

List IV below shows specific articles for which countries are currently ineligible for GSP but which may be eligible for redesignation to GSP status pursuant to the President's discretionary authority (country accounted for less than 50 percent, or 25 percent in the case of products determined to be sufficiently competitive, of the value of U.S. imports and did not exceed the applicable dollar competitive need limit during January-October 1987).

The column headed "TSUS" in the lists below set forth item numbers of the Tariff Schedules of the United States (19 U.S.C. 1202), representing categories of imported articles.

NOTE: The President has taken action to suspend, indefinitely, Chile from the list of beneficiary developing countries effective February 28, 1988 (52 FR 49129 and 52 FR 49137). Therefore, the information concerning specific products and Chile in Lists I through IV should be disregarded. (End Note.)

As noted above, the decisions that the President will make on whether to waive the percentage limit in cases where trade is *de minimis* and whether

to redesignate countries with respect to products are discretionary. In this regard, the GSP Subcommittee of the Trade Policy Staff Committee invites public comment relevant to these potential upcoming decisions.

All written comments with regard to these decisions should be addressed to: GSP Subcommittee, Office of the United States Trade Representative, 600 17th St. NW., Room 517, Washington, DC 20506. All such submissions should conform to 15 CFR 2007, particularly Sections 2007.0, 2007.1(a)(1), 2007.1(a)(2) and 2007.1(a)(3). Furthermore, all those parties providing comments should indicate on the first page of the submission the name of the petitioner, the TSUS number(s), HS subheading(s), and beneficiary country(s) of interest, and the type of action (i.e., the use of the President's *de minimis* waiver authority, etc . . .) in which the party is interested. (The appropriate HS subheadings(s), if unknown, can be obtained by contacting the Classification and Value Division, U.S. Customs Service, at (202) 566–5858.)

These statements must be accompanied by twenty copies, in English, of all comments and must be received by the Chairman of the GSP Subcommittee of the Trade Policy Staff Committee no later than the close of business Monday, February 8, 1988 at the address listed above. If the comments contain business confidential information, twenty copies of a non-confidential version of the comments along with twelve copies of the confidential version must be submitted. A justification as to why the information contained in the submission should be treated confidentially must be included in the submission. In addition, the submission containing confidential information should be clearly market "confidential" at the top and bottom of each and every page of the submission. The version that does not contain business confidential information (the public version) should also be clearly market at the top and bottom of each and every page "public version" or "non-confidential."

Written comments submitted in connection with these decisions will be subject to public inspection by appointment only with the staff of the GSP Information Center, except for information granted "business confidential" status pursuant to 15 CFR 2007.7. The GSP Information Center is located in the Office of the United States Trade Representative at the address listed above. The telephone number of the GSP Information Center is (202) 395–6971.

Donald M. Phillips,

Chairman, Trade Policy Staff Committee.

BILLING CODE 3190-01-M

LIST I : COUNTRIES GRADUATED OR EXCEEDING COMPETITIVE NEED LIMITS
JAN-OCT 1987

	TSUS	COUNTRY	% OF WORLD	COUNTRY TOTAL	WORLD TOTAL
*	12161	ARGENTINA	43.6%	$62,866,761	$144,337,358
*	12165	ARGENTINA	59.8%	$61,807,074	$103,338,976
*	13551	MEXICO	68.9%	$535,736	$778,000
*	13595	MEXICO	95.7%	$14,478,802	$15,126,725
*	13620	MEXICO	97.5%	$1,559,927	$1,600,409
*	13622	MEXICO	98.9%	$3,020,700	$3,053,537
*	13710	MEXICO	69.7%	$38,174,515	$54,807,847
*	13740	MEXICO	90.2%	$3,051,263	$3,381,284
*	13750	MEXICO	97.7%	$30,719,657	$31,458,533
*	13763	MEXICO	98.7%	$55,310,314	$56,043,014
*	14676	MEXICO	83.8%	$21,058,899	$25,121,493
*	14803	MEXICO	78.9%	$15,081,250	$19,103,421
*	14817	MEXICO	93.0%	$19,861,486	$21,351,573
*R	16705	MEXICO	21.6%	$160,053,660	$739,575,635
R	19221	COLOMBIA	53.2%	$50,313,820	$94,508,375
*	20660	MEXICO	30.2%	$16,835,143	$55,697,654
*R	22250	TAIWAN	31.7%	$639,854	$2,020,715
R	24014	TAIWAN	52.2%	$39,589,169	$75,867,105
*R	24520	BRAZIL	52.5%	$20,915,893	$39,838,076
*	24530	BRAZIL	44.7%	$6,228,459	$13,941,660
*	25660	KOREA, SOUTH	1.0%	$414,940	$40,034,604
	25687	MEXICO	86.7%	$118,230,450	$136,303,913
*	25691	BRAZIL	67.6%	$62,215	$92,083
*R	33740	KOREA, SOUTH	18.4%	$3,093,028	$16,818,431
*R	33740	HONG KONG	1.5%	$259,022	$16,818,431
*R	35581	TAIWAN	21.6%	$19,211,341	$88,845,407
*R	38961	HONG KONG	6.9%	$15,360,375	$224,136,259
*R	38961	TAIWAN	18.7%	$41,813,641	$224,136,259
*	40620	ISRAEL	66.4%	$1,556,752	$2,343,132
*	40719	MEXICO	2.8%	$1,782,284	$62,747,808
*	41072	TURKEY	5.2%	$215,809	$4,155,270
	41222	BAHAMAS	52.1%	$92,126,709	$176,928,477
*R	41324	KOREA, SOUTH	34.6%	$1,028,322	$2,969,586
*	41723	ISRAEL	90.5%	$1,694,693	$1,871,981
*R	42106	TAIWAN	49.6%	$1,166,080	$2,349,525
*	42949	ISRAEL	43.0%	$2,018,388	$4,694,309
*	43764	BRAZIL	24.9%	$3,185,775	$12,812,113
R	43950	SINGAPORE	36.9%	$95,579,263	$259,151,943
*R	44542	TAIWAN	46.6%	$16,561,375	$35,503,879
*	45244	BRAZIL	64.8%	$2,608,408	$4,026,214
*	47356	MEXICO	78.0%	$318,565	$408,482
*R	51164	MEXICO	34.4%	$532,928	$1,547,881
*	52221	MEXICO	36.4%	$11,628,874	$31,984,022
*R	53222	KOREA, SOUTH	14.5%	$1,866,803	$12,850,045
*R	53222	TAIWAN	29.7%	$3,820,762	$12,850,045
*	53231	MEXICO	32.9%	$1,962,272	$5,968,146
*	53330	BRAZIL	5.1%	$4,190,449	$81,713,187
*	53330	KOREA, SOUTH	28.1%	$22,989,795	$81,713,187
*	53330	TAIWAN	17.2%	$14,042,883	$81,713,187

* = GRADUATED; R = REDUCED LIMIT APPLIES

LIST I : COUNTRIES GRADUATED OR EXCEEDING COMPETITIVE NEED LIMITS JAN-OCT 1987

	TSUS	COUNTRY	% OF WORLD	COUNTRY TOTAL	WORLD TOTAL
*R	53491	TAIWAN	49.4%	$5,978,154	$12,098,561
*	53531	MEXICO	38.1%	$21,006,520	$55,123,029
*	54553	MEXICO	20.6%	$5,761,202	$27,937,963
R	54567	TAIWAN	68.2%	$46,771,201	$68,619,382
*	54587	TAIWAN	57.8%	$13,484,314	$23,342,382
*	60628	MEXICO	24.0%	$3,475,927	$14,487,272
*	60636	BRAZIL	61.5%	$6,576,955	$10,690,746
*R	60637	BRAZIL	29.1%	$15,792,464	$54,262,926
*R	60644	BRAZIL	2.4%	$1,062,122	$44,213,621
*R	61065	KOREA, SOUTH	3.7%	$234,886	$6,288,885
*R	61070	TAIWAN	2.1%	$54,484	$2,614,016
*R	61074	KOREA, SOUTH	9.0%	$1,343,435	$14,992,392
*R	61074	TAIWAN	9.3%	$1,396,878	$14,992,392
*R	61082	KOREA, SOUTH	36.8%	$5,818,956	$15,828,329
*	61084	BRAZIL	7.9%	$2,601,395	$32,993,024
*	61084	KOREA, SOUTH	24.9%	$8,209,830	$32,993,024
*	61084	TAIWAN	9.4%	$3,094,423	$32,993,024
*	61086	KOREA, SOUTH	8.3%	$875,795	$10,502,024
*	61086	TAIWAN	34.2%	$3,596,723	$10,502,024
*R	61088	TAIWAN	27.2%	$4,063,795	$14,929,989
*	61203	CHILE	21.5%	$8,953,562	$41,592,018
*	61206	PERU	7.0%	$44,021,118	$625,956,314
	61206	CHILE	26.1%	$163,207,130	$625,956,314
*	61206	ZAMBIA	4.9%	$30,415,549	$625,956,314
*R	61318	TAIWAN	32.3%	$2,837,219	$8,770,510
*	64214	KOREA, SOUTH	52.7%	$4,973,630	$9,430,213
*	64216	KOREA, SOUTH	61.7%	$34,485,548	$55,847,957
*R	64217	KOREA, SOUTH	0.7%	$8,484	$1,289,127
*	64632	KOREA, SOUTH	64.2%	$2,398,931	$3,733,761
*R	64692	TAIWAN	32.2%	$50,137,688	$155,923,052
*R	64703	TAIWAN	37.9%	$69,606,270	$183,750,338
	64897	TAIWAN	68.6%	$93,972,851	$137,021,632
*R	64937	TAIWAN	33.9%	$15,195,056	$44,776,992
*R	65089	HONG KONG	11.4%	$312,479	$2,752,660
*	65089	TAIWAN	49.2%	$1,354,073	$2,752,660
*	65137	TAIWAN	69.8%	$20,389,344	$29,219,989
*R	65146	KOREA, SOUTH	9.8%	$482,877	$4,934,174
*	65146	TAIWAN	62.9%	$3,102,962	$4,934,174
R	65148	TAIWAN	41.7%	$33,688,610	$80,806,404
*	65149	TAIWAN	65.2%	$2,537,515	$3,893,833
*R	65203	KOREA, SOUTH	20.9%	$964,849	$4,606,352
*	65260	TAIWAN	67.4%	$3,882,526	$5,759,170
*	65284	MEXICO	27.1%	$22,836,355	$84,215,106
*	65300	SINGAPORE	0.8%	$735,851	$90,273,674
*R	65300	KOREA, SOUTH	4.7%	$4,212,516	$90,273,674
*	65300	TAIWAN	3.9%	$3,524,911	$90,273,674
R	65335	TAIWAN	81.0%	$43,748,411	$54,023,345
R	65337	TAIWAN	59.1%	$75,786,335	$128,323,054
*R	65338	TAIWAN	5.6%	$113,039	$2,024,613

* = GRADUATED; R = REDUCED LIMIT APPLIES

LIST I : COUNTRIES GRADUATED OR EXCEEDING COMPETITIVE NEED LIMITS
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	TSUS	COUNTRY	% OF WORLD	COUNTRY TOTAL	WORLD TOTAL
	65339	TAIWAN	56.3%	$126,114,047	$224,192,619
*R	65348	TAIWAN	49.2%	$6,503,402	$13,212,047
R	65352	TAIWAN	22.6%	$33,327,760	$147,388,897
*	65390	HONG KONG	49.1%	$4,798,172	$9,779,936
*	65393	TAIWAN	68.8%	$3,227,536	$4,689,318
*R	65394	KOREA, SOUTH	46.6%	$49,230,275	$105,544,443
R	65400	TAIWAN	50.2%	$54,505,782	$108,478,817
*	65408	MEXICO	10.7%	$5,429,543	$50,723,414
*R	65408	TAIWAN	51.3%	$26,004,594	$50,723,414
R	65425	TAIWAN	46.5%	$62,383,594	$134,037,371
*	65430	KOREA, SOUTH	41.6%	$3,482,784	$8,370,559
*R	65430	TAIWAN	21.2%	$1,772,410	$8,370,559
*	65440	TAIWAN	53.5%	$2,913,087	$5,447,276
*R	65460	HONG KONG	38.1%	$5,438,148	$14,260,790
	65725	TAIWAN	17.7%	$103,709,700	$584,560,707
*R	65735	TAIWAN	40.2%	$38,347,212	$95,457,042
R	65740	TAIWAN	34.2%	$64,966,322	$190,003,768
*R	66042	BRAZIL	27.7%	$102,849,726	$371,160,519
	66048	MEXICO	51.2%	$518,502,950	$1,011,979,369
R	66067	MEXICO	6.5%	$51,682,074	$790,023,743
R	66067	BRAZIL	7.0%	$55,046,361	$790,023,743
R	66071	BRAZIL	4.6%	$37,535,938	$812,752,424
R	66097	SINGAPORE	6.2%	$33,935,988	$545,607,055
R	66106	MEXICO	6.7%	$48,220,001	$716,360,522
	66106	HONG KONG	13.3%	$95,118,086	$716,360,522
	66106	TAIWAN	49.9%	$357,410,686	$716,360,522
*R	66109	SINGAPORE	14.0%	$18,161,337	$129,430,897
R	66120	MEXICO	16.0%	$81,406,671	$509,540,396
R	66135	KOREA, SOUTH	14.7%	$46,731,994	$318,260,699
*	66165	ISRAEL	8.5%	$2,178,717	$25,515,118
*R	66194	HONG KONG	7.8%	$1,096,380	$13,977,716
*R	66194	TAIWAN	27.5%	$3,847,954	$13,977,716
*	66235	MEXICO	32.0%	$7,444,753	$23,270,114
R	66408	BRAZIL	4.3%	$46,201,616	$1,067,296,086
R	66410	MEXICO	6.3%	$57,932,187	$917,682,837
*R	66410	TAIWAN	8.3%	$75,953,253	$917,682,837
*R	67216	TAIWAN	42.8%	$58,330,287	$136,368,175
*	67431	TAIWAN	80.4%	$17,877,535	$22,245,789
R	67434	TAIWAN	7.7%	$34,203,721	$442,883,834
*R	67435	TAIWAN	4.9%	$54,526,583	$1,123,012,600
R	67442	TAIWAN	23.1%	$73,212,471	$317,469,534
	67615	MEXICO	5.1%	$84,135,322	$1,664,110,440
R	67615	KOREA, SOUTH	10.6%	$176,838,269	$1,664,110,440
	67615	TAIWAN	15.8%	$262,555,004	$1,664,110,440
*R	67620	TAIWAN	29.2%	$91,239,777	$312,980,469
	67630	KOREA, SOUTH	4.5%	$232,718,715	$5,124,432,331
R	67630	HONG KONG	1.6%	$80,146,837	$5,124,432,331
	67630	TAIWAN	11.1%	$566,601,290	$5,124,432,331
*	67656	MEXICO	0.8%	$7,255,010	$952,615,781

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LIST I : COUNTRIES GRADUATED OR EXCEEDING COMPETITIVE NEED LIMITS
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	TSUS	COUNTRY	% OF WORLD	COUNTRY TOTAL	WORLD TOTAL
*	67656	KOREA, SOUTH.....	2.1%	$20,136,620	$952,615,781
*	67656	HONG KONG.....	0.6%	$5,444,645	$952,615,781
*R	67656	TAIWAN.....	7.6%	$72,158,325	$952,615,781
	67850	MEXICO.....	6.4%	$219,175,192	$3,412,574,490
R	67850	BRAZIL.....	2.5%	$86,030,963	$3,412,574,490
	67850	SINGAPORE.....	3.9%	$133,849,703	$3,412,574,490
*	67850	KOREA, SOUTH.....	8.2%	$281,300,594	$3,412,574,490
*	67850	HONG KONG.....	2.2%	$74,152,050	$3,412,574,490
	67850	TAIWAN.....	11.0%	$377,062,393	$3,412,574,490
*R	68014	TAIWAN.....	40.4%	$64,134,405	$158,778,726
	68235	MEXICO.....	51.3%	$102,811,828	$200,284,383
	68260	MEXICO.....	18.1%	$265,997,632	$1,473,036,414
	68260	HONG KONG.....	8.5%	$124,576,456	$1,473,036,414
	68260	TAIWAN.....	9.4%	$138,807,712	$1,473,036,414
*R	68301	KOREA, SOUTH.....	14.2%	$7,560,350	$53,145,292
*R	68301	TAIWAN.....	17.1%	$9,079,371	$53,145,292
*	68315	MEXICO.....	16.2%	$31,067,335	$191,792,712
*R	68370	HONG KONG.....	18.2%	$5,330,692	$29,360,500
*R	68370	TAIWAN.....	4.9%	$1,442,919	$29,360,500
*R	68380	HONG KONG.....	46.8%	$10,575,494	$22,604,639
*R	68410	TAIWAN.....	41.1%	$2,316,312	$5,639,095
*	68425	SINGAPORE.....	3.8%	$20,962,583	$555,894,277
	68425	KOREA, SOUTH.....	54.5%	$303,131,934	$555,894,277
	68448	HONG KONG.....	41.1%	$89,165,046	$216,725,440
R	68448	TAIWAN.....	18.6%	$40,233,657	$216,725,440
*R	68453	TAIWAN.....	46.5%	$5,422,965	$11,666,410
*	68455	MEXICO.....	37.3%	$14,439,569	$38,668,522
	68458	KOREA, SOUTH.....	12.1%	$117,828,863	$974,883,060
	68458	TAIWAN.....	17.4%	$169,188,043	$974,883,060
*	68459	HONG KONG.....	0.7%	$1,633,789	$240,438,100
*	68459	TAIWAN.....	2.0%	$4,768,543	$240,438,100
*R	68470	KOREA, SOUTH.....	7.8%	$67,924,952	$867,014,841
	68470	TAIWAN.....	24.5%	$212,838,866	$867,014,841
*R	68514	KOREA, SOUTH.....	7.8%	$38,895,827	$495,967,639
*R	68514	TAIWAN.....	11.0%	$54,369,279	$495,967,639
*	68516	KOREA, SOUTH.....	0.3%	$227,036	$78,266,731
*	68516	HONG KONG.....	3.0%	$2,311,205	$78,266,731
*	68516	TAIWAN.....	33.8%	$26,421,137	$78,266,731
*	68524	SINGAPORE.....	9.6%	$23,153,639	$240,771,780
*	68524	KOREA, SOUTH.....	2.2%	$5,177,744	$240,771,780
*	68524	TAIWAN.....	15.4%	$37,109,502	$240,771,780
*	68531	KOREA, SOUTH.....	0.7%	$188,778	$25,298,389
*	68531	TAIWAN.....	22.0%	$5,568,813	$25,298,389
R	68532	MEXICO.....	13.1%	$36,334,464	$277,032,121
*	68532	KOREA, SOUTH.....	3.0%	$8,214,564	$277,032,121
*R	68532	TAIWAN.....	5.8%	$16,126,968	$277,032,121
*	68533	KOREA, SOUTH.....	1.6%	$2,948,333	$181,060,241
*R	68533	TAIWAN.....	3.3%	$6,014,041	$181,060,241
R	68539	KOREA, SOUTH.....	28.6%	$64,541,922	$225,357,429

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LIST I : COUNTRIES GRADUATED OR EXCEEDING COMPETITIVE NEED LIMITS
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	TSUS	COUNTRY	% OF WORLD	COUNTRY TOTAL	WORLD TOTAL
R	68539	HONG KONG.....	22.3%	$50,299,624	$225,357,429
*	68540	KOREA, SOUTH.....	8.9%	$284,823,710	$3,187,265,642
R	68540	HONG KONG.....	1.7%	$53,726,100	$3,187,265,642
*R	68540	TAIWAN.....	3.3%	$105,090,643	$3,187,265,642
*	68565	SINGAPORE.....	22.7%	$16,036,560	$70,494,773
	68590	MEXICO.....	15.5%	$366,383,274	$2,358,903,276
	68590	TAIWAN.....	9.6%	$226,894,144	$2,358,903,276
*	68660	MEXICO.....	53.1%	$8,765,383	$16,514,904
R	68690	KOREA, SOUTH.....	25.6%	$32,600,802	$127,233,701
	68810	TAIWAN.....	81.2%	$107,980,228	$133,042,036
	68812	MEXICO.....	75.0%	$496,241,330	$661,560,086
*	68812	TAIWAN.....	9.9%	$65,780,430	$661,560,086
*	68817	MEXICO.....	6.8%	$917,922	$13,558,158
	68818	MEXICO.....	41.1%	$187,657,460	$456,986,856
R	68818	TAIWAN.....	21.6%	$98,733,564	$456,986,856
*	68832	KOREA, SOUTH.....	28.8%	$1,853,859	$6,437,375
*R	68841	HONG KONG.....	24.4%	$3,733,529	$15,308,351
*	68841	TAIWAN.....	1.6%	$252,182	$15,308,351
R	68842	MEXICO.....	8.3%	$74,320,158	$898,574,491
R	68842	KOREA, SOUTH.....	4.9%	$44,094,785	$898,574,491
	68842	HONG KONG.....	11.4%	$102,457,953	$898,574,491
	68842	TAIWAN.....	17.6%	$158,444,010	$898,574,491
	69232	MEXICO.....	9.5%	$447,096,182	$4,712,186,425
*	69232	BRAZIL.....	4.5%	$211,033,638	$4,712,186,425
R	69232	KOREA, SOUTH.....	1.2%	$56,934,638	$4,712,186,425
	69232	TAIWAN.....	3.4%	$159,203,272	$4,712,186,425
*R	69260	TAIWAN.....	50.5%	$38,720,556	$76,664,914
	69610	TAIWAN.....	49.4%	$129,438,889	$262,147,211
*	69635	TAIWAN.....	38.4%	$5,858,791	$15,270,089
*	69640	TAIWAN.....	31.8%	$2,012,309	$6,320,587
*	70661	HONG KONG.....	11.6%	$5,053,264	$43,703,576
*R	70661	TAIWAN.....	32.3%	$14,102,729	$43,703,576
	70845	TAIWAN.....	42.4%	$109,347,831	$257,732,944
*R	70847	HONG KONG.....	7.5%	$24,319,911	$323,296,943
*	70909	MEXICO.....	37.7%	$23,279,733	$61,741,495
*	70915	ISRAEL.....	16.8%	$13,945,622	$82,950,282
*	70940	HONG KONG.....	17.7%	$5,947,989	$33,577,539
*	71072	TAIWAN.....	40.7%	$3,934,616	$9,666,777
*	71138	MEXICO.....	20.8%	$3,607,223	$17,345,198
*R	72208	KOREA, SOUTH.....	3.0%	$804,254	$26,983,217
*R	72208	HONG KONG.....	24.1%	$6,500,765	$26,983,217
*R	72208	TAIWAN.....	45.8%	$12,362,975	$26,983,217
*R	72211	KOREA, SOUTH.....	9.7%	$6,865,322	$70,973,853
*R	72211	HONG KONG.....	11.6%	$8,257,172	$70,973,853
*	72211	TAIWAN.....	36.2%	$25,675,282	$70,973,853
R	72330	BRAZIL.....	10.2%	$31,205,931	$305,772,739
R	72445	MEXICO.....	4.7%	$50,729,935	$1,089,452,181
	72445	KOREA, SOUTH.....	10.8%	$117,591,986	$1,089,452,181
*R	72501	KOREA, SOUTH.....	49.1%	$20,230,941	$41,179,260

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LIST I : COUNTRIES GRADUATED OR EXCEEDING COMPETITIVE NEED LIMITS JAN-OCT 1987

	TSUS	COUNTRY	% OF WORLD	COUNTRY TOTAL	WORLD TOTAL
*R	72503	KOREA, SOUTH.....	34.5%	$28,169,881	$81,643,867
*R	72532	TAIWAN.....	49.5%	$7,382,407	$14,928,046
*R	72546	KOREA, SOUTH.....	38.8%	$10,973,629	$28,271,769
*	72546	TAIWAN.....	12.4%	$3,508,506	$28,271,769
*R	72625	TAIWAN.....	52.6%	$9,195,168	$17,494,502
	72706	MEXICO.....	60.3%	$136,894,645	$227,111,101
*	72711	HONG KONG.....	9.6%	$13,988,901	$145,390,269
R	72711	TAIWAN.....	32.8%	$47,652,772	$145,390,269
*R	72723	TAIWAN.....	32.3%	$1,341,772	$4,159,950
*R	72729	YUGOSLAVIA.....	20.0%	$63,059,924	$314,639,094
*R	72729	TAIWAN.....	34.1%	$107,308,094	$314,639,094
*R	72735	TAIWAN.....	33.1%	$424,312,687	$1,281,788,609
*	72739	YUGOSLAVIA.....	11.0%	$1,090,226	$9,945,859
*R	72739	TAIWAN.....	28.6%	$2,839,988	$9,945,859
*R	72741	TAIWAN.....	27.5%	$10,394,087	$37,796,948
R	72759	TAIWAN.....	33.3%	$37,151,817	$111,596,967
*	72770	TAIWAN.....	30.9%	$283,579,242	$916,335,973
*	72822	TAIWAN.....	70.8%	$15,184,290	$21,454,673
*R	73094	KOREA, SOUTH.....	35.3%	$6,142,180	$17,392,509
*	73130	TAIWAN.....	42.6%	$550,138	$1,291,729
R	73252	TAIWAN.....	90.7%	$123,052,584	$135,643,975
*R	73415	TAIWAN.....	41.5%	$23,418,223	$56,452,415
R	73420	TAIWAN.....	9.7%	$50,158,436	$518,040,017
*R	73425	HONG KONG.....	23.4%	$1,946,508	$8,324,958
R	73477	KOREA, SOUTH.....	20.5%	$37,964,602	$184,840,865
	73477	TAIWAN.....	48.4%	$89,545,813	$184,840,865
*	73486	TAIWAN.....	56.6%	$15,891,982	$28,059,447
*	73507	KOREA, SOUTH.....	48.3%	$11,839,429	$24,507,273
*R	73509	TAIWAN.....	54.0%	$25,967,587	$48,114,411
*	73512	TAIWAN.....	60.1%	$6,814,124	$11,337,643
R	73520	KOREA, SOUTH.....	12.7%	$54,325,030	$426,556,344
*	73520	TAIWAN.....	60.0%	$255,732,629	$426,556,344
*R	73714	HONG KONG.....	7.6%	$2,293,598	$30,194,857
*R	73715	HONG KONG.....	9.4%	$6,066,169	$64,211,627
*R	73716	HONG KONG.....	8.9%	$5,269,943	$59,348,175
*	73723	HONG KONG.....	8.4%	$9,133,769	$108,664,673
*	73730	KOREA, SOUTH.....	57.5%	$389,461,851	$677,680,762
*R	73742	KOREA, SOUTH.....	28.8%	$1,588,398	$5,513,657
*R	73780	HONG KONG.....	24.0%	$10,491,949	$43,722,052
*	73793	TAIWAN.....	11.6%	$20,278,316	$174,254,370
*	73798	TAIWAN.....	17.9%	$48,867,693	$272,553,484
*R	74011	HONG KONG.....	0.1%	$14,332	$10,273,502
*R	74012	HONG KONG.....	1.3%	$174,575	$13,674,847
*R	74013	HONG KONG.....	0.6%	$2,043,723	$340,627,100
	74014	THAILAND.....	9.0%	$81,636,472	$910,201,005
*R	74014	HONG KONG.....	9.2%	$83,520,184	$910,201,005
*	74015	HONG KONG.....	37.6%	$116,611,085	$310,349,348
R	74038	KOREA, SOUTH.....	30.0%	$57,455,178	$191,682,543
*	74039	TAIWAN.....	32.9%	$726,619	$2,205,336

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LIST I : COUNTRIES GRADUATED OR EXCEEDING COMPETITIVE NEED LIMITS
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	TSUS	COUNTRY	% OF WORLD	COUNTRY TOTAL	WORLD TOTAL
R	74041	KOREA, SOUTH.....	23.3%	$30,781,356	$131,907,406
*	74125	HONG KONG.....	18.3%	$793,171	$4,333,702
*R	75020	TAIWAN.....	58.7%	$24,698,848	$42,095,254
*R	75040	HONG KONG.....	36.3%	$7,719,178	$21,275,653
*R	75045	KOREA, SOUTH.....	30.0%	$4,088,573	$13,609,943
*	75122	TAIWAN.....	96.6%	$3,163,862	$3,274,155
*R	75525	HONG KONG.....	43.1%	$20,786,646	$48,191,414
*R	77141	TAIWAN.....	36.1%	$17,094,647	$47,291,674
*	77145	TAIWAN.....	47.1%	$3,052,136	$6,480,581
R	77220	TAIWAN.....	22.6%	$52,813,471	$234,091,489
	77235	TAIWAN.....	89.9%	$226,936,538	$252,563,393
	77251	BRAZIL.....	4.7%	$83,533,252	$1,759,476,211
	77251	KOREA, SOUTH.....	7.8%	$137,073,536	$1,759,476,211
R	77251	TAIWAN.....	2.3%	$40,973,199	$1,759,476,211
*R	77260	KOREA, SOUTH.....	25.1%	$7,333,939	$29,233,931
*R	77305	TAIWAN.....	38.2%	$3,709,507	$9,699,851
*R	77445	HONG KONG.....	21.7%	$5,543,070	$25,503,720
R	77450	TAIWAN.....	54.8%	$39,656,846	$72,339,730
*	77451	TAIWAN.....	7.3%	$505,439	$6,951,076
*	77453	TAIWAN.....	28.5%	$802,193	$2,819,082
	77455	TAIWAN.....	19.4%	$107,741,888	$555,979,565
*	77456	TAIWAN.....	8.4%	$294,733	$3,515,090
*	79003	TAIWAN.....	53.8%	$15,832,565	$29,417,329
*R	79010	TAIWAN.....	36.3%	$4,647,908	$12,816,607
	79039	TAIWAN.....	86.8%	$87,569,889	$100,894,274
R	79055	TAIWAN.....	23.6%	$33,389,632	$141,735,162
	79115	KOREA, SOUTH.....	29.5%	$117,380,389	$398,027,889
	79115	HONG KONG.....	25.1%	$99,900,147	$398,027,889
*	79128	MEXICO.....	2.6%	$336,097	$13,108,696
R	79160	TAIWAN.....	41.2%	$44,408,994	$107,888,047

* = GRADUATED; R = REDUCED LIMIT APPLIES

LIST II : COUNTRIES APPROACHING COMPETITIVE NEED LIMITS
JAN-OCT 1987

	TSUS	COUNTRY	% OF WORLD	COUNTRY TOTAL	WORLD TOTAL
*	10584	ISRAEL	84.7%	$5,448,077	$6,432,991
*	10670	THAILAND	60.6%	$8,312	$13,720
	12162	INDIA	59.5%	$11,228,451	$18,859,998
*	12164	INDIA	62.2%	$3,759,839	$6,044,310
*	12470	BRAZIL	49.7%	$74,538	$150,088
*R	13032	ARGENTINA	23.5%	$286,993	$1,222,201
*	13037	ARGENTINA	82.2%	$1,787,414	$2,173,816
*	13180	URUGUAY	77.9%	$47,979	$61,561
*	13541	ISRAEL	52.7%	$1,042,081	$1,978,103
*	13560	GUATEMALA	55.2%	$149,119	$270,127
*	13570	TURKEY	84.1%	$105,086	$124,943
*	13580	EL SALVADOR	94.8%	$31,964	$33,728
	13590	MEXICO	95.5%	$26,446,583	$27,680,534
*	13600	DOMINICAN REPUBLIC	74.5%	$4,788,876	$6,427,806
	13630	MEXICO	69.1%	$11,191,129	$16,192,254
*	13661	MEXICO	91.5%	$1,225,633	$1,339,455
*	13677	MEXICO	88.9%	$3,628,920	$4,081,550
*	13680	MEXICO	65.6%	$1,504,024	$2,291,815
*	13697	TAIWAN	58.8%	$1,203,356	$2,047,484
*	13702	DOMINICAN REPUBLIC	91.9%	$1,651,902	$1,797,199
R	13704	MEXICO	27.0%	$4,307,210	$15,955,859
*	13771	MEXICO	61.7%	$2,357,091	$3,820,647
*	13788	JAMAICA	54.7%	$3,613,845	$6,611,339
*	13789	DOMINICAN REPUBLIC	98.6%	$1,615,417	$1,638,749
*	13793	DOMINICAN REPUBLIC	53.3%	$483,017	$905,374
	13805	MEXICO	78.6%	$45,315,581	$57,625,758
*	14011	CHILE	50.0%	$1,459,934	$2,919,274
*	14020	INDIA	57.7%	$238,430	$413,175
*	14021	MEXICO	83.2%	$3,739,055	$4,492,937
*	14054	ISRAEL	75.5%	$1,238,130	$1,640,762
	14177	MEXICO	49.9%	$16,196,494	$32,436,081
R	14198	MEXICO	31.5%	$5,493,092	$17,447,476
*	14526	HONG KONG	48.7%	$875,116	$1,796,248
*	14550	MEXICO	96.8%	$2,147,561	$2,218,254
*	14565	TAIWAN	57.6%	$1,312,693	$2,280,469
*R	14612	ARGENTINA	48.4%	$1,120,756	$2,317,753
	14622	TURKEY	73.5%	$9,414,206	$12,811,442
*	14678	CHILE	52.5%	$180,237	$343,432
*	14687	DOMINICAN REPUBLIC	79.8%	$172,248	$215,827
*	14733	JAMAICA	86.5%	$188,517	$217,958
*	14754	MEXICO	63.5%	$125,280	$197,352
	14812	MEXICO	69.5%	$10,147,581	$14,603,549
*	14825	MEXICO	88.6%	$4,255,030	$4,799,892
R	14830	MEXICO	45.3%	$10,330,884	$22,807,394
*	14835	GUATEMALA	75.0%	$735,338	$980,713
*	14877	KOREA, SOUTH	53.6%	$13,987	$26,079
*R	14950	MEXICO	47.6%	$1,964,216	$4,126,388
*	14960	THAILAND	60.9%	$3,270,763	$5,367,410
*	15200	ECUADOR	94.6%	$489,900	$518,085

* = See LIST III; R = REDUCED LIMIT APPLIES

LIST II : COUNTRIES APPROACHING COMPETITIVE NEED LIMITS
JAN-OCT 1987

	TSUS	COUNTRY	% OF WORLD	COUNTRY TOTAL	WORLD TOTAL
*R	15254	BRAZIL	44.5%	$801,489	$1,801,453
*	15320	DOMINICAN REPUBLIC	84.2%	$32,210	$38,237
*	15443	TAIWAN	65.8%	$76,145	$115,773
*	15460	THAILAND	56.7%	$435,288	$767,623
*	15535	DOMINICAN REPUBLIC	47.8%	$2,704,931	$5,662,892
*	16105	TAIWAN	90.7%	$127,951	$141,030
*	16175	ISRAEL	87.9%	$361,961	$411,646
*	16188	INDIA	100.0%	$1,239	$1,239
*	16211	LEBANON	64.6%	$12,831	$19,850
*	16813	TRINIDAD ISLAND	100.0%	$496,561	$496,561
R	16898	MEXICO	46.5%	$6,703,455	$14,418,784
*	16944	COLOMBIA	52.7%	$759,820	$1,441,675
*	16958	YUGOSLAVIA	100.0%	$2,000	$2,000
*	17040	MEXICO	49.1%	$2,010,901	$4,096,707
*	17615	BRAZIL	69.4%	$1,663,125	$2,395,679
*	17670	MEXICO	51.0%	$2,041,882	$4,003,625
*	17716	ISRAEL	76.0%	$24,677	$32,452
*	18453	ARGENTINA	52.1%	$227,012	$436,065
*	18834	MEXICO	54.4%	$151,638	$278,621
	19221	COLOMBIA	53.2%	$50,313,820	$94,508,375
	19223	COLOMBIA	90.5%	$28,228,137	$31,174,811
*R	20091	MEXICO	26.0%	$1,215,985	$4,683,498
*	20091	HONDURAS	68.0%	$3,185,901	$4,683,498
	20262	MEXICO	96.1%	$39,185,470	$40,773,576
R	20266	TAIWAN	28.1%	$14,352,415	$51,001,673
*	20330	MALAYSIA	52.0%	$632,255	$1,215,635
*	20405	TAIWAN	68.8%	$2,370,302	$3,444,033
*	20435	HONDURAS	57.8%	$224,214	$387,803
	20440	TAIWAN	84.0%	$22,861,635	$27,227,192
R	20630	TAIWAN	31.3%	$20,774,650	$66,475,791
*	20647	TAIWAN	70.6%	$2,194,670	$3,106,859
	20698	TAIWAN	67.8%	$75,661,053	$111,547,757
*	22234	TAIWAN	91.9%	$92,450	$100,621
*	22236	TAIWAN	85.3%	$583,003	$683,217
*	24010	BRAZIL	98.1%	$5,416,319	$5,521,364
*	24012	BRAZIL	80.5%	$969,789	$1,204,963
	24014	TAIWAN	52.2%	$39,589,169	$75,867,105
*	24019	TAIWAN	57.6%	$571,115	$991,032
	24021	INDONESIA	56.1%	$9,004,057	$16,049,835
*	24032	BRAZIL	57.5%	$69,449	$120,820
*	24050	TAIWAN	75.1%	$67,322	$89,650
*	25120	ISRAEL	77.8%	$78,546	$101,021
*	25261	MEXICO	89.1%	$1,096,397	$1,229,864
*R	31525	MEXICO	33.1%	$1,166,292	$3,519,554
*	31535	PHILIPPINES	83.5%	$2,640,468	$3,161,784
*	31555	BRAZIL	47.3%	$46,988	$99,385
*	31580	THAILAND	80.6%	$505,863	$627,718
*	31590	THAILAND	71.3%	$71,163	$99,748
*	31901	INDIA	99.1%	$1,578,113	$1,592,419

* = See LIST III; R = REDUCED LIMIT APPLIES

LIST II : COUNTRIES APPROACHING COMPETITIVE NEED LIMITS
JAN-OCT 1987

	TSUS	COUNTRY	% OF WORLD	COUNTRY TOTAL	WORLD TOTAL
*	31903	INDIA	94.6%	$1,459,700	$1,543,109
*	31905	INDIA	98.9%	$6,362,132	$6,431,153
*	31907	INDIA	97.9%	$178,998	$182,787
*	36035	INDIA	72.0%	$561,761	$780,403
*	36121	INDIA	78.6%	$29,820	$37,960
	38614	TAIWAN	48.7%	$12,625,507	$25,947,467
*	39016	TAIWAN	84.4%	$24,166	$28,622
*	40212	MEXICO	54.5%	$2,066,360	$3,791,702
*	40220	MEXICO	55.9%	$1,238,483	$2,216,322
*	40647	INDIA	100.0%	$6,160	$6,160
	40823	BRAZIL	53.9%	$38,762,867	$71,970,701
R	40872	TAIWAN	34.3%	$13,047,819	$38,062,596
*	41056	TAIWAN	54.4%	$18,014	$33,140
*	41182	YUGOSLAVIA	50.3%	$4,241,721	$8,426,003
*	41231	ISRAEL	48.4%	$637,372	$1,318,163
*	41280	MEXICO	76.4%	$708,284	$926,589
*R	41645	TAIWAN	26.6%	$1,893,911	$7,108,574
*	41722	MEXICO	47.8%	$1,726,364	$3,613,484
*	41722	TRINIDAD ISLAND	51.3%	$1,854,399	$3,613,484
*	41754	HONG KONG	50.7%	$45,472	$89,766
*	41824	INDIA	67.8%	$74,099	$109,252
*	41876	MEXICO	56.1%	$1,122,733	$2,002,904
*	41878	MEXICO	64.0%	$2,262,602	$3,535,470
*	41910	CHILE	78.2%	$4,257,976	$5,446,098
*	42002	ISRAEL	81.2%	$789,882	$973,136
*	42020	INDIA	80.0%	$452,684	$565,848
*	42024	ISRAEL	86.4%	$499,147	$577,727
*R	42060	MEXICO	93.9%	$5,320,407	$5,665,046
*	42070	ISRAEL	100.0%	$72,313	$72,313
*	42082	ISRAEL	99.4%	$339,466	$341,610
*	42114	CHILE	70.3%	$2,124,363	$3,020,003
*	42276	MEXICO	58.7%	$965,883	$1,646,448
*	42532	HONG KONG	48.5%	$1,533	$3,164
*	42584	TRINIDAD ISLAND	61.7%	$732,856	$1,187,021
*	42600	MEXICO	95.8%	$806,990	$841,953
*	42716	ARGENTINA	96.7%	$403,913	$417,603
*	42725	MEXICO	81.4%	$413,058	$507,620
*	42746	MEXICO	100.0%	$246,278	$246,278
*R	42784	BRAZIL	24.7%	$1,131,039	$4,586,271
*	42850	BRAZIL	92.3%	$200,289	$216,976
*	42858	TAIWAN	65.0%	$415,000	$638,616
*	42929	BRAZIL	68.3%	$2,140,445	$3,133,857
*	43510	DOMINICA ISLAND	71.7%	$243,184	$339,375
*	43713	INDIA	85.3%	$205,934	$241,316
*	44510	TAIWAN	64.9%	$745,949	$1,149,212
R	44546	MEXICO	41.7%	$14,516,646	$34,787,076
*	45254	BRAZIL	52.2%	$399,403	$764,608
*	45516	VENEZUELA	100.0%	$49,014	$49,014
*	45518	BRAZIL	100.0%	$57,020	$57,020

* = See LIST III; R = REDUCED LIMIT APPLIES

LIST II : COUNTRIES APPROACHING COMPETITIVE NEED LIMITS
JAN-OCT 1987

	TSUS	COUNTRY	% OF WORLD	COUNTRY TOTAL	WORLD TOTAL
*	45530	TAIWAN	95.7%	$162,652	$170,007
*	45546	TAIWAN	73.5%	$331,669	$451,124
*	46605	PHILIPPINES	84.3%	$645,912	$766,085
*	46610	MEXICO	49.8%	$23,047	$46,285
	47085	MEXICO	61.6%	$6,893,466	$11,186,622
*	47338	CYPRUS	74.3%	$84,774	$114,136
*	47352	MEXICO	99.5%	$7,288,121	$7,325,746
*	47378	MEXICO	91.2%	$2,140,175	$2,347,420
*	47382	KOREA, SOUTH	89.1%	$216,000	$242,329
*	51131	MEXICO	74.5%	$441,758	$592,660
*	51224	MEXICO	51.1%	$166,228	$325,466
*	51671	INDIA	100.0%	$369,259	$369,259
*	51673	INDIA	84.7%	$24,705	$29,175
*	51674	INDIA	86.7%	$85,525	$98,625
*	51676	INDIA	77.6%	$152,523	$196,621
*	51841	MEXICO	79.7%	$335,157	$420,406
*	52187	MEXICO	56.9%	$2,327,315	$4,092,960
*	52241	MEXICO	91.8%	$343,036	$373,870
*	52351	TAIWAN	50.1%	$11,540	$23,029
*	52394	TAIWAN	63.9%	$1,342,747	$2,100,362
R	53411	TAIWAN	32.0%	$29,541,666	$92,380,389
*	53481	TAIWAN	64.7%	$4,840,100	$7,479,457
	53484	TAIWAN	75.2%	$29,411,290	$39,135,044
R	53512	MEXICO	40.3%	$20,171,941	$50,021,936
*R	54021	MEXICO	38.5%	$2,435,837	$6,325,463
*	54257	HONG KONG	93.2%	$16,200	$17,386
*R	54277	MEXICO	30.2%	$142,720	$471,893
*	54292	TAIWAN	100.0%	$22,320	$22,320
*	54294	TAIWAN	86.0%	$47,444	$55,195
	54441	MEXICO	48.0%	$58,634,119	$122,140,940
R	54451	TAIWAN	24.7%	$15,764,454	$63,819,902
R	54553	TAIWAN	52.1%	$14,549,380	$27,937,963
*	54565	MEXICO	70.1%	$850,191	$1,212,302
	54567	TAIWAN	68.2%	$46,771,201	$68,619,382
*	54585	TAIWAN	90.8%	$1,202,883	$1,324,161
*	54647	TAIWAN	74.0%	$1,313,463	$1,776,042
R	54737	TAIWAN	36.1%	$5,200,208	$14,399,216
*	60210	MEXICO	80.9%	$63,795	$78,869
*	60315	VENEZUELA	85.3%	$5,608,810	$6,577,875
	60340	CHILE	68.6%	$9,031,017	$13,167,156
*	60350	MEXICO	87.2%	$4,553,001	$5,222,511
*	60505	LIBERIA	53.7%	$20,760	$38,675
*	60673	MEXICO	50.0%	$2,740,673	$5,483,828
R	60914	BRAZIL	45.2%	$11,319,353	$25,026,548
*	61058	TAIWAN	74.2%	$74,015	$99,741
*	61063	KOREA, SOUTH	98.4%	$145,554	$147,908
*	61065	TAIWAN	61.2%	$3,846,898	$6,288,885
*	61070	ISRAEL	69.5%	$1,816,972	$2,614,016
*	61071	TAIWAN	67.6%	$58,564	$86,570

* = See LIST III; R = REDUCED LIMIT APPLIES

LIST II : COUNTRIES APPROACHING COMPETITIVE NEED LIMITS JAN-OCT 1987

	TSUS	COUNTRY	% OF WORLD	COUNTRY TOTAL	WORLD TOTAL
R	61203	MEXICO	58.8%	$24,475,352	$41,592,018
*	61230	YUGOSLAVIA	86.4%	$545,595	$631,333
*	61250	MEXICO	47.7%	$142,272	$298,033
*	61271	PERU	51.4%	$485,231	$944,702
*	61303	MEXICO	50.7%	$74,321	$146,543
*	61311	MEXICO	96.8%	$2,524,659	$2,607,584
	61815	VENEZUELA	72.5%	$54,377,988	$74,954,193
*	61842	BAHRAIN	47.0%	$2,156,473	$4,592,459
*	62215	VENEZUELA	61.7%	$180,553	$292,414
*	62220	BOLIVIA	50.9%	$62,157	$122,039
*	62404	MEXICO	47.6%	$1,018,255	$2,139,520
*	62410	PERU	57.2%	$85,549	$149,632
*	62631	MEXICO	84.6%	$9,702	$11,464
*R	62640	MEXICO	23.5%	$1,512,762	$6,446,595
*	62815	BRAZIL	69.5%	$277,355	$398,963
*	62890	CHILE	64.0%	$986,391	$1,541,559
*	62895	CHILE	100.0%	$114,500	$114,500
*	63266	MEXICO	91.3%	$354,671	$388,677
*	64208	KOREA, SOUTH	61.6%	$899,383	$1,459,105
*	64225	TAIWAN	63.3%	$16,375	$25,889
*R	64245	MEXICO	61.9%	$939,789	$1,518,744
*	64258	VENEZUELA	100.0%	$162,510	$162,510
*	64285	TAIWAN	83.5%	$158,457	$189,698
*	64464	EL SALVADOR	93.6%	$27,893	$29,798
*	64604	TAIWAN	72.0%	$10,027	$13,928
*	64606	TAIWAN	56.1%	$225,875	$402,750
*	64628	KOREA, SOUTH	83.7%	$1,042,811	$1,245,697
R	64630	KOREA, SOUTH	40.0%	$5,871,460	$14,696,352
*	64647	TAIWAN	80.4%	$830,388	$1,032,597
*	64653	HONG KONG	53.7%	$1,020,061	$1,898,265
*R	64665	TAIWAN	33.3%	$2,476,522	$7,441,731
R	64672	TAIWAN	30.2%	$7,189,842	$23,841,691
*	64678	TAIWAN	50.3%	$785,139	$1,560,271
*	64685	TAIWAN	61.7%	$901,180	$1,460,519
*	64687	TAIWAN	73.6%	$281,880	$382,891
R	64695	TAIWAN	32.9%	$9,148,113	$27,842,472
R	64697	TAIWAN	42.0%	$4,556,617	$10,841,656
*	64698	MEXICO	76.1%	$249,474	$327,926
R	64705	TAIWAN	36.7%	$14,350,751	$39,147,449
*	64710	TAIWAN	51.5%	$95,539	$185,666
*	64855	TAIWAN	70.3%	$3,473,506	$4,938,471
*	64857	TAIWAN	54.7%	$902,714	$1,651,084
*	64873	TAIWAN	65.3%	$3,565,199	$5,461,287
*R	64880	TAIWAN	36.2%	$52,375	$144,855
R	64885	TAIWAN	35.6%	$12,859,343	$36,139,259
*	64891	TAIWAN	77.2%	$999,617	$1,295,004
*R	64895	TAIWAN	36.1%	$2,390,638	$6,624,305
*	64971	TAIWAN	60.9%	$16,013	$26,274
*	64977	HONG KONG	51.9%	$445,186	$857,455

* = See LIST III; R = REDUCED LIMIT APPLIES

LIST II : COUNTRIES APPROACHING COMPETITIVE NEED LIMITS
JAN-OCT 1987

	TSUS	COUNTRY	% OF WORLD	COUNTRY TOTAL	WORLD TOTAL
*	64989	TAIWAN	70.1%	$159,287	$227,191
R	65021	TAIWAN	29.3%	$12,620,664	$43,105,514
*	65037	TAIWAN	49.6%	$1,008,263	$2,033,567
*	65047	TAIWAN	91.1%	$524,216	$575,296
*	65048	TAIWAN	62.1%	$435,282	$701,106
*	65056	TAIWAN	47.1%	$2,253,593	$4,784,369
*	65079	TAIWAN	57.2%	$137,352	$240,173
*	65104	TAIWAN	94.9%	$74,108	$78,089
	65121	TAIWAN	73.9%	$10,470,623	$14,176,104
*	65125	TAIWAN	53.3%	$1,738,312	$3,262,610
R	65131	TAIWAN	24.3%	$2,801,183	$11,523,240
*	65153	TAIWAN	65.1%	$2,721,307	$4,177,159
R	65155	TAIWAN	36.7%	$6,683,191	$18,200,191
*	65160	KOREA, SOUTH	49.1%	$32,886	$66,970
*	65162	KOREA, SOUTH	85.9%	$65,026	$75,676
*	65213	TAIWAN	100.0%	$2,782	$2,782
R	65224	TAIWAN	26.7%	$2,533,008	$9,479,906
	65272	KOREA, SOUTH	57.3%	$7,591,668	$13,242,657
*	65325	MEXICO	71.8%	$1,861,778	$2,591,786
	65335	TAIWAN	81.0%	$43,748,411	$54,023,345
	65337	TAIWAN	59.1%	$75,786,335	$128,323,054
	65345	TAIWAN	48.5%	$10,663,672	$21,966,774
*	65347	TAIWAN	76.5%	$1,362,719	$1,781,452
*	65370	KOREA, SOUTH	52.1%	$58,369	$111,953
R	65396	TAIWAN	39.7%	$12,275,495	$30,940,337
	65399	TAIWAN	83.7%	$9,120,392	$10,893,376
	65400	TAIWAN	50.2%	$54,505,782	$108,478,817
	65425	TAIWAN	46.5%	$62,383,594	$134,037,371
R	65435	TAIWAN	43.4%	$3,971,989	$9,149,603
R	65445	TAIWAN	45.4%	$11,132,283	$24,502,486
	65450	TAIWAN	52.8%	$11,231,808	$21,269,199
*	65455	TAIWAN	81.9%	$1,696,037	$2,069,790
R	65460	TAIWAN	23.9%	$3,413,521	$14,260,790
	65465	TAIWAN	83.0%	$9,506,596	$11,448,275
R	65475	TAIWAN	63.1%	$13,749,812	$21,793,372
*	65610	SINGAPORE	55.6%	$3,663,593	$6,587,370
R	65615	MEXICO	46.4%	$6,693,011	$14,424,741
*	65630	HONG KONG	53.3%	$488,758	$916,340
	65724	TAIWAN	75.4%	$13,357,046	$17,713,597
	65740	TAIWAN	34.2%	$64,966,322	$190,003,768
*	65790	MEXICO	83.0%	$1,400,135	$1,686,982
*	66020	TAIWAN	51.3%	$49,056	$95,718
	66035	ISRAEL	74.3%	$8,652,548	$11,648,808
	67442	TAIWAN	23.1%	$73,212,471	$317,469,534
R	68019	TAIWAN	32.2%	$15,297,745	$47,487,335
*	68025	TAIWAN	58.2%	$1,650,252	$2,837,721
	68062	SINGAPORE	77.0%	$7,582,001	$9,841,521
	68255	SINGAPORE	60.1%	$15,650,972	$26,038,112
R	68312	MEXICO	22.5%	$11,060,015	$49,208,023

* = See LIST III; R = REDUCED LIMIT APPLIES

LIST II : COUNTRIES APPROACHING COMPETITIVE NEED LIMITS
JAN-OCT 1987

	TSUS	COUNTRY	% OF WORLD	COUNTRY TOTAL	WORLD TOTAL
	68332	HONG KONG	26.7%	$68,491,889	$256,540,500
	68360	MEXICO	14.0%	$75,355,581	$539,267,307
*R	68410	HONG KONG	26.5%	$1,495,425	$5,639,095
R	68506	TAIWAN	69.5%	$10,023,148	$14,418,161
	68514	HONG KONG	13.3%	$66,196,503	$495,967,639
R	68522	KOREA, SOUTH	22.4%	$4,649,046	$20,765,895
R	68522	HONG KONG	25.4%	$5,282,590	$20,765,895
	68539	KOREA, SOUTH	28.6%	$64,541,922	$225,357,429
*	68542	HONG KONG	100.0%	$11,070	$11,070
R	68570	HONG KONG	7.9%	$28,968,316	$367,783,735
	68590	KOREA, SOUTH	2.6%	$61,792,461	$2,358,903,276*
R	68618	TAIWAN	38.2%	$7,378,874	$19,314,521
	68630	TAIWAN	84.7%	$19,595,574	$23,148,557
*	68650	SINGAPORE	48.1%	$992,235	$2,063,449
	68817	TAIWAN	63.4%	$8,590,900	$13,558,158
*	68820	VENEZUELA	69.0%	$2,404,904	$3,487,083
*	68830	KOREA, SOUTH	71.5%	$2,229,515	$3,116,861
R	68834	HONG KONG	51.6%	$18,667,490	$36,159,526
	68842	MEXICO	8.3%	$74,320,158	$898,574,491
*	69431	TAIWAN	56.7%	$110,390	$194,719
	70090	MEXICO	77.6%	$9,725,145	$12,526,213
*	70232	MEXICO	66.0%	$372,175	$563,512
*	70245	MEXICO	93.7%	$41,000	$43,776
	70314	MEXICO	76.4%	$9,770,232	$12,783,448
R	70372	TAIWAN	45.9%	$18,243,245	$39,728,246
*	70495	PHILIPPINES	50.9%	$299,539	$588,251
R	70582	TAIWAN	37.6%	$9,231,721	$24,536,230
R	70583	TAIWAN	26.1%	$12,341,204	$47,271,032
*	70619	KENYA	47.9%	$15,311	$31,952
*	70633	KOREA, SOUTH	66.4%	$1,682,876	$2,532,993
	70645	HONG KONG	61.3%	$5,882,323	$9,595,258
*	70841	ISRAEL	64.8%	$24,181	$37,331
*	70871	TAIWAN	76.8%	$5,389,253	$7,014,416
*	71060	HONG KONG	63.5%	$1,086,838	$1,710,431
*	71067	TAIWAN	78.8%	$115,577	$146,627
*	71068	BRAZIL	48.7%	$30,087	$61,777
*	71130	TAIWAN	58.9%	$331,925	$563,558
*	71131	INDIA	76.9%	$3,386,195	$4,400,987
	71249	TAIWAN	4.4%	$61,598,287	$1,401,637,922
	71315	MEXICO	51.3%	$5,207,799	$10,151,170
*	72202	TAIWAN	81.5%	$1,086,274	$1,332,973
*	72214	TAIWAN	94.8%	$3,180,903	$3,356,962
*	72255	HONG KONG	62.3%	$429,775	$690,120
*	72278	TAIWAN	96.2%	$4,265,096	$4,431,833
*	72435	TAIWAN	49.5%	$3,735	$7,553
	72550	TAIWAN	70.4%	$52,166,278	$74,054,243
*	72552	TAIWAN	60.8%	$4,641,352	$7,636,192
R	72725	TAIWAN	33.7%	$3,080,774	$9,142,349
R	72740	TAIWAN	26.4%	$16,832,805	$63,682,148

* = See LIST III; R = REDUCED LIMIT APPLIES

LIST II : COUNTRIES APPROACHING COMPETITIVE NEED LIMITS
JAN-OCT 1987

	TSUS	COUNTRY	% OF WORLD	COUNTRY TOTAL	WORLD TOTAL
R	72747	TAIWAN	33.7%	$9,535,225	$28,296,443
R	72765	TAIWAN	38.7%	$9,813,962	$25,350,267
R	72786	TAIWAN	42.7%	$10,560,303	$24,708,813
*	73110	TAIWAN	72.1%	$646,999	$897,459
*	73142	BRAZIL	100.0%	$12,418	$12,418
*	73150	TAIWAN	61.0%	$799,633	$1,310,613
R	73170	TAIWAN	34.8%	$6,198,874	$17,816,699
*	73243	TAIWAN	90.8%	$3,242,414	$3,569,345
	73260	TAIWAN	88.2%	$57,020,810	$64,674,454
R	73262	TAIWAN	55.2%	$8,076,188	$14,629,415
	73410	TAIWAN	74.4%	$7,231,012	$9,722,546
*	73430	HONG KONG	73.5%	$623,107	$847,649
*	73434	HONG KONG	55.0%	$1,182,161	$2,151,132
*	73440	TAIWAN	68.3%	$4,082,088	$5,972,427
*R	73442	BRAZIL	33.3%	$844,905	$2,539,765
*	73442	TAIWAN	47.9%	$1,215,641	$2,539,765
*	73451	TAIWAN	89.0%	$5,170,558	$5,811,963
*	73460	TAIWAN	95.0%	$1,881,838	$1,981,870
*	73471	TAIWAN	89.0%	$1,427,691	$1,604,454
*	73472	TAIWAN	75.2%	$4,173,974	$5,550,806
*	73485	INDONESIA	51.4%	$814,418	$1,584,684
	73487	TAIWAN	89.5%	$28,282,534	$31,586,499
R	73488	TAIWAN	37.6%	$4,627,260	$12,312,461
R	73491	TAIWAN	41.9%	$5,833,723	$13,930,297
R	73509	KOREA, SOUTH	28.9%	$13,896,937	$48,114,411
*R	73510	TAIWAN	32.7%	$699,658	$2,140,221
*	73511	TAIWAN	77.0%	$1,162,830	$1,510,022
R	73765	TAIWAN	40.0%	$4,271,049	$10,668,012
	73798	HONG KONG	24.8%	$67,480,695	$272,553,484
	74015	THAILAND	23.1%	$71,837,774	$310,349,348
*	74030	HONG KONG	67.5%	$3,988,330	$5,906,341
*	74034	HONG KONG	79.2%	$1,329,017	$1,677,563
*	74075	KOREA, SOUTH	50.6%	$506,350	$1,000,133
*	74115	TAIWAN	47.4%	$1,222,476	$2,576,829
*	74120	HONG KONG	97.1%	$1,606,896	$1,655,129
R	74150	HONG KONG	26.9%	$5,066,716	$18,831,583
*	74510	HONG KONG	58.8%	$452,583	$770,167
R	74545	TAIWAN	40.4%	$9,881,313	$24,463,348
*	74556	MALAYSIA	47.8%	$1,141,468	$2,388,299
*	74560	TAIWAN	61.5%	$1,653,712	$2,687,322
*	74570	TAIWAN	86.4%	$1,046,062	$1,210,712
*	74815	TAIWAN	55.2%	$1,590,321	$2,879,978
*	74836	TAIWAN	55.6%	$1,238,678	$2,226,262
*	75005	TAIWAN	60.4%	$639,454	$1,059,535
	75022	TAIWAN	68.0%	$13,026,666	$19,149,775
*	75025	HONG KONG	51.1%	$3,475,176	$6,804,676
*	75035	TAIWAN	50.2%	$1,482,446	$2,953,026
R	75045	TAIWAN	37.1%	$5,044,572	$13,609,943
R	75047	TAIWAN	47.4%	$9,396,328	$19,831,846

* = See LIST III; R = REDUCED LIMIT APPLIES

LIST II : COUNTRIES APPROACHING COMPETITIVE NEED LIMITS
JAN-OCT 1987

	TSUS	COUNTRY	% OF WORLD	COUNTRY TOTAL	WORLD TOTAL
*	75050	KOREA, SOUTH.....	54.7%	$948,038	$1,732,458
*	75055	KOREA, SOUTH.....	67.4%	$1,541,370	$2,286,334
R	75065	TAIWAN.....	73.5%	$12,926,496	$17,588,327
R	75070	TAIWAN.....	36.0%	$15,220,481	$42,333,041
*	75075	HONG KONG.....	48.3%	$1,978,171	$4,097,300
*	75080	TAIWAN.....	91.2%	$1,379,998	$1,513,061
	75105	TAIWAN.....	74.6%	$70,585,560	$94,642,172
*	75110	INDIA.....	69.9%	$36,888	$52,788
*	75111	TAIWAN.....	48.6%	$801,693	$1,649,895
*	75115	TAIWAN.....	71.5%	$26,431	$36,984
*	75121	TAIWAN.....	93.2%	$1,134,737	$1,217,191
*	75124	TAIWAN.....	96.9%	$1,082,699	$1,117,048
*	75125	TAIWAN.....	86.8%	$1,986,076	$2,286,827
*	75520	ISRAEL.....	53.9%	$1,077,036	$1,998,581
*	75615	HONG KONG.....	65.9%	$4,517,975	$6,860,533
*	75623	INDIA.....	70.8%	$7,278	$10,273
*	75635	TURKEY.....	69.1%	$239,289	$346,256
*	75650	HONG KONG.....	52.3%	$2,724	$5,204
*	76038	MEXICO.....	59.7%	$621,694	$1,040,883
*	76050	TAIWAN.....	70.0%	$703,185	$1,004,916
*	76056	TAIWAN.....	56.2%	$1,071,427	$1,906,771
	77007	MEXICO.....	88.6%	$24,212,701	$27,319,451
R	77040	MEXICO.....	34.5%	$5,199,707	$15,064,555
*	77105	MEXICO.....	100.0%	$29,720	$29,720
	77143	TAIWAN.....	14.7%	$68,676,182	$465,615,414
R	77206	TAIWAN.....	54.8%	$14,262,447	$26,031,073
R	77216	HONG KONG.....	18.7%	$24,164,208	$129,455,902
*	77229	HONG KONG.....	50.9%	$205,409	$403,857
R	77280	TAIWAN.....	29.5%	$7,387,539	$25,062,637
R	77295	TAIWAN.....	40.9%	$16,470,218	$40,310,408
R	77297	TAIWAN.....	42.0%	$26,397,259	$62,909,497
R	77310	TAIWAN.....	41.0%	$6,779,803	$16,547,171
*	77320	TAIWAN.....	58.6%	$98,941	$168,906
	77450	TAIWAN.....	54.8%	$39,656,846	$72,339,730
R	77458	HONG KONG.....	6.9%	$28,393,678	$409,468,760
	77458	TAIWAN.....	17.1%	$70,209,416	$409,468,760
*	79000	TAIWAN.....	47.5%	$721,654	$1,519,046
R	79060	TAIWAN.....	29.9%	$2,785,747	$9,319,044
	79061	TAIWAN.....	49.1%	$6,978,076	$14,198,211
*	79063	HONG KONG.....	71.5%	$351,720	$491,993
	79070	KOREA, SOUTH.....	80.6%	$40,034,369	$49,698,804
*	79110	HONG KONG.....	68.7%	$402,092	$585,437
*	79120	THAILAND.....	51.8%	$40,038	$77,351
	79128	ARGENTINA.....	54.9%	$7,193,208	$13,108,696
*	79170	TAIWAN.....	67.4%	$1,230,737	$1,825,229
*	79260	HONG KONG.....	84.2%	$5,680,272	$6,748,146

* = See LIST III; R = REDUCED LIMIT APPLIES

LIST III : POSSIBLE de MINIMIS ITEMS
JAN-OCT 1987

	TSUS	COUNTRY	% OF WORLD	COUNTRY TOTAL	WORLD TOTAL
	10584	ISRAEL	84.7%	$5,448,077	$6,432,991
	10670	THAILAND	60.6%	$8,312	$13,720
	12164	INDIA	62.2%	$3,759,839	$6,044,310
	12470	BRAZIL	49.7%	$74,538	$150,088
R	13032	ARGENTINA	23.5%	$286,993	$1,222,201
	13037	ARGENTINA	82.2%	$1,787,414	$2,173,816
	13180	URUGUAY	77.9%	$47,979	$61,561
	13541	ISRAEL	52.7%	$1,042,081	$1,978,103
	13560	GUATEMALA	55.2%	$149,119	$270,127
	13570	TURKEY	84.1%	$105,086	$124,943
	13580	EL SALVADOR	94.8%	$31,964	$33,728
	13600	DOMINICAN REPUBLIC	74.5%	$4,788,876	$6,427,806
	13661	MEXICO	91.5%	$1,225,633	$1,339,455
	13677	MEXICO	88.9%	$3,628,920	$4,081,550
	13680	MEXICO	65.6%	$1,504,024	$2,291,815
	13697	TAIWAN	58.8%	$1,203,356	$2,047,484
	13702	DOMINICAN REPUBLIC	91.9%	$1,651,902	$1,797,199
	13771	MEXICO	61.7%	$2,357,091	$3,820,647
	13788	JAMAICA	54.7%	$3,613,845	$6,611,339
	13789	DOMINICAN REPUBLIC	98.6%	$1,615,417	$1,638,749
	13793	DOMINICAN REPUBLIC	53.3%	$483,017	$905,374
	14011	CHILE	50.0%	$1,459,934	$2,919,274
	14020	INDIA	57.7%	$238,430	$413,175
	14021	MEXICO	83.2%	$3,739,055	$4,492,937
	14054	ISRAEL	75.5%	$1,238,130	$1,640,762
	14526	HONG KONG	48.7%	$875,116	$1,796,248
	14550	MEXICO	96.8%	$2,147,561	$2,218,254
	14565	TAIWAN	57.6%	$1,312,693	$2,280,469
R	14612	ARGENTINA	48.4%	$1,120,756	$2,317,753
	14678	CHILE	52.5%	$180,237	$343,432
	14687	DOMINICAN REPUBLIC	79.8%	$172,248	$215,827
	14733	JAMAICA	86.5%	$188,517	$217,958
	14754	MEXICO	63.5%	$125,280	$197,352
	14825	MEXICO	88.6%	$4,255,030	$4,799,892
	14835	GUATEMALA	75.0%	$735,338	$980,713
	14877	KOREA, SOUTH	53.6%	$13,987	$26,079
R	14950	MEXICO	47.6%	$1,964,216	$4,126,388
	14960	THAILAND	60.9%	$3,270,763	$5,367,410
	15200	ECUADOR	94.6%	$489,900	$518,085
R	15254	BRAZIL	44.5%	$801,489	$1,801,453
	15320	DOMINICAN REPUBLIC	84.2%	$32,210	$38,237
	15443	TAIWAN	65.8%	$76,145	$115,773
	15460	THAILAND	56.7%	$435,288	$767,623
	15535	DOMINICAN REPUBLIC	47.8%	$2,704,931	$5,662,892
	16105	TAIWAN	90.7%	$127,951	$141,030
	16175	ISRAEL	87.9%	$361,961	$411,646
	16188	INDIA	100.0%	$1,239	$1,239
	16211	LEBANON	64.6%	$12,831	$19,850
	16813	TRINIDAD ISLAND	100.0%	$496,561	$496,561

R = REDUCED LIMIT APPLIES

LIST III : POSSIBLE de MINIMIS ITEMS
JAN-OCT 1987

	TSUS	COUNTRY	% OF WORLD	COUNTRY TOTAL	WORLD TOTAL
	16944	COLOMBIA	52.7%	$759,820	$1,441,675
	16958	YUGOSLAVIA	100.0%	$2,000	$2,000
	17040	MEXICO	49.1%	$2,010,901	$4,096,707
	17615	BRAZIL	69.4%	$1,663,125	$2,395,679
	17670	MEXICO	51.0%	$2,041,882	$4,003,625
	17716	ISRAEL	76.0%	$24,677	$32,452
	18453	ARGENTINA	52.1%	$227,012	$436,065
	18834	MEXICO	54.4%	$151,638	$278,621
R	20091	MEXICO	26.0%	$1,215,985	$4,683,498
	20091	HONDURAS	68.0%	$3,185,901	$4,683,498
	20330	MALAYSIA	52.0%	$632,255	$1,215,635
	20405	TAIWAN	68.8%	$2,370,302	$3,444,033
	20435	HONDURAS	57.8%	$224,214	$387,803
	20647	TAIWAN	70.6%	$2,194,670	$3,106,859
	22234	TAIWAN	91.9%	$92,450	$100,621
	22236	TAIWAN	85.3%	$583,003	$683,217
	24010	BRAZIL	98.1%	$5,416,319	$5,521,364
	24012	BRAZIL	80.5%	$969,789	$1,204,963
	24019	TAIWAN	57.6%	$571,115	$991,032
	24032	BRAZIL	57.5%	$69,449	$120,820
	24050	TAIWAN	75.1%	$67,322	$89,650
	25120	ISRAEL	77.8%	$78,546	$101,021
	25261	MEXICO	89.1%	$1,096,397	$1,229,864
R	31525	MEXICO	33.1%	$1,166,292	$3,519,554
	31535	PHILIPPINES	83.5%	$2,640,468	$3,161,784
	31555	BRAZIL	47.3%	$46,988	$99,385
	31580	THAILAND	80.6%	$505,863	$627,718
	31590	THAILAND	71.3%	$71,163	$99,748
	31901	INDIA	99.1%	$1,578,113	$1,592,419
	31903	INDIA	94.6%	$1,459,700	$1,543,109
	31905	INDIA	98.9%	$6,362,132	$6,431,153
	31907	INDIA	97.9%	$178,998	$182,787
	36035	INDIA	72.0%	$561,761	$780,403
	36121	INDIA	78.6%	$29,820	$37,960
	39016	TAIWAN	84.4%	$24,166	$28,622
	40212	MEXICO	54.5%	$2,066,360	$3,791,702
	40220	MEXICO	55.9%	$1,238,483	$2,216,322
	40647	INDIA	100.0%	$6,160	$6,160
	41056	TAIWAN	54.4%	$18,014	$33,140
	41182	YUGOSLAVIA	50.3%	$4,241,721	$8,426,003
	41231	ISRAEL	48.4%	$637,372	$1,318,163
	41280	MEXICO	76.4%	$708,284	$926,589
R	41645	TAIWAN	26.6%	$1,893,911	$7,108,574
	41722	MEXICO	47.8%	$1,726,364	$3,613,484
	41722	TRINIDAD ISLAND	51.3%	$1,854,399	$3,613,484
	41754	HONG KONG	50.7%	$45,472	$89,766
	41824	INDIA	67.8%	$74,099	$109,252
	41876	MEXICO	56.1%	$1,122,733	$2,002,904
	41878	MEXICO	64.0%	$2,262,602	$3,535,470

R = REDUCED LIMIT APPLIES

LIST III : POSSIBLE de MINIMIS ITEMS
JAN-OCT 1987

	TSUS	COUNTRY	% OF WORLD	COUNTRY TOTAL	WORLD TOTAL
	41910	CHILE	78.2%	$4,257,976	$5,446,098
	42002	ISRAEL	81.2%	$789,882	$973,136
	42020	INDIA	80.0%	$452,684	$565,848
	42024	ISRAEL	86.4%	$499,147	$577,727
R	42060	MEXICO	93.9%	$5,320,407	$5,665,046
	42070	ISRAEL	100.0%	$72,313	$72,313
	42082	ISRAEL	99.4%	$339,466	$341,610
	42114	CHILE	70.3%	$2,124,363	$3,020,003
	42276	MEXICO	58.7%	$965,883	$1,646,448
	42532	HONG KONG	48.5%	$1,533	$3,164
	42584	TRINIDAD ISLAND	61.7%	$732,856	$1,187,021
	42600	MEXICO	95.8%	$806,990	$841,953
	42716	ARGENTINA	96.7%	$403,913	$417,603
	42725	MEXICO	81.4%	$413,058	$507,620
	42746	MEXICO	100.0%	$246,278	$246,278
R	42784	BRAZIL	24.7%	$1,131,039	$4,586,271
	42850	BRAZIL	92.3%	$200,289	$216,976
	42858	TAIWAN	65.0%	$415,000	$638,616
	42929	BRAZIL	68.3%	$2,140,445	$3,133,857
	43510	DOMINICA ISLAND	71.7%	$243,184	$339,375
	43713	INDIA	85.3%	$205,934	$241,316
	44510	TAIWAN	64.9%	$745,949	$1,149,212
	45254	BRAZIL	52.2%	$399,403	$764,608
	45516	VENEZUELA	100.0%	$49,014	$49,014
	45518	BRAZIL	100.0%	$57,020	$57,020
	45530	TAIWAN	95.7%	$162,652	$170,007
	45546	TAIWAN	73.5%	$331,669	$451,124
	46605	PHILIPPINES	84.3%	$645,912	$766,085
	46610	MEXICO	49.8%	$23,047	$46,285
	47338	CYPRUS	74.3%	$84,774	$114,136
	47352	MEXICO	99.5%	$7,288,121	$7,325,746
	47378	MEXICO	91.2%	$2,140,175	$2,347,420
	47382	KOREA, SOUTH	89.1%	$216,000	$242,329
	51131	MEXICO	74.5%	$441,758	$592,660
	51224	MEXICO	51.1%	$166,228	$325,466
	51671	INDIA	100.0%	$369,259	$369,259
	51673	INDIA	84.7%	$24,705	$29,175
	51674	INDIA	86.7%	$85,525	$98,625
	51676	INDIA	77.6%	$152,523	$196,621
	51841	MEXICO	79.7%	$335,157	$420,406
	52187	MEXICO	56.9%	$2,327,315	$4,092,960
	52241	MEXICO	91.8%	$343,036	$373,870
	52351	TAIWAN	50.1%	$11,540	$23,029
	52394	TAIWAN	63.9%	$1,342,747	$2,100,362
	53481	TAIWAN	64.7%	$4,840,100	$7,479,457
R	54021	MEXICO	38.5%	$2,435,837	$6,325,463
	54257	HONG KONG	93.2%	$16,200	$17,386
R	54277	MEXICO	30.2%	$142,720	$471,893
	54292	TAIWAN	100.0%	$22,320	$22,320

R = REDUCED LIMIT APPLIES

LIST III : POSSIBLE de MINIMIS ITEMS
JAN-OCT 1987

	TSUS	COUNTRY	% OF WORLD	COUNTRY TOTAL	WORLD TOTAL
	54294	TAIWAN	86.0%	$47,444	$55,195
	54565	MEXICO	70.1%	$850,191	$1,212,302
	54585	TAIWAN	90.8%	$1,202,883	$1,324,161
	54647	TAIWAN	74.0%	$1,313,463	$1,776,042
	60210	MEXICO	80.9%	$63,795	$78,869
	60315	VENEZUELA	85.3%	$5,608,810	$6,577,875
	60350	MEXICO	87.2%	$4,553,001	$5,222,511
	60505	LIBERIA	53.7%	$20,760	$38,675
	60673	MEXICO	50.0%	$2,740,673	$5,483,828
	61058	TAIWAN	74.2%	$74,015	$99,741
	61063	KOREA, SOUTH	98.4%	$145,554	$147,908
	61065	TAIWAN	61.2%	$3,846,898	$6,288,885
	61070	ISRAEL	69.5%	$1,816,972	$2,614,016
	61071	TAIWAN	67.6%	$58,564	$86,570
	61230	YUGOSLAVIA	86.4%	$545,595	$631,333
	61250	MEXICO	47.7%	$142,272	$298,033
	61271	PERU	51.4%	$485,231	$944,702
	61303	MEXICO	50.7%	$74,321	$146,543
	61311	MEXICO	96.8%	$2,524,659	$2,607,584
	61842	BAHRAIN	47.0%	$2,156,473	$4,592,459
	62215	VENEZUELA	61.7%	$180,553	$292,414
	62220	BOLIVIA	50.9%	$62,157	$122,039
	62404	MEXICO	47.6%	$1,018,255	$2,139,520
	62410	PERU	57.2%	$85,549	$149,632
	62631	MEXICO	84.6%	$9,702	$11,464
R	62640	MEXICO	23.5%	$1,512,762	$6,446,595
	62815	BRAZIL	69.5%	$277,355	$398,963
	62890	CHILE	64.0%	$986,391	$1,541,559
	62895	CHILE	100.0%	$114,500	$114,500
	63266	MEXICO	91.3%	$354,671	$388,677
	64208	KOREA, SOUTH	61.6%	$899,383	$1,459,105
	64225	TAIWAN	63.3%	$16,375	$25,889
R	64245	MEXICO	61.9%	$939,789	$1,518,744
	64258	VENEZUELA	100.0%	$162,510	$162,510
	64285	TAIWAN	83.5%	$158,457	$189,698
	64464	EL SALVADOR	93.6%	$27,893	$29,798
	64604	TAIWAN	72.0%	$10,027	$13,928
	64606	TAIWAN	56.1%	$225,875	$402,750
	64628	KOREA, SOUTH	83.7%	$1,042,811	$1,245,697
	64647	TAIWAN	80.4%	$830,388	$1,032,597
	64653	HONG KONG	53.7%	$1,020,061	$1,898,265
R	64665	TAIWAN	33.3%	$2,476,522	$7,441,731
	64678	TAIWAN	50.3%	$785,139	$1,560,271
	64685	TAIWAN	61.7%	$901,180	$1,460,519
	64687	TAIWAN	73.6%	$281,880	$382,891
	64698	MEXICO	76.1%	$249,474	$327,926
	64710	TAIWAN	51.5%	$95,539	$185,666
	64855	TAIWAN	70.3%	$3,473,506	$4,938,471
	64857	TAIWAN	54.7%	$902,714	$1,651,084

R = REDUCED LIMIT APPLIES

LIST III : POSSIBLE de MINIMIS ITEMS
JAN-OCT 1987

	TSUS	COUNTRY	% OF WORLD	COUNTRY TOTAL	WORLD TOTAL
	64873	TAIWAN	65.3%	$3,565,199	$5,461,287
R	64880	TAIWAN	36.2%	$52,375	$144,855
	64891	TAIWAN	77.2%	$999,617	$1,295,004
R	64895	TAIWAN	36.1%	$2,390,638	$6,624,305
	64971	TAIWAN	60.9%	$16,013	$26,274
	64977	HONG KONG	51.9%	$445,186	$857,455
	64989	TAIWAN	70.1%	$159,287	$227,191
	65037	TAIWAN	49.6%	$1,008,263	$2,033,567
	65047	TAIWAN	91.1%	$524,216	$575,296
	65048	TAIWAN	62.1%	$435,282	$701,106.
	65056	TAIWAN	47.1%	$2,253,593	$4,784,369
	65079	TAIWAN	57.2%	$137,352	$240,173
	65104	TAIWAN	94.9%	$74,108	$78,089
	65125	TAIWAN	53.3%	$1,738,312	$3,262,610
	65153	TAIWAN	65.1%	$2,721,307	$4,177,159
	65160	KOREA, SOUTH	49.1%	$32,886	$66,970
	65162	KOREA, SOUTH	85.9%	$65,026	$75,676
	65213	TAIWAN	100.0%	$2,782	$2,782
	65325	MEXICO	71.8%	$1,861,778	$2,591,786
	65347	TAIWAN	76.5%	$1,362,719	$1,781,452
	65370	KOREA, SOUTH	52.1%	$58,369	$111,953
	65455	TAIWAN	81.9%	$1,696,037	$2,069,790
	65610	SINGAPORE	55.6%	$3,663,593	$6,587,370
	65630	HONG KONG	53.3%	$488,758	$916,340
	65790	MEXICO	83.0%	$1,400,135	$1,686,982
	66020	TAIWAN	51.3%	$49,056	$95,718
	68025	TAIWAN	58.2%	$1,650,252	$2,837,721
R	68410	HONG KONG	26.5%	$1,495,425	$5,639,095
	68542	HONG KONG	100.0%	$11,070	$11,070
	68650	SINGAPORE	48.1%	$992,235	$2,063,449
	68820	VENEZUELA	69.0%	$2,404,904	$3,487,083
	68830	KOREA, SOUTH	71.5%	$2,229,515	$3,116,861
	69431	TAIWAN	56.7%	$110,390	$194,719
	70232	MEXICO	66.0%	$372,175	$563,512
	70245	MEXICO	93.7%	$41,000	$43,776
	70495	PHILIPPINES	50.9%	$299,539	$588,251
	70619	KENYA	47.9%	$15,311	$31,952
	70633	KOREA, SOUTH	66.4%	$1,682,876	$2,532,993
	70841	ISRAEL	64.8%	$24,181	$37,331
	70871	TAIWAN	76.8%	$5,389,253	$7,014,416
	71060	HONG KONG	63.5%	$1,086,838	$1,710,431
	71067	TAIWAN	78.8%	$115,577	$146,627
	71068	BRAZIL	48.7%	$30,087	$61,777
	71130	TAIWAN	58.9%	$331,925	$563,558
	71131	INDIA	76.9%	$3,386,195	$4,400,987
	72202	TAIWAN	81.5%	$1,086,274	$1,332,973
	72214	TAIWAN	94.8%	$3,180,903	$3,356,962
	72255	HONG KONG	62.3%	$429,775	$690,120
	72278	TAIWAN	96.2%	$4,265,096	$4,431,833

R = REDUCED LIMIT APPLIES

LIST III : POSSIBLE de MINIMIS ITEMS
JAN-OCT 1987

	TSUS	COUNTRY	% OF WORLD	COUNTRY TOTAL	WORLD TOTAL
	72435	TAIWAN	49.5%	$3,735	$7,553
	72552	TAIWAN	60.8%	$4,641,352	$7,636,192
	73110	TAIWAN	72.1%	$646,999	$897,459
	73142	BRAZIL	100.0%	$12,418	$12,418
	73150	TAIWAN	61.0%	$799,633	$1,310,613
	73243	TAIWAN	90.8%	$3,242,414	$3,569,345
	73430	HONG KONG	73.5%	$623,107	$847,649
	73434	HONG KONG	55.0%	$1,182,161	$2,151,132
	73440	TAIWAN	68.3%	$4,082,088	$5,972,427
R	73442	BRAZIL	33.3%	$844,905	$2,539,765
	73442	TAIWAN	47.9%	$1,215,641	$2,539,765
	73451	TAIWAN	89.0%	$5,170,558	$5,811,963
	73460	TAIWAN	95.0%	$1,881,838	$1,981,870
	73471	TAIWAN	89.0%	$1,427,691	$1,604,454
	73472	TAIWAN	75.2%	$4,173,974	$5,550,806
	73485	INDONESIA	51.4%	$814,418	$1,584,684
R	73510	TAIWAN	32.7%	$699,658	$2,140,221
	73511	TAIWAN	77.0%	$1,162,830	$1,510,022
	74030	HONG KONG	67.5%	$3,988,330	$5,906,341
	74034	HONG KONG	79.2%	$1,329,017	$1,677,563
	74075	KOREA, SOUTH	50.6%	$506,350	$1,000,133
	74115	TAIWAN	47.4%	$1,222,476	$2,576,829
	74120	HONG KONG	97.1%	$1,606,896	$1,655,129
	74510	HONG KONG	58.8%	$452,583	$770,167
	74556	MALAYSIA	47.8%	$1,141,468	$2,388,299
	74560	TAIWAN	61.5%	$1,653,712	$2,687,322
	74570	TAIWAN	86.4%	$1,046,062	$1,210,712
	74815	TAIWAN	55.2%	$1,590,321	$2,879,978
	74836	TAIWAN	55.6%	$1,238,678	$2,226,262
	75005	TAIWAN	60.4%	$639,454	$1,059,535
	75025	HONG KONG	51.1%	$3,475,176	$6,804,676
	75035	TAIWAN	50.2%	$1,482,446	$2,953,026
	75050	KOREA, SOUTH	54.7%	$948,038	$1,732,458
	75055	KOREA, SOUTH	67.4%	$1,541,370	$2,286,334
	75075	HONG KONG	48.3%	$1,978,171	$4,097,300
	75080	TAIWAN	91.2%	$1,379,998	$1,513,061
	75110	INDIA	69.9%	$36,888	$52,788
	75111	TAIWAN	48.6%	$801,693	$1,649,895
	75115	TAIWAN	71.5%	$26,431	$36,984
	75121	TAIWAN	93.2%	$1,134,737	$1,217,191
	75124	TAIWAN	96.9%	$1,082,699	$1,117,048
	75125	TAIWAN	86.8%	$1,986,076	$2,286,827
	75520	ISRAEL	53.9%	$1,077,036	$1,998,581
	75615	HONG KONG	65.9%	$4,517,975	$6,860,533
	75623	INDIA	70.8%	$7,278	$10,273
	75635	TURKEY	69.1%	$239,289	$346,256
	75650	HONG KONG	52.3%	$2,724	$5,204
	76038	MEXICO	59.7%	$621,694	$1,040,883
	76050	TAIWAN	70.0%	$703,185	$1,004,916

R = REDUCED LIMIT APPLIES

LIST III : POSSIBLE de MINIMIS ITEMS
JAN-OCT 1987

TSUS	COUNTRY	% OF WORLD	COUNTRY TOTAL	WORLD TOTAL
76056	TAIWAN	56.2%	$1,071,427	$1,906,771
77105	MEXICO	100.0%	$29,720	$29,720
77229	HONG KONG	50.9%	$205,409	$403,857
77320	TAIWAN	58.6%	$98,941	$168,906
79000	TAIWAN	47.5%	$721,654	$1,519,046
79063	HONG KONG	71.5%	$351,720	$491,993
79110	HONG KONG	68.7%	$402,092	$585,437
79120	THAILAND	51.8%	$40,038	$77,351
79170	TAIWAN	67.4%	$1,230,737	$1,825,229
79260	HONG KONG	84.2%	$5,680,272	$6,748,146

R = REDUCED LIMIT APPLIES

LIST IV : POSSIBLE REDESIGNATION ITEMS
JAN-OCT 1987

	TSUS	COUNTRY	% OF WORLD	COUNTRY TOTAL	WORLD TOTAL
	12161	ARGENTINA	43.6%	$62,866,761	$144,337,358
	14177	MEXICO	49.9%	$16,196,494	$32,436,081
	15520	DOMINICAN REPUBLIC	16.4%	$53,390,002	$324,622,793
	15520	BRAZIL	11.1%	$36,055,992	$324,622,793
	20709	TAIWAN	41.7%	$49,289,958	$118,188,176
	24530	BRAZIL	44.7%	$6,228,459	$13,941,660
	25660	KOREA, SOUTH	1.0%	$414,940	$40,034,604
R	33740	KOREA, SOUTH	18.4%	$3,093,028	$16,818,431
R	33740	HONG KONG	1.5%	$259,022	$16,818,431
R	35581	TAIWAN	21.6%	$19,211,341	$88,845,407
	38614	TAIWAN	48.7%	$12,625,507	$25,947,467
R	38961	HONG KONG	6.9%	$15,360,375	$224,136,259
	40719	MEXICO	2.8%	$1,782,284	$62,747,808
R	42582	BRAZIL	20.2%	$1,485,111	$7,340,467
R	42784	BRAZIL	24.7%	$1,131,039	$4,586,271
	43764	BRAZIL	24.9%	$3,185,775	$12,812,113
R	49094	BRAZIL	21.8%	$262,199	$1,200,054
	52221	MEXICO	36.4%	$11,628,874	$31,984,022
R	53222	KOREA, SOUTH	14.5%	$1,866,803	$12,850,045
	53231	MEXICO	32.9%	$1,962,272	$5,968,146
	53531	MEXICO	38.1%	$21,006,520	$55,123,029
R	53531	BRAZIL	18.1%	$9,951,860	$55,123,029
R	54451	TAIWAN	24.7%	$15,764,454	$63,819,902
	54553	MEXICO	20.6%	$5,761,202	$27,937,963
	60628	MEXICO	24.0%	$3,475,927	$14,487,272
R	60644	BRAZIL	2.4%	$1,062,122	$44,213,621
R	61065	KOREA, SOUTH	3.7%	$234,886	$6,288,885
R	61070	TAIWAN	2.1%	$54,484	$2,614,016
R	61074	TAIWAN	9.3%	$1,396,878	$14,992,392
R	61082	TAIWAN	19.0%	$3,008,152	$15,828,329
	61203	CHILE	21.5%	$8,953,562	$41,592,018
	61206	PERU	7.0%	$44,021,118	$625,956,314
	61206	ZAMBIA	4.9%	$30,415,549	$625,956,314
	61847	BRAZIL	2.0%	$308,298	$15,110,378
R	62640	MEXICO	23.5%	$1,512,762	$6,446,595
R	63242	BRAZIL	14.1%	$3,603,903	$25,641,286
R	64217	KOREA, SOUTH	0.7%	$8,484	$1,289,127
R	64880	HONG KONG	7.8%	$11,363	$144,855
	65087	HONG KONG	27.3%	$28,426	$104,127
R	65089	HONG KONG	11.4%	$312,479	$2,752,660
	65089	TAIWAN	49.2%	$1,354,073	$2,752,660
R	65131	TAIWAN	24.3%	$2,801,183	$11,523,240
R	65146	KOREA, SOUTH	9.8%	$482,877	$4,934,174
R	65203	KOREA, SOUTH	20.9%	$964,849	$4,606,352
	65284	MEXICO	27.1%	$22,836,355	$84,215,106
R	65300	KOREA, SOUTH	4.7%	$4,212,516	$90,273,674
R	65338	TAIWAN	5.6%	$113,039	$2,024,613
	65345	TAIWAN	48.5%	$10,663,672	$21,966,774
	65390	HONG KONG	49.1%	$4,798,172	$9,779,936

R = REDUCED LIMIT APPLIES

LIST IV : POSSIBLE REDESIGNATION ITEMS
JAN-OCT 1987

	TSUS	COUNTRY	% OF WORLD	COUNTRY TOTAL	WORLD TOTAL
	65430	KOREA, SOUTH.....	41.6%	$3,482,784	$8,370,559
R	65430	TAIWAN.....	21.2%	$1,772,410	$8,370,559
R	65460	TAIWAN.....	23.9%	$3,413,521	$14,260,790
	65780	TAIWAN.....	46.2%	$4,256,673	$9,213,850
	66048	BRAZIL.....	3.3%	$33,191,593	$1,011,979,369
R	66109	SINGAPORE.....	14.0%	$18,161,337	$129,430,897
	66165	ISRAEL.....	8.5%	$2,178,717	$25,515,118
	66235	MEXICO.....	32.0%	$7,444,753	$23,270,114
	67656	MEXICO.....	0.8%	$7,255,010	$952,615,781
	67656	KOREA, SOUTH.....	2.1%	$20,136,620	$952,615,781
	67656	HONG KONG.....	0.6%	$5,444,645	$952,615,781
	67850	HONG KONG.....	2.2%	$74,152,050	$3,412,574,490
R	68301	KOREA, SOUTH.....	14.2%	$7,560,350	$53,145,292
R	68301	TAIWAN.....	17.1%	$9,079,371	$53,145,292
	68315	MEXICO.....	16.2%	$31,067,335	$191,792,712
	68332	HONG KONG.....	26.7%	$68,491,889	$256,540,500
	68360	MEXICO.....	14.0%	$75,355,581	$539,267,307
R	68370	HONG KONG.....	18.2%	$5,330,692	$29,360,500
R	68370	TAIWAN.....	4.9%	$1,442,919	$29,360,500
	68425	SINGAPORE.....	3.8%	$20,962,583	$555,894,277
R	68435	HONG KONG.....	15.1%	$2,917,895	$19,327,525
	68455	MEXICO.....	37.3%	$14,439,569	$38,668,522
	68459	HONG KONG.....	0.7%	$1,633,789	$240,438,100
	68459	TAIWAN.....	2.0%	$4,768,543	$240,438,100
	68514	HONG KONG.....	13.3%	$66,196,503	$495,967,639
	68516	KOREA, SOUTH.....	0.3%	$227,036	$78,266,731
	68516	HONG KONG.....	3.0%	$2,311,205	$78,266,731
	68516	TAIWAN.....	33.8%	$26,421,137	$78,266,731
R	68522	KOREA, SOUTH.....	22.4%	$4,649,046	$20,765,895
	68531	KOREA, SOUTH.....	0.7%	$188,778	$25,298,389
	68531	TAIWAN.....	22.0%	$5,568,813	$25,298,389
	68532	KOREA, SOUTH.....	3.0%	$8,214,564	$277,032,121
R	68532	TAIWAN.....	5.8%	$16,126,968	$277,032,121
R	68533	MEXICO.....	9.8%	$17,827,675	$181,060,241
	68533	SINGAPORE.....	4.4%	$7,960,580	$181,060,241
	68533	KOREA, SOUTH.....	1.6%	$2,948,333	$181,060,241
R	68533	TAIWAN.....	3.3%	$6,014,041	$181,060,241
	68565	SINGAPORE.....	22.7%	$16,036,560	$70,494,773
R	68573	HONG KONG.....	5.3%	$10,765,243	$203,794,550
	68817	MEXICO.....	6.8%	$917,922	$13,558,158
R	68841	HONG KONG.....	24.4%	$3,733,529	$15,308,351
	68841	TAIWAN.....	1.6%	$252,182	$15,308,351
	69635	TAIWAN.....	38.4%	$5,858,791	$15,270,089
	69640	TAIWAN.....	31.8%	$2,012,309	$6,320,587
	70661	HONG KONG.....	11.6%	$5,053,264	$43,703,576
R	70847	HONG KONG.....	7.5%	$24,319,911	$323,296,943
	70909	MEXICO.....	37.7%	$23,279,733	$61,741,495
	70940	HONG KONG.....	17.7%	$5,947,989	$33,577,539
	71072	TAIWAN.....	40.7%	$3,934,616	$9,666,777

R = REDUCED LIMIT APPLIES

LIST IV : POSSIBLE REDESIGNATION ITEMS
JAN-OCT 1987

	TSUS	COUNTRY	% OF WORLD	COUNTRY TOTAL	WORLD TOTAL
R	71131	BRAZIL	13.9%	$613,261	$4,400,987
	71138	MEXICO	20.8%	$3,607,223	$17,345,198
R	72208	HONG KONG	24.1%	$6,500,765	$26,983,217
R	72211	HONG KONG	11.6%	$8,257,172	$70,973,853
	72211	TAIWAN	36.2%	$25,675,282	$70,973,853
R	73029	BRAZIL	19.9%	$249,774	$1,257,216
R	73425	HONG KONG	23.4%	$1,946,508	$8,324,958
	73507	KOREA, SOUTH	48.3%	$11,839,429	$24,507,273
R	73714	HONG KONG	7.6%	$2,293,598	$30,194,857
R	73715	HONG KONG	9.4%	$6,066,169	$64,211,627
R	73716	HONG KONG	8.9%	$5,269,943	$59,348,175
	73723	HONG KONG	8.4%	$9,133,769	$108,664,673
	73760	TAIWAN	40.3%	$10,099,446	$25,044,409
R	73780	HONG KONG	24.0%	$10,491,949	$43,722,052
	73793	TAIWAN	11.6%	$20,278,316	$174,254,370
R	73796	MEXICO	10.1%	$15,453,209	$153,101,215
	73796	HONG KONG	28.6%	$43,770,840	$153,101,215
R	73798	MEXICO	7.0%	$19,026,468	$272,553,484
	73798	HONG KONG	24.8%	$67,480,695	$272,553,484
	73798	TAIWAN	17.9%	$48,867,693	$272,553,484
R	74011	HONG KONG	0.1%	$14,332	$10,273,502
R	74012	HONG KONG	1.3%	$174,575	$13,674,847
R	74013	HONG KONG	0.6%	$2,043,723	$340,627,100
	74038	TAIWAN	24.6%	$47,163,102	$191,682,543
	74039	TAIWAN	32.9%	$726,619	$2,205,336
	74041	HONG KONG	18.7%	$24,692,340	$131,907,406
	74041	TAIWAN	25.4%	$33,490,456	$131,907,406
	74125	HONG KONG	18.3%	$793,171	$4,333,702
	77143	TAIWAN	14.7%	$68,676,182	$465,615,414
	77145	TAIWAN	47.1%	$3,052,136	$6,480,581
R	77216	HONG KONG	18.7%	$24,164,208	$129,455,902
	77216	TAIWAN	33.3%	$43,101,396	$129,455,902
R	77445	HONG KONG	21.7%	$5,543,070	$25,503,720
	77451	TAIWAN	7.3%	$505,439	$6,951,076
	77453	TAIWAN	28.5%	$802,193	$2,819,082
	77456	TAIWAN	8.4%	$294,733	$3,515,090
	77458	TAIWAN	17.1%	$70,209,416	$409,468,760
R	79127	BRAZIL	15.3%	$18,598,458	$121,203,086
	79128	MEXICO	2.6%	$336,097	$13,108,696

R = REDUCED LIMIT APPLIES

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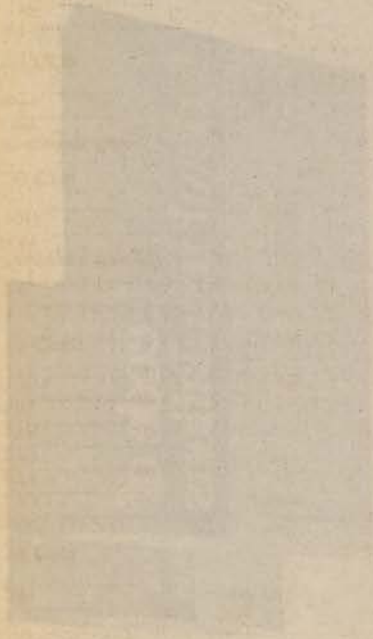
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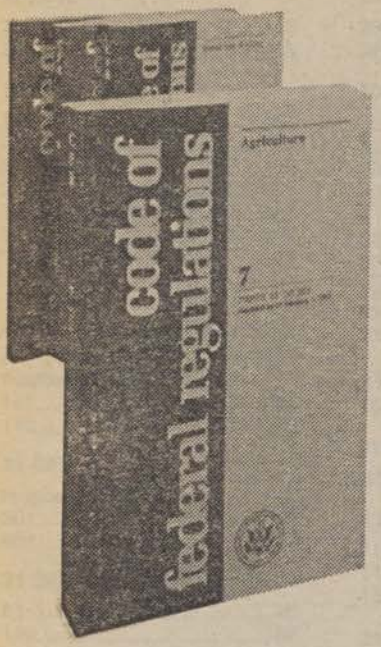
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